

## **DCJS Response to Amended Economic Impact Analysis**

6 VAC 20-172, 6 VAC 20-174

Regulations Relating to Private Security Services Businesses and Private Security Services  
Registered Personnel

The Department of Criminal Justice Services respectfully disagrees with several statements and conclusions contained within the Economic Impact Analysis (EIA) drafted by the Department of Planning and Budget.

### **Summary of the Proposed Amendments to Regulation**

Chapter 202 of the 2015 Acts of Assembly authorizes private investigators and personal protection specialists to work as independent contractors provided they maintain a general liability insurance policy, in an amount determined by DCJS.<sup>1</sup>

Independent of this new statutory change, the Code of Virginia authorizes private security service businesses to be licensed provided they maintain a general liability policy or surety/cash bond, in an amount to be determined by the Board.

### **Result of Analysis**

The EIS concludes that (a) allowing private security businesses to hire registered personal protection specialists and private investigators as independent contractors will likely result in benefits outweighing potential costs. DCJS agrees with this conclusion as it is reasonable to expect that parties will only engage in independent contracts when it is profitable.

The EIS also concludes that insufficient information exists to ascertain whether the benefits outweigh the costs for (b) requiring registered personal protection specialists and private investigators who want to work as independent contractors to maintain a general liability insurance policy in the amount of \$1,000,000 and for (c) requiring private security businesses to maintain a minimum general liability insurance policy or bond in the amount of \$1,000,000. DCJS disagrees with these two conclusions.

### **The Benefits of Requiring \$1,000,000 Insurance for Registered Personal Protection Specialists and Private Investigators and for Private Security Businesses**

The General Assembly determined as early as 1976, that insurance is a necessary component for private security businesses. In 1998, the General Assembly enacted legislation requiring private security businesses to obtain a bond or liability insurance at the initial point of being licensed by DCJS. The Assembly also added language specifically requiring the business to maintain the

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<sup>1</sup> For clarification, the statutory language uses the term “independent contractor” not private contractor, which is cited in the EIA. The term independent contractor has certain legal and tax implications, to include recognition by the [Internal Revenue Service](#) as self-employed.

bonds or liability insurance for the duration of their licenses. By its very nature, insurance protects businesses from unforeseen events and accidents. Private security businesses which have insurance are shielded from potentially expensive claims and litigation costs. Insurance also provides the public a resource to obtain compensation for losses caused by businesses. The General Assembly also made the Criminal Justice Services Board (CJSB) responsible for determining the appropriate amount and type of insurance for private security businesses. The CJSB initially set the amount of insurance at \$100,000 more than twenty years ago. This amount had not been reviewed or revised until 2015.

In addition to requiring private security businesses to have insurance or bond, the General Assembly has also determined that a benefit and need exists for certain professionals to have insurance in order to be licensed by the state. The very nature of engaging in certain professions, such as doctors, lawyers, and law enforcement, includes exposure to risk and liability. The private security industry is no exception to risk exposure; in fact, the type of work conducted by private security businesses presents increased risks for their employees who are engaged in potentially dangerous activity and situations while securing and protecting property. Many of these professionals are licensed by DCJS to carry firearms in the performance of their duties. The General Assembly relied on the same reasoning as it did for other professionals when it authorized two types of private security professionals to act as independent contractors in 2015, provided they have the appropriate insurance coverage as determined by DCJS.

Given the General Assembly's directive to determine the amount of insurance necessary for private investigators and personal protection specialists to act as independent contractors, DCJS consulted with private security and insurance professionals, engaged the Private Security Services Advisory Board and conducted evidence based research. DCJS staff spent a significant amount of time with DPB staff explaining the process the agency used to arrive at its decision.

DCJS utilized its Research Center to arrive at an informed, educated conclusion regarding the appropriate amount of insurance necessary for independent contractors and private security businesses. The Research Center is managed by a professional with a PhD and the data was developed and analyzed using scientifically sound methods. Furthermore, the combined years of research experience of the two staff who participated in this project is approximately 45 years.

The DCJS Research Center selected a random sample of 400 private security businesses regulated by DJCS. The sample size of 400 was determined using a standard statistical formula to generate a sample size with a 95% confidence interval. In other words, by using a sample size of 400 businesses, the sample is 95% accurate in representing the entire private security business population. This standard statistical formula is widely used in the scientific research field.

Security Officer (sample size N=78)

Private Investigation (N=82)

Armored Car (N=15)

Security Canine Handling (N=15)

Personal Protection (N=52)

Electronic Security (N=86)

Locksmith (N=72)

The statistical research demonstrates that 99% of the private security businesses licensed by DCJS already have insurance policies that **exceed** the current requirement of \$100,000. In fact, 93% of these businesses have a general liability policy of \$1,000,000 or more. The average liability amount for private security businesses is \$1,160,250. This evidence suggests that the private security business industry has already determined that \$100,000 is inadequate to meet their business needs and that \$1,000,000 minimally meets that need. During this research process, it became clear to DCJS that a \$100,000 general liability insurance policy is woefully inadequate to meet and protect the needs of private security businesses and the public at large. It is insufficient for covering bodily injury, personal injury, property damage, advertising injury, and legal defense and judgments.

After discussions with staff from DPB who suggested that DCJS determine whether any claims have been filed against private security actors or remained unpaid due to current insurance requirements, DCJS looked into the matter. DCJS is not in a position to know whether any of its licensees have been sued, or insurance claims have been filed and paid, because these businesses are not required to report this type of data to DCJS. However, DCJS is aware of a 2014 case (*Pompey v. Palla*) in which a jury returned an \$8 million judgment against a security officer arising out of his excessive force and wrongful arrest of a citizen of the Commonwealth. This case demonstrates that lawsuits against private security actors can result in judgments exceeding \$1,000,000 and that \$100,000 is not sufficient insurance coverage.

