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## Final Regulation Agency Background Document

<b>Agency name</b>	Department of Criminal Justice Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	6VAC20-172 and 6VAC20-174
<b>Regulation title(s)</b>	6VAC20-172 Regulations Relating to Private Security Services Businesses 6VAC20-174 Regulations Relating to Private Security Services Registered Personnel
<b>Action title</b>	Amend 6VAC20-172 and 6VAC20-174 to Address Insurance Requirements for Private Security Services Businesses and Independent Contractors
<b>Date this document prepared</b>	July 11, 2017

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*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

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. The proposed revisions will allow 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 1 million dollars in general aggregate liability insurance and provide evidence of such insurance to the private security services business with which they are

contracting. All private security businesses will be required to secure a surety bond in the amount of 1million dollars or maintain 1 million dollars in general aggregate liability insurance.

**Acronyms and Definitions**

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

PSSAB - Private Security Services Advisory Board a fifteen-member board that is established pursuant to Virginia Code § 9.1-143 that advises the Criminal Justice Services Board (CJSB) on matters related to the regulation of private securities businesses. Members of the PSSAB must represent the various industries regulated by DCJS (e.g. security officer, locksmith, private investigator, personal protection specialists, etc.).

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency including:1) the date the action was taken;2) the name of the agency taking the action; and 3) the title of the regulation.*

On June 15, 2017, the Criminal Justice Services Board approved the advancement to the final stage of the regulatory action amending 6VAC20-172 Regulations Relating to Private Security Services Businesses and 6VAC20-174 Regulations Relating to Private Security Services Registered Personnel.

**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;...

§ 9.1-141. Powers of Board relating to private security services business.

A. The Board may adopt regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), establishing compulsory minimum, entry-level, in-service, and advanced training standards for persons employed by private security services businesses in classifications defined in § 9.1-138. The regulations may include provisions delegating to the Board's staff the right to inspect the facilities and programs of persons conducting training to ensure compliance with the law and Board regulations. In establishing compulsory training standards for each of the classifications defined in § 9.1-138, the Board shall be guided by the policy of this section to secure the public safety and welfare against incompetent or unqualified persons engaging in the activities regulated by this section and Article 4 (§ 9.1-138 et seq.) of this chapter;

...C. The Board may adopt regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) to secure the public safety and welfare against incompetent, unqualified, unscrupulous, or unfit persons engaging in the activities of private security services businesses that:

1. Establish the qualifications of applicants for registration, certification, or licensure under Article 4 (§ 9.1-138) of this chapter;
2. Examine, or cause to be examined, the qualifications of each applicant for registration, certification, or licensure, including when necessary the preparation, administration, and grading of examinations;
3. Certify qualified applicants for private security training schools and instructors or license qualified applicants as practitioners of private security services businesses;
4. Levy and collect fees for registration, certification, or licensure and renewal that are sufficient to cover all expenses for administration and operation of a program of registration, certification, and licensure for private security services businesses and training schools;
5. Are necessary to ensure continued competency, and to prevent deceptive or misleading practices by practitioners and effectively administer the regulatory system adopted by the Board; ...

§ 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 explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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During the 2015 Virginia General Assembly Session, Delegate James M. LeMunyon introduced House Bill 1718. Chapter 202 Acts of Assembly. This law permits a licensed private security services business to hire as an independent contractor a personal protection specialist or private investigator. The law 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.

Chapters 6VAC20-172 and 6VAC20-174 do not address the requirements for insurance for independent contractors. Chapter 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 bond and insurance amounts identified in 6VAC20-172 had not been reviewed since these regulations were first promulgated fifteen years ago and the amounts do not reflect current industry standards, the needs of private security businesses, and do not adequately protect the public.

Requiring personal protection specialists and private investigators serving as independent contractors to maintain comprehensive liability insurance protects the health, safety, and welfare of all parties involved. Comprehensive liability insurance protects the public against personal injury and property damage 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.

