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Notice of Intended Regulatory Action (NOIRA)
Agency Background Document

Agency name	Virginia Department of Criminal Justice Services (DCJS)
Virginia Administrative Code (VAC) citation(s)	6 VAC20-172 and 6 VAC20-174
Regulation title(s)	6 VAC20-172 Regulations Relating to Private Security Services Businesses 6 VAC20-174 Regulations Relating to Private Security Services Registered Personnel
Action title	Amend 6VAC20-172 and 6VAC20-174 to Address Insurance Requirements for Independent Contractors
Date this document prepared	October 20, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

The proposed language will amend 6 VAC20-172 Regulations Relating to Private Security Services Businesses and 6 VAC20-174 Regulations Relating to Private Security Services Registered Personnel to allow for licensed private security services businesses licensed by DCJS to independently contract with private investigators and personal protection specialists registered with DCJS. Additionally the language will require that every registered personal protection specialist and private investigator hired as an independent contractor maintain comprehensive general liability in the amount to be determined by DCJS and provide evidence of such insurance to the business they are contracting with. The promulgation of this regulation will address the language and requirements of HB1718 which became effective July 1, 2015.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Virginia Department of Criminal Justice Services and the Criminal Justice Services Board

§ 9.1-102. Powers and duties of the Board and the Department.

The Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to:

1. Adopt regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the administration of this chapter including the authority to require the submission of reports and information by law-enforcement officers within the Commonwealth. Any proposed regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, or committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof;…

§ 9.1-144. Bond or insurance required; actions against bond.

A. Every person licensed as a private security services business under subsection A of § 9.1-139 or certified as a private security services training school under subsection B of § 9.1-139 shall, at the time of receiving the license or certification and before the license or certification shall be operative, file with the Department (i) a cash bond or evidence that the licensee or certificate holder is covered by a surety bond, executed by a surety company authorized to do business in the Commonwealth, in a reasonable amount to be fixed by the Department, conditioned upon the faithful and honest conduct of his business or employment; or (ii) evidence of a policy of liability insurance in an amount and with coverage as fixed by the Department. The bond or liability insurance shall be maintained for so long as the licensee or certificate holder is licensed or certified by the Department.

   Every personal protection specialist and private investigator who has been issued a registration by the Department and is hired as an independent contractor by a licensed private security services business shall maintain comprehensive general liability insurance in a reasonable amount to be fixed by the Department, evidence of which shall be provided to the private security services business prior to the hiring of such independent contractor pursuant to subsection C of § 9.1-139.

Purpose

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The proposed regulatory action is essential to protect the safety and welfare of citizens. The *Virginia Administrative Code* 6VAC20-172 Regulations Relating to Private Security Services Businesses currently

requires individuals obtaining a business license to provide documentation verifying that a bond has been secured in the amount of $100,000 or a certificate of insurance for comprehensive general liability insurance with a minimum coverage of $100,000 per individual occurrence and $300,000 general aggregate.

The *Virginia Administrative Code* 6VAC20-174 Regulations Relating to Private Security Services Registered Personnel currently requires private security services business personnel to conform to all the requirements of the *Code of the Virginia* and along with the regulation and it prohibits a registrant from soliciting or contracting to provide any private security services without first having obtained a private security services business license with the department. Adding language that references the statutory and regulatory requirements for independent contractors ensures that registrants are aware of the requirement to obtain and maintain comprehensive labiality insurance.

The 6VAC20-172 and 6VAC20-174 do not address the requirements for a bond or insurance for independent contractors. Requiring personal protection specialists and private investigators serving as independent contractors to maintain comprehensive liability insurance protects the welfare of all parties involved. Comprehensive liability insurance protects the public against personal injury, property damage due to negligence or omission on the part of the personal protection specialist or private investigator. Additionally the insurance protects the personal protection specialist's and private investigator's personal assets up to the covered amount. DCJS will research and identify the appropriate amount of liability insurance to be maintained based on industry standards.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The proposed revisions will provide a definition for the term independent contractor and include language in sections 6VAC20-172-40 *Initial business license application* and 6VAC20-172-50 *Renewal business license application* requiring personal protection specialists and private investigators hired as independent contractors by a licensed private security services business to maintain a minimum amount of comprehensive liability insurance. Additionally, the proposed language will amend 6 VAC20-174 Regulations Relating to Private Security Services Businesses to reference the statutory requirements of §9.1-144 of the *Code of Virginia* and the proposed regulatory requirements of 6VAC20-172-40 and 6VAC20-172-50 of the *Virginia Administrative Code* authorizing a licensed private security services businesses licensed by DCJS to independently contract with private investigators and personal protection specialists registered with DCJS and requiring comprehensive liability insurance.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no viable alternatives to this regulatory action. During the 2015 Virginia General Assembly Session Delegate James M. LeMunyon patroned HB1718. The bill permits a licensed private security services business to hire as an independent contractor a personal protection specialist or private investigator who has been issued a registration with the DCJS. Additionally, the bill requires every personal protection specialist and private investigator hired as an independent contractor by a licensed private security services business to maintain comprehensive liability insurance in an amount to be determined by DCJS. This legislation became effective July 1, 2015.

The *Virginia Administrative Code* 6VAC20-172 Regulations Relating to Private Security Services Businesses currently requires individuals obtaining a business license to provide documentation verifying that a bond has been secured in the amount of $100,000 or a certificate of insurance for comprehensive general liability insurance with a minimum coverage of $100,000 per individual occurrence and $300,000 general aggregate. The regulations do not address the requirements for a bond or insurance for independent contractors.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (**http://www.townhall.virginia.gov**), or by mail, email, or fax to **Barbara Peterson-Wilson, Address: 1100 Bank Street 12th Floor Richmond, VA 23219, Phone number: 804-225-4503, Fax number: 804-786-0410, and Email address: Barbara.Peterson-Wilson@dcjs.virginia.gov.** Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A panel will not be used and public hearing will not be held following the publication of the proposed stage of this regulatory action.