

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4749**

BY DELEGATES HOWELL AND C. MARTIN

(BY REQUEST OF THE WEST VIRGINIA SECRETARY OF STATE)

[Introduced February 07, 2020; Referred to the  
Committee on Government Organization.]



1 A BILL to amend and reenact §30-18-3, §30-18-6, §30-18-9, and §30-18-10 of the Code of West  
2 Virginia, 1931, as amended, all relating to providing more efficient application processes  
3 for private investigators, security guards, and firms; removing unnecessary requirements  
4 for each private investigator and security guard applicant to submit fingerprints and  
5 photographs of each applicant to the Secretary of State; to allow private investigators,  
6 security guards, and private investigator or security guard firms to obtain liability insurance  
7 in lieu of a surety bond; increasing the amount of a surety bond; increasing the licensure  
8 renewal term of a private investigator, security guard, and private investigator or security  
9 guard firms from one to two years; and making technical typographical changes to  
10 distinguish the Secretary of State from an entity's secretary or administrative assistant.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 18. PRIVATE INVESTIGATIVE AND SECURITY SERVICES.**

**§30-18-3. Application requirements for a license to conduct the private investigation  
business.**

1 (a) To be licensed to be a private detective, a private investigator or to operate a private  
2 detective or investigative firm, each applicant shall ~~complete and file a written~~ file an application  
3 ~~under oath~~ with the Secretary of State in a manner or method authorized and in such form as the  
4 secretary may prescribe.

5 (b) On the application each applicant shall provide the following information: The  
6 applicant's name, birth date, citizenship, physical description, military service, current residence,  
7 residences for the preceding seven years, qualifying education or experience, the location of each  
8 of his or her offices in this state and any other information requested by the Secretary of State in  
9 order to comply with the requirements of this article.

10 (c) In the case of a corporation that is seeking a firm license, the application shall be signed  
11 by the president ~~and verified by the secretary or treasurer~~ of such corporation and shall specify  
12 the name of the corporation, the date and place of its incorporation, the names and titles of all

13 officers, the location of its principal place of business, and the name of the city, town or village,  
14 stating the street and number, and otherwise such apt description as will reasonably indicate the  
15 location. If the corporation has been incorporated in a state other than West Virginia, a certificate  
16 of good standing from the state of incorporation must accompany the application. This information  
17 must be provided in addition to that required to be provided by the applicant.

18 (d) The applicant shall provide:

19 (1) Information in the application about whether the applicant has ever been arrested for  
20 or convicted of any crime or wrongs, either done or threatened, against the government of the  
21 United States;

22 (2) Information about offenses against the laws of West Virginia or any state; and

23 (3) Any facts as may be required by the Secretary of State to show the good character,  
24 competency and integrity of the applicant.

25 To qualify for a firm license, the applicant shall provide such information for each person  
26 who will be authorized to conduct the private investigation business and for each officer, member  
27 or partner of the firm.

28 (e) As part of the application, each applicant shall give the Secretary of State permission  
29 to review the records held by the division of public safety for any convictions that may be on record  
30 for the applicant.

31 (f) For each applicant ~~for a license and for each officer, member and partner of the firm~~  
32 applying for a license, the application shall be accompanied by one recent full-face photograph.  
33 ~~and one complete set of the person's fingerprints~~

34 (g) For each applicant, the application shall be accompanied by:

35 (1) Character references from at least five reputable citizens. Each reference must have  
36 known the applicant for at least five years preceding the application. No reference may be  
37 connected to the applicant by blood or marriage. All references must have been written for the  
38 purpose of the application for a license to conduct the private investigation business; and

39 (2) A nonrefundable application processing service charge of \$50, which shall be payable  
40 to the Secretary of State to offset the cost of license review and criminal investigation background  
41 report from the department of public safety, along with a license fee of \$100 if the applicant is an  
42 individual, or \$200 if the applicant is a firm, or \$500 if the applicant is a nonresident of West  
43 Virginia or a foreign corporation or business entity. The license fee shall be deposited to the  
44 General Revenue Fund, and shall be refunded only if the license is denied.

45 (h) All applicants for private detective or private investigator licenses or for private  
46 investigation firm licenses shall file in the office of Secretary of State a surety bond or sufficient  
47 proof of liability insurance as required by the Secretary of State.