During the December 1, 2015, meeting of the Private Security Services Advisory Board (PSSAB), DCJS requested the PSSAB to recommend an amount of comprehensive liability insurance that it felt was appropriate for independent contractors and for private security businesses. The PSSAB informed DCJS staff they did not have enough information to determine an appropriate figure. DCJS was asked to provide additional information regarding the current amount of insurance held by private security businesses and agreed to utilize staff from the research unit to conduct a random sample of the private security businesses.

At the March 3, 2016, meeting, the PSSAB was presented with the following results of the research:

#### **Random Sample**

The DCJS Research Center selected a random sample of private security businesses from each of the seven categories of private security businesses regulated by DJCS. The number of armored car and security canine handling services businesses registered with DCJS is small, therefore all armored car and security canine handling services businesses were included in the sample. A total of 400 businesses made up the final sample.

- 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)

#### **Current Requirement**

Private security business insurance requirements per current regulation are: a surety bond in the amount of \$100,000 **OR** Comprehensive general liability insurance with a minimum coverage of \$100,000 per individual occurrence **AND** \$300,000 general aggregate.

**Terminology**

**Surety bonds** are a financial guarantee of performance of a specific action. A surety bond is not liability insurance.

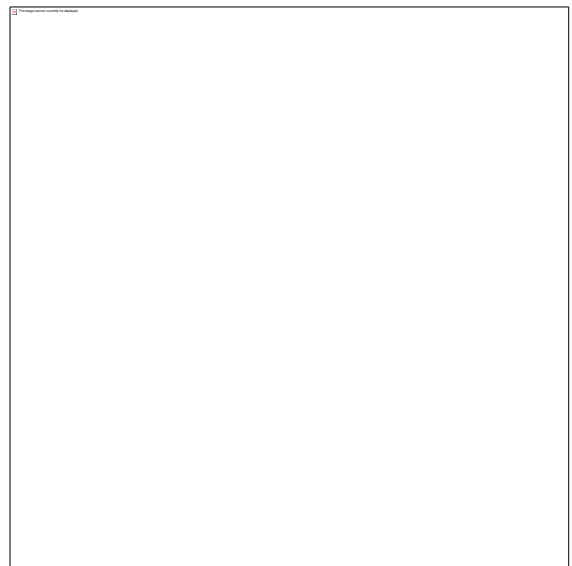
**Commercial general liability insurance** protects a business from financial loss resulting from claims of injury or damage caused to others by the business. A comprehensive policy typically covers:

- Bodily Injury – physical damage to a person other than an employee of the business and injuries caused by the business at a client's home or work place
- Personal Injury – libel, slander, copyright infringement, invasion of property or privacy, wrongful eviction, false arrest and similar acts that cause damage to a person's reputation or rights
- Property Damage – damage done to another person's property by the business in the course of conducting business
- Advertising Injury – losses caused by the businesses' advertising
- Legal Defense and Judgments – costs to defend against real and frivolous suits and judgments up to the limit of coverage. This generally does not include punitive damages for negligence or willful misconduct

A **general aggregate insurance limit** is the maximum amount of money the insurer will pay out during a policy term. Once the general aggregate limit has been exhausted, the insurer is under no obligation to cover further losses in any of the categories covered under the general liability policy.

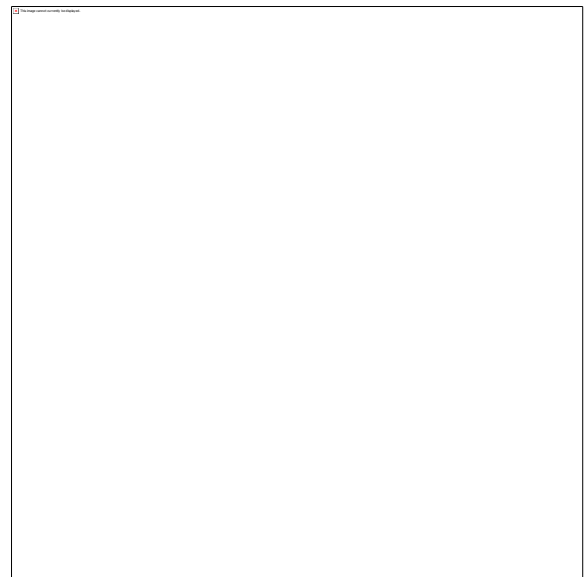
**Current General Liability Insurance Carried by Private Security Businesses**