DCJS strongly disagrees with the following statement in the EIA: *“Board staff reports that this change is being proposed because most firms already have insurance in at least this amount.”* This statement does not accurately reflect the numerous and lengthy conversation that Board staff had with DPB. There is a statutory requirement to determine the amount of general liability insurance for private investigators and personal protection specialists. In the process of researching this issue, DCJS determined that the original amount of insurance required for private security businesses had not been reviewed or analyzed for approximately twenty years. DCJS would have been remiss in its duties as the regulatory agency for private security businesses had it not brought this issue before the Board. DCJS regulates all private security businesses and determining the insurance requirements for two specific types without comprehensively researching this issue would have been inappropriate and possibly viewed in the eyes of the law as negligent supervision of regulatory duties. It would not be appropriate to set a general amount of the liability insurance requirement for two types of professionals that grossly exceeds the private security businesses’ general liability insurance requirements.

Furthermore, DCJS has determined that the cost to purchase a general liability insurance policy that satisfies the current requirements (\$100,000/\$300,000 aggregate) is the same as the cost to purchase \$1,000,000 in coverage. DCJS’s initial research indicates that it costs approximately \$500 to \$695 per year for \$1,000,000 of general liability insurance. Based on the issuance of the amended EIA, DCJS worked with staff from the Virginia Department of Treasury to determine the cost to purchase a \$100,000/\$300,000 aggregate general insurance policy, which ranges from \$500 a year for low risk activity to \$1,000-\$5,000 a year for higher risk activity. These estimates have also been validated by professionals serving on the Private Security Services Advisory Board who have previously communicated with the DCJS that it cost the same to purchase

\$100,000 of coverage as it does \$1,000,000. It is important to note that the Private Security Services Advisory Board approved the \$1,000,000 insurance policy requirement for both independent contractors and private security businesses. It is for these reasons that DCJS believes that this regulatory action will have little to no fiscal impact on private security businesses or individuals who want to work as independent contractors.

DPB staff suggested that DCJS provide data demonstrating the number of legal judgments against private security businesses that were not paid as a result of insufficient or no insurance. DCJS appreciates the value of such data and will explore the possibility that private security businesses should be required to report unpaid judgments to DCJS as a new regulatory requirement.

### **Businesses and Entities Affected**

DCJS disagrees with DPB's conclusion that "all" private security businesses are affected by the regulatory package. As explained above, the research shows that 93% of security businesses already carry \$1,000,000 or more in general liability insurance. In other words, 93% of the private security businesses will not be impacted. Furthermore, the impact to the remaining businesses is minimal given the similarity in cost to purchase insurance coverage of \$100,000 or \$1,000,000. Not all private investigators and personal protection specialists will choose to engage in independent contracting; not all private security businesses will choose to hire independent contractors. These businesses, by virtue of their statutory definition, already employ either or both private investigators or personal protection specialists as part of their corporate structure.

Further, there is no requirement that registered personal protection specialists and private investigators must engage in independent contracting in order to find gainful employment. Acting as an independent contractor is entirely discretionary on the part of an individual licensee and not mandatory. All registered personal protection specialists and private investigators must work for a licensed private security business in order to engage in the activity providing those services. This new law will only impact those professionals who wish to operate more like freelance employees, and presumably those professionals will consider all the pros and cons, to include financial costs and tax and other legal implications (independent contractors are typically viewed as self-employed under federal tax laws; respondeat superior relationship is not necessarily established when businesses contract with independent contractors). DCJS does not know how many of the currently registered personal protection specialists and private investigators wish to engage in independent contracting, nor will it know this data once the regulations become effective as there is no reporting requirement.

### **Costs and Other Effects**

DCJS also disagrees with notion described in the EIA that existing private investigators and personal protection specialists who currently have business licenses and cash/surety bonds would be prohibited from working as independent contractors unless they obtain general liability insurance. Obtaining a private security business license entitles businesses to engage in contractual agreements. In other words, private security businesses already meet the statutory

requirements regarding insurance, regardless of whether they are operated by one person or one-hundred people, and can still conduct business without having to switch from a bond to insurance.

Chapter 202 of the 2015 Acts of Assembly allows licensed private security businesses to contract with individuals who are registered as private investigators or personal protection specialists who are not licensed as businesses. The law does not impact or prevent a private security business which has general liability insurance from contracting with another private security business which has a surety or cash bond.

DCJS staff takes issue with the figures reported by DPB staff regarding the cost to obtain a surety bond. The EIA provides figures from one licensee who currently maintains a surety bond. DPB has included this figure referenced as an estimate but provides no information regarding the basis of the estimate. The cost of a surety bond is calculated not only based on the total amount of the bond but also the risk of the particular business and the risk of the individual applicant attempting to obtain the bond. The EIA does not state if the licensee consulted anyone to obtain the estimate nor does it specify if this individual has any additional risk factors influencing the cost of the bond. Additionally, Board staff is concerned that the footnote included by DPB is misleading as it references Board research findings but is attached to a statement that does not identify or reflect any research conducted by the DCJS Research Center. At best, the surety cost estimate cited in the EIA is spurious.

### **Effects on the Use and Value of Private Property**

DCJS believes that these regulatory changes will have absolutely no impact on the use or value of private property in the Commonwealth.

### **Alternative Methods that Minimizes Adverse Impact**

As stated above, the cost to purchase a general liability insurance policy is the same regardless of whether the policy provides \$100,000 or \$1,000,000 in coverage.

The research conducted by the DCJS Research Center, the information gathered by DCJS staff to compile the agency background document, and the information in this response to the EIA supports the Governor's initiative to use evidence based decision making in determining public policy that impacts public safety and citizens of the Commonwealth.