48 (i) If a surety bond is obtained in lieu of liability insurance, such bond shall:

49 (1) Be in the sum of ~~\$2,500~~ \$5,000 and conditioned upon the faithful and honest conduct  
50 of such business by such applicant;

51 (2) Be written by a company recognized and approved by the Insurance Commissioner of  
52 West Virginia and approved by the Attorney General of West Virginia with respect to its form;

53 (3) Be in favor of the State of West Virginia for any person who is damaged by any violation  
54 of this article. The bond must also be in favor of any person damaged by such a violation.

55 ~~(†)~~ (j) Any person claiming against the bond required by subsection ~~(†)~~ (j) of this section  
56 for a violation of this article may maintain an action at law against any licensed individual or firm  
57 and against the surety. The surety shall be liable only for damages awarded under §30-18-12 of  
58 this code and not the punitive damages permitted under that section. The aggregate liability of  
59 the surety to all persons damaged by a person or firm licensed under this article may not exceed  
60 the amount of the bond.

**§30-18-6. Application requirements for a license to conduct security guard business.**

1 (a) To be licensed as a security guard or to operate a security guard firm, each applicant  
2 shall ~~complete and~~ file a written application, under oath file an application with the Secretary of  
3 State in a manner or method authorized and in such form as the secretary may prescribe.

4 (b) On the application, each applicant shall provide the following information: The  
5 applicant's name, birth date, citizenship, physical description, military service, current residence,  
6 residences for the preceding seven years, qualifying education or experience, the location of each  
7 of his or her offices in this state and any other information requested by the Secretary of State in  
8 order to comply with the requirements of this article.

9 (c) In the case of a corporation that is seeking a firm license, the application shall be signed  
10 by the president ~~and verified by the secretary or treasurer~~ of such corporation and shall specify  
11 the name of the corporation, the date and place of its incorporation, the names and titles of all  
12 officers, the location of its principal place of business, and the name of the city, town or village,  
13 stating the street and number, and otherwise such apt description as will reasonably indicate the  
14 location. If the corporation has been incorporated in a state other than West Virginia, a certificate  
15 of good standing from the state of incorporation must accompany the application. This information  
16 shall be provided in addition to that required to be provided the applicant.

17 (d) The applicant shall provide:

18 (1) Information in the application about whether the applicant has ever been arrested for  
19 or convicted of any crime or wrongs, either done or threatened, against the government of the  
20 United States;

21 (2) Information about offenses against the laws of West Virginia or any state; ~~and~~

22 (3) Any facts as may be required by the Secretary of State to show the good character,  
23 competency and integrity of the applicant; and

24 (4) To qualify for a firm license, ~~the applicant shall provide such~~ the same information for  
25 each person who would be authorized to conduct security guard business under the applicant's  
26 firm license and for each officer, member or partner in the firm.

27 (e) As part of the application, each applicant shall give the Secretary of State permission  
28 to review the records held by the department of public safety for any convictions that may be on  
29 record for the applicant.

30 (f) For each applicant for a license ~~and for each officer, member and partner of the firm~~  
31 ~~applying for a license~~ the application shall be accompanied by one recent full-face photograph  
32 ~~and one complete set of the person's fingerprints~~ of the applicant.

33 (g) For each applicant, the application shall be accompanied by:

34 (1) Character references from at least five reputable citizens. Each reference must have  
35 known the applicant for at least five years preceding the application. No reference may be  
36 connected to the applicant by blood or marriage. All references must have been written for the  
37 purpose of the application for a license to conduct security guard business; and

38 (2) A nonrefundable application processing service charge of \$50, which shall be payable  
39 to the Secretary of State to offset the cost of license review and criminal investigation background  
40 report from the department of public safety, along with a license fee of \$100 if the applicant is an  
41 individual, or \$200 if the applicant is a firm, or \$500 if the applicant is a nonresident of West  
42 Virginia or a foreign corporation or business entity. The license fee shall be deposited to the  
43 General Revenue Fund, and shall be refunded only if the license is denied.

44 (h) All applicants for security guard licenses or security guard firm licenses shall file in the  
45 office of Secretary of State a surety bond or sufficient proof of liability insurance as required by  
46 the Secretary of State.

47 (i) If a surety bond is obtained in lieu of liability insurance, such bond shall:

48 (1) Be in the sum of ~~\$2,500~~ \$5,000 and conditioned upon the faithful and honest conduct  
49 of such business by such applicant;

50 (2) Be written by a company recognized and approved by the Insurance Commissioner of  
51 West Virginia and approved by the Attorney General of West Virginia with respect to its form;

52 (3) Be in favor of the State of West Virginia for any person who is damaged by any violation  
53 of this article. The bond must also be in favor of any person damaged by such a violation.