- 99% (N=395) of businesses have a general liability insurance limit that exceeds the \$100,000 minimum
- 1 business has a \$100,000 surety bond in lieu of general liability insurance
- 93% (N=371) have a general liability limit of \$1,000,000 or more (range \$1,000,000 to \$10,000,000)
- Average general liability insurance limit: \$1,160,250



**Current General Aggregate Insurance Carried by Private Security Businesses**

- 1 business has a surety bond in lieu of aggregate liability insurance
- 97% (N=389) of businesses have a general aggregate liability limit that exceeds the \$300,000 minimum
- 93% (N=337) have an aggregate liability insurance limit of \$1,000,000 or more (range \$1,000,000 to \$10,000,000)
- Average general aggregate liability limit: \$2,344,361



At the conclusion of the presentation on March 3, 2016, the PSSAB voted to approve the following recommendations:

- Private security businesses shall be required to maintain comprehensive liability insurance in the amount of 1 million dollars in general aggregate liability insurance.
- Independent contractors working for private security businesses shall be required to maintain comprehensive liability insurance in an amount equal to the insurance requirements for private security businesses.
- Private security business should no longer have the option of securing a surety bond in place of comprehensive liability insurance.

The PSSAB made the recommendation described above to the CJSB, as did DCJS. On March 24, 2016, the CJSB voted to approve the recommendations of the PSSAB.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.*

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 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 1 million dollars in general aggregate liability insurance and provide evidence of such insurance to the private security services business they are contracting with. Private security businesses will be required to secure a surety bond in the amount of 1 million dollars or maintain 1 million dollars in general aggregate liability insurance.

### Issues

*Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantage to the public is ensuring an increased opportunity for civil recourse in the event that an individual is harmed as a result of interacting with private security businesses or private investigators and personal protection specialist that are independent contractors.

There are no significant advantages or disadvantages to the majority of private security businesses in Virginia. The research conducted by DCJS indicated that 93% of the private security businesses already carry general aggregate liability insurance in an amount greater than 1 million dollars identified in the proposed regulatory action.

The primary advantage to private security businesses not currently carrying 1 million dollars or greater in general aggregate liability insurance and future private investigators and personal protection specialist that are independent contractors is increased liability protection against financial loss resulting from claims of injury or damage caused to the public.

The primary disadvantage to a small percentage of private security businesses will be an increase in the cost of insurance. The primary advantage to individuals wishing to work as independent contractors will be the ability to work in this capacity once the insurance requirements are addressed in the regulations using the standard three stage regulatory process. The disadvantage is that completing the standard three stage process to amend a regulation is a slow process which can take one to two years. Individuals are not able to work as independent contractors until the regulation is finalized and becomes effective.

There are no disadvantages to the general public, agency, or the Commonwealth.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There are no localities that will be particularly affected by the proposed revisions to the regulation.

**Family impact**

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

This regulation has no impact on the institution of the family and may have a minimal impact on the family stability in terms of increasing and decreasing disposable family income. As mentioned above, for a small percentage of private security businesses, there will be an increase in the cost of insurance which has the potential to decrease disposable family income for a business owner. However, there is the potential for an increase in disposable income for personal protection specialists and private investigators once the regulations are finalized and become effective as these individual would now be permitted to work as independent contractors.

**Changes made since the proposed stage**

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. \*Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.*

Commenter	Comment	Agency response
LARRY A. PETERS, INC	I am opposed to this regulation because there will be a lack of control over those individuals who will interpret the law in such a manner that they will act without be licensed. Such a case is pending in Circuit Court in Chesterfield County now. DCJS can not control the illegal (Jack Legs) running around with a badge and a gun now. When this law is passed it will cost more money to police these Independent contractors and those that suffer will be the General Public. The lack of training is another aspect of this regulation which will be detrimental to the State and to the Public in general. Whether it is written in stone when you give a person a license to act on his own and he doesn't have a clue what he is doing except what he saw on television, there will be lots of problems develop. It would be my recommendation to leave everything the way it is and let the time pass for training before anyone goes out to meet the public.	Thank you for your comments. A great deal of research was conducted by the Department leading to the recommendation of the Private Security Services Advisory Board and decision by the Criminal Justice Services Board to adjust the insurance requirements.
Michael Youlen, Youlen Detective Agency	While the original intent of the legislation was to create more employment opportunities for people, it has of course turned into another backdoor attack at private business, turning the Criminal Justice Services Board into a legislature and bypassing elected representatives. Increasing the insurance cost will double or triple a typical businesses premium. There is no evidence to suggest that DCJS even conducted a survey of businesses since the results were kept from the public record, and instead summarized by percentage. Citing Pompey v. Palla (2014) is completely irrelevant in that it states a Jury award was in excess of insurance limits prescribed by rule or law. Juries are given instructions by the court that adhere to the Code of VA, not follow the guidance of a state agency in the executive branch of government. "As stated, 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." That could not be	Thank you for your comments. A great deal of research was conducted by the Department leading to the recommendation of the Private Security Services Advisory Board and decision by the Criminal Justice Services Board to adjust



	<p>farther from the truth, and is an outright falsehood.</p>	<p>the insurance requirements.</p>
<p>Thomas Kaschak; Hanover Consulting LLC DCJS#11-8638</p>	<p>The current regulation setting insurance limits at 100,000 dollars per incident and 300,000 aggregate or a surety bond in the amount of 100,000 dollars is more than sufficient coverage to set as a minimum requirement to have a private security business or as a private investigator. There are no valid reasons to increase the minimum amount and no valid reasons have been presented by DCJS.</p> <p>House Bill 1628, presented in the 2017 General Assembly, required, in part, that the option to have a bond, in lieu of liability insurance, has been delayed until passed a second time by the 2018 General Assembly. During a hearing on House Bill 1628 a representative from DCJS argued that the reason for the elimination of the bond and raise in liability insurance to 1,000,000 dollars was due to a survey showing that a large percentage of security businesses already carried liability insurance in excess of 100,000 dollars. This reason has no foundation of common sense and I believe that this type of regulation is nothing more then regulatory overreach, by a State Regulatory Agency, which will do more harm to small businesses such as Hanover Consulting LLC, which is owned and operated by one person. Additionally; this proposed action does not meet any common sense standard of protecting the consumer. The increase in the insurance minimum is not based on any incident which harmed any consumer; it is based on what larger businesses, with more employees, already have in place on their own, based on the owners business needs and does not need to be mandated on all businesses for the sake of just doing it because other businesses have done it.</p> <p>I am completely against this regulatory action as the cost of this insurance will triple my costs for insurance and there is no sound basis for this increase.</p>	<p>Thank you for your comments. A great deal of research was conducted by the Department leading to the recommendation of the Private Security Services Advisory Board and decision by the Criminal Justice Services Board to adjust the insurance requirements.</p>
<p>Todd Troutner, Broadside Investigative Group LLC</p>	<p>I am submitting this comment as a Registered Private Investigator who owns a Licensed Private Security Service Business (to provide Private Investigation Services). I am a "one man operation", set up as an LLC, and have been in business for 5 years.</p> <p>It should first be noted that the Department of Criminal Justice Services (DCJS) has no idea whether it is necessary to raise the required insurance coverage for private security service businesses (PSSBs) in Virginia. It admits that it "is not in a position to know whether any of its licensees have been sued or whether insurance claims have been filed and paid..." (p. 1406). Forging ahead in ignorance, DCJS has nevertheless issued this proposed regulation. As one justification for raising the required insurance amounts for PSSBs, DCJS claims that current insurance "amounts do not reflect current industry standards" (p. 1402). However, DCJS does not then reference any "industry standards" to justify the claim. Indeed, DCJS could not point to any such standards because the PSSBs that it regulates are divided into several different sectors (incl. security officer (armed and unarmed), private investigation, personal protection, armored car, security canine handling, electronic security, locksmith). It would be nonsensical to claim that a locksmith and an armed security officer would have the same</p>	<p>Thank you for your comments. A great deal of research was conducted by the Department leading to the recommendation of the Private Security Services Advisory Board and decision by the Criminal Justice Services Board to adjust the insurance requirements.</p>