54 ~~(†)~~ (j) Any person claiming against the bond required by subsection ~~(†)~~ (i) of this section  
55 for a violation of this article may maintain an action at law against any licensed individual or firm

56 and against the surety. The surety shall be liable only for damages awarded under §30-18-12 of  
57 this code and not the punitive damages permitted under that section. The aggregate liability of  
58 the surety to all persons damaged by a person or firm licensed under this article may not exceed  
59 the amount of the bond.

**§30-18-9. Renewal of license.**

1 A license granted under the provisions of this article shall be in effect for ~~one year~~ two  
2 years from the date the certificate of license is issued and may be renewed for a period of one  
3 year by the Secretary of State upon application, in such form as the secretary may prescribe, and  
4 upon payment of the fee and the filing of the surety bond or proof of liability insurance. At the time  
5 of applying for renewal of a license, the Secretary of State may require any person to provide  
6 additional information to reflect any changes in the original application or any previous renewal.

**§30-18-10. Authority of Secretary of State.**

1 (a) When the Secretary of State is satisfied as to the good character, competency and  
2 integrity of an applicant, of all employees or individuals conducting the private investigation  
3 business or security guard services under a firm license and, if the applicant is a firm, of each  
4 member, officer or partner, he or she shall issue and deliver to the applicant a certificate of license.  
5 Each license issued shall be for a period of one year and is revocable at all times for cause shown  
6 pursuant to subsection (b) of this section or any rules promulgated pursuant thereto.

7 (b) The Secretary of State may propose for promulgation in accordance with the provisions  
8 of chapter 29A of this code legislative rules necessary for the administration and enforcement of  
9 this article and for the issuance, suspension and revocation of licenses issued under the  
10 provisions of this article. The Secretary of State shall afford any applicant an opportunity to be  
11 heard in person or by counsel when a determination is made to deny, revoke or suspend an  
12 applicant's license or application for license, including a renewal of a license. The applicant has  
13 15 days from the date of receiving written notice of the Secretary of State's adverse determination  
14 to request a hearing on the matter of denial, suspension or revocation. The action of the Secretary



15 of State in granting, renewing, or in refusing to grant or to renew, a license is subject to review by  
16 the circuit court of Kanawha County or other court of competent jurisdiction.

17 (c) At any hearing before the Secretary of State to challenge an adverse determination by  
18 the Secretary of State on the matter of a denial, suspension or revocation of a license, if the  
19 adverse determination is based upon a conviction for a crime which would bar licensure under  
20 the provisions of this article, the hearing shall be an identity hearing only and the sole issue which  
21 may be contested is whether the person whose application is denied or whose license is  
22 suspended or revoked is the same person convicted of the crime.

23 (d) The Secretary of State shall require each applicant to submit to a state and national  
24 criminal history record check, as set forth in this subsection:

25 (1) The criminal history record check shall be based on fingerprints submitted to the West  
26 Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

27 (2) The applicant shall meet all requirements necessary to accomplish the state and  
28 national criminal history record check, including:

29 (A) Submitting fingerprints for the purposes set forth in this section, if required by the  
30 Secretary of State, West Virginia State Police, or the Federal Bureau of Investigation; and

31 (B) Authorizing the Secretary of State, the West Virginia State Police and the Federal  
32 Bureau of Investigation to use all records submitted and produced for the purpose of screening  
33 the applicant for a license.

34 (3) The results of the state and national criminal history record check may not be released  
35 to or by a private entity except:

36 (A) To the individual who is the subject of the criminal history record check;

37 (B) With the written authorization of the individual who is the subject of the criminal history  
38 record check; or

39 (C) Pursuant to a court order.

40           (4) The criminal history record check and related records are not public records for the  
41 purposes of chapter 29B of this code.

42           (5) The applicant shall ensure that the criminal history record check is completed as soon  
43 as possible after the date of the original application for registration.

44           (6) The applicant shall pay the actual costs of the fingerprinting and criminal history record  
45 check.

NOTE: The purpose of this bill is to allow private investigators, security guards, and private investigator or security guard firms to obtain liability insurance in lieu of a surety bond, remove unnecessary requirements for submitting fingerprints and photographs of applicants and employees to the Secretary of State for each application, increasing the amount of a surety bond, and to increase the licensure renewal term of a private investigator, security guard, and private investigator or security guard firms from one to two years.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.