	<p>“industry standards”, or even close to the same level of anticipated liabilities.</p> <p>DCJS then claims that the current insurance requirements do not “reflect” the “needs of private security businesses” (p. 1402). Whether the insurance requirements reflect the “needs” of a PSSB in Virginia, whatever “needs” means in this context, is not for DCJS to decide – it is at the most fundamental level a business issue, not a governmental one. A business owner must decide what the business “needs”, not DCJS, and that includes what level of insurance coverage the business should maintain beyond the existing minimum.</p> <p>The only sound basis for deciding whether the minimum insurance requirements for PSSBs should be raised is whether the current requirements adequately protects the public. DCJS claims the current amounts “do not adequately protect the public”, and in support points to a court case with a judgement of \$8 million that involved a use of force and wrongful arrest by a security officer. The referenced case can in no way be held out as representative of the anticipated liabilities of the other PSSB sectors, such as locksmiths, PIs, or electronic security. That there is such diversity among PSSB sectors would instead seem to justify setting low minimum insurance requirements to accommodate sectors that have lower anticipated liabilities than other sectors (contrast, e.g., armed security with locksmith). If anything, the \$8 million case should be seen as outlier, and not as a justification for a rulemaking.</p> <p>Despite DCJS’s claim to the contrary, its Research Center’s survey results do not provide the basis for an “informed, educated conclusion regarding the appropriate amount of insurance necessary for independent contractors and private security businesses” (p. 1406), nor should the survey results be considered as evidence of some sort of “industry standard”.. The survey DCJS conducted is a red herring and is misused by DCJS in this rulemaking.</p> <p>DCJS claims that “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 judgements” (p. 1406). The survey in no way supports such dramatic claims as “woefully inadequate” and “insufficient”. Rather, the survey results simply reflect business decisions made by business owners as to what coverage they believe is necessary to protect their businesses. As noted above, that is exactly the type of decision a business owner should be making, not the government.</p> <p>What DCJS does not mention anywhere in this rulemaking is that “as part of its due diligence in determining an amount of liability insurance for independent contractors”, it set up conference calls with two insurance industry representatives who were familiar with PSSBs. I listened in on both calls. One industry expert told us that the current insurance amounts were “very adequate”, and the other said they were “fine” (specifically observing that while the “standard coverage” in the industry was \$1 million, \$100,000 was “fine” because the actual claims made on the policies were much</p>	
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	<p>lower). These insurance representatives' comments specifically repudiate DCJS's claims that the current requirements are inadequate or insufficient, and it is absolutely disingenuous of DCJS to fail to mention such contrary evidence that it developed as part of its "due diligence" in preparation for this rulemaking.</p> <p>It is the job of DCJS to protect "the public at large", but DCJS points to no evidence to support its claims that the \$100,000 is both "woefully inadequate" and "insufficient" to do so -- it has no evidence because, as is noted above, it is "not in a position to know" anything about insurance claims, and strikingly, it references not a single complaint from a citizen [sic] about issues with insurance. DCJS simply points instead to the results of its business survey, which in and of itself does not demonstrate anything as to the adequacy or sufficiency of the \$100,000 amount to protect the public. Indeed, as noted above, at least one industry representative in a position to be familiar with such claims told DCJS that the \$100,000 coverage amount was "fine", in light of actual claims.</p> <p>It is a mistake to assert, as DCJS does, that because 93% of businesses, according to its survey, already carry \$1 million in insurance coverage they would not be "impacted" by the proposed raising of the insurance requirement to \$1 million. Any regulation that a business is subject to "impacts" it. A lower required threshold would permit a business flexibility in the amount of insurance it carries, for example.</p> <p>Similarly, DCJS claims that businesses will not be impacted because the cost to obtain the higher levels of insurance will be the same, yet it relies on anecdotal "evidence" and discounts an actual case of a bond holder whose costs would increase by hundreds of dollars and "spurious". Confusingly, even though DCJS claims "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" (p. 1408), it also acknowledges that the "primary disadvantage [of the proposed regulation] to a small percentage of private security businesses will be an increase in the cost of insurance" (p. 1403). As is noted in the Economic Impact Analysis, "Higher insurance costs may affect whether marginally profitable private security services businesses choose to remain licensed." I believe that a business that is unable hold onto its license because of higher insurance costs can be said to have been "impacted".</p> <p>DCJS claims that the rulemaking was undertaken in accordance with the "Governor's initiative to use evidence-based decision making in determining public policy that impacts public safety and the citizens of the Commonwealth" (p. 1408), but it also acknowledges it has no information about actual claims or complaints against PSSBs for lack of insurance, which would seem to be the logical starting point for deciding whether existing coverage requirements are adequate. DCJS therefore cannot point to a single piece of actual evidence of benefits to the public that would justify raising the required insurance amounts to \$1 million. Its reference to the survey it conducted is simply a demonstration that business owners have largely decided to carry more insurance than is required, for whatever reasons, and does not reflect an "industry standard".</p> <p>DCJS should be required to independently justify raising the existing insurance requirement by something more substantial than simply</p>	
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	<p>claiming it is “woefully inadequate” and “insufficient”. Just because most businesses carry \$1 million in insurance, is not adequate or sufficient reason to justify a public policy change that would impact 1,804 private security service businesses. Nor is the fact that the required insurance amounts have not changed for a number of years an adequate or sufficient reason to raise the amounts. Lastly, DCJS heard from two insurance representatives who told them the current insurance amounts did not need to be raised, and not only ignored them, but failed to mention their comments in this proposed regulation.</p> <p>In this rulemaking, DCJS should maintain the existing insurance coverage requirements for businesses, and not require registered PIs and PPSs to maintain insurance coverage any higher than that of businesses.</p>	
<p>Maria Velikonja, Drew Investigations</p>	<p>I oppose an increase to the mandatory insurance amounts private investigative businesses must carry. In fact, I oppose having a mandate to carry any insurance at all, for businesses where no firearm is carried..</p> <p>DCJS has the obligation to view "one man shops", and PI businesses that operate without firearms, differently than larger businesses and those who carry firearms. Our need for insurance is much lower.</p> <p>This insurance requirement would raise my insurance costs 400%, enough to make me quit the profession. I work as a PI part-time, and the current insurance requirement is already very onerous. This is a detriment to the public, in that I regularly take civil rights cases and help those with little means, for a fraction of what other businesses would charge. Virginia requirements should not be so onerous as to eliminate pro bono or "low bono" work from PIs. Law firms in Virginia are not required to carry insurance. Why should a PI business with no firearms be any different? It should be our choice.</p>	<p>Thank you for your comments. A great deal of research was conducted by the Department leading to the recommendation of the Private Security Services Advisory Board and decision by the Criminal Justice Services Board to adjust the insurance requirements.</p>
<p>Elizabeth Kurtz, Blueshield Security &amp; Investigations, LLC</p>	<p>I stongly [sic] oppose the Regulatory Action that would raise the minimum amount of insurance required for all PI's and PI Businesses. My business is a sole proprietorship in a small town in the middle of Virginia. I work civil cases and many of my clients pay less than I charge because they're paying their attorney more than they can afford. I don't turn them away. They need the assistance to make their case. Neither myself nor none of my employees carry a weapon. We rarely interact with the public photographing PDA most often from the privacy of a vehicle as a couple holds hands crossing a parking lot. My point is that my business is very low risk for ever having a claim against it as it is certainly no risk to the public. I believe that each business has their own best interest at heart, and if they need to increase their insurance coverage to protect themselves against a claim, they will do so. I see little difference, if any, between my business insurance and vehicle insurance or homeowners needs. There's a state minimum, but iif [sic] I want to protect myself, my home, my vehicle, and my possessions, I will increase my coverage without being forced.</p>	<p>Thank you for your comments. A great deal of research was conducted by the Department leading to the recommendation of the Private Security Services Advisory Board and decision by the Criminal Justice Services Board to adjust the insurance requirements.</p>

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
6VAC20-172-10		This section defines terms throughout the regulation the term independent contractor is not currently defined.	A definition for the term independent contractor has been included. <u>"Independent contractor" means a self-employed personal protection specialist or a private investigator who (1) maintains comprehensive liability insurance in an amount fixed by the Department, (2) has been issued a registration by the Department, and (3) enters into a contract to perform work for a private security business licensed to provide services within the Commonwealth.</u>
6VAC20-172-40		<p>This section identifies the requirements that must be met or exceeded prior to DCJS issuing a private security business a new license. There is a requirement for the applicant to obtain a surety bond or insurance. Currently, there is no language addressing the insurance requirements for independent contractors.</p> <p>“... B. Each person seeking a license shall file a completed application provided by the department including:</p> <p>2. Documentation verifying that the applicant has secured a surety bond in the amount of \$100,000 executed by a surety company authorized to do business in Virginia, or a certificate of insurance reflecting the department as a certificate holder, showing a policy of</p>	<p>This section identifies the requirements that must be met or exceeded prior to DCJS issuing a private security business a new license. The proposed revisions increase the bond and insurance requirements to 1 million dollars for private security businesses. Additionally, the revisions identify the new insurance requirement for independent contractors working as private investigators and personal protection specialists.</p> <p>B. Each person seeking a license shall file a completed application provided by the department including:</p> <p>1. For each principal and supervisor of the applying business and for each electronic security employee of an electronic security services business, his fingerprints pursuant to this chapter;</p> <p>2. Documentation verifying that the applicant has secured a surety bond in the amount of <del>\$100,000</del> <u>\$1 million</u> executed by a surety company authorized to do business in Virginia; or a certificate of insurance reflecting the department as a certificate holder; <u>and</u> showing a policy of comprehensive general liability insurance</p>

		<p>comprehensive general liability insurance with a minimum coverage of \$100,000 per individual occurrence and \$300,000 general aggregate issued by an insurance company authorized to do business in Virginia; ...”</p>	<p><del>with a in the minimum coverage amount of \$100,000 per individual occurrence and \$300,000</del> <u>\$1 million of general aggregate liability insurance</u> issued by an insurance company authorized to do business in Virginia.</p> <p><u>a. 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 the minimum coverage amount of \$1 million of general aggregate liability insurance; and</u></p> <p><u>b. Documentation verifying the personal protection specialist or private investigator has obtained the required insurance shall be provided to the private security services business prior to the hiring of such independent contractor;</u></p>
<p>6VAC20-172-50</p>		<p>This section identifies the requirements that must be met or exceeded prior to DCJS renewing a private security business license. There is a requirement for the applicant to obtain a surety bond or insurance. Currently, there is no language addressing the insurance requirements for independent contractors</p> <p>“... B. Licenses will be renewed for a period not to exceed 24 months.</p> <p>C. The department may renew a license when the following are received by the department:</p> <ol style="list-style-type: none"> <li>1. A properly completed renewal application;</li> <li>2. Documentation verifying that the applicant has secured and maintained a surety bond in the amount of \$100,000 executed by a surety company authorized to do business in Virginia, or a certificate of insurance</li> </ol>	<p>This section identifies the requirements that must be met or exceeded prior to DCJS renewing a private security business license. The proposed revisions increase the bond and insurance requirements to 1 million dollars for private security businesses. Additionally, the revisions identify the new insurance requirement for independent contractors working as private investigators and personal protection specialists.</p> <p>C. The department may renew a license when the following are received by the department:</p> <ol style="list-style-type: none"> <li>1. A properly completed renewal application;</li> <li>2. Documentation verifying that the applicant has secured and maintained <del>a</del> <u>\$1 million</u> executed by a surety company authorized to do business in Virginia, or a certificate of insurance reflecting the department as a certificate holder, <u>and</u> showing a policy of comprehensive general liability insurance <del>with a in the minimum coverage amount of \$100,000 per individual occurrence and \$300,000</del> <u>\$1 million</u> general aggregate issued by an</li> </ol>

		reflecting the department as a certificate holder, showing a policy of comprehensive general liability insurance with a minimum coverage of \$100,000 per individual occurrence and \$300,000 general aggregate issued by an insurance company authorized to do business in Virginia;...”	insurance company authorized to do business in Virginia;  <u>a. 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 the minimum coverage amount of \$1 million of general aggregate liability insurance; and</u>  <u>b. Documentation verifying the personal protection specialist or private investigator has obtained the required insurance shall be provided to the private security services business prior to the hiring of such independent contractor;</u>
6VAC20-172-80		This section identifies the business standards of conduct for private security businesses. The section does not address standards of conduct for businesses contracting with independent contractors.	The proposed language will identify the standards of conduct requirements for private security businesses contracting independent contractors.  A licensee shall:  1. Conform to all requirements pursuant to the Code of Virginia and this chapter.  ... <u>6. Enter into contracts with self-employed personal protection specialists and private investigators to work as independent contractors in accordance with § 9.1-144 of the Code of Virginia and require documentation verifying the personal protection specialist or private investigator has obtained the required insurance in accordance with 6VAC20-172-40 and 6VAC20-172-50 prior to the hiring of such independent contractor.</u>
6VAC20-174-10		This section defines terms throughout the regulation the term independent contractor is not currently defined.	A definition for the term independent contractor has been included.  <u>"Independent contractor" means a self-employed personal protection specialist or a private investigator who (1) maintains comprehensive liability insurance in an amount fixed by the department, (2) has been issued a registration by the department, and (3) enters into a contract to perform work for a private security business licensed to provide services</u>

<p>6VAC20-174-150</p>		<p>This section identifies the standards of conduct for private security registrants. The section does not address standards of conduct for registrants acting as independent contractors.</p>	<p><u>within the Commonwealth.</u></p> <p>The proposed language will identify the standards of conduct for private security registrants acting as independent contractors.</p> <p>A registrant shall:</p> <ol style="list-style-type: none"> <li>1. Conform to all requirements pursuant to the Code of Virginia and this chapter.</li> </ol> <p><u>...7. Maintain comprehensive general liability insurance in the minimum amount of \$1 million in general aggregate liability insurance when the registrant:</u></p> <ol style="list-style-type: none"> <li><u>a. Is self-employed;</u></li> <li><u>b. Is a personal protection specialist or private investigator; and</u></li> <li><u>c. Has entered into a contract with a licensed private security business to work as an independent contractor.</u></li> </ol>
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