

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

6 VAC 20-172 – Regulations Relating to Private Security Services Businesses
6 VAC 20-174 – Regulations Relating to Private Security Services Registered Personnel
Department of Criminal Justice Services
Town Hall Action/Stage: 4457/8004
August 10, 2017[Final Stage Update¹ of Proposed Stage Economic Impact Analysis²]

Summary of the Proposed Amendments to Regulation

The Criminal Justice Services Board (Board) proposes to amend its regulations that govern private security businesses and their registered personnel to a) allow such businesses to hire registered personal protection specialists and private investigators as private contractors, b) set the amount of general liability insurance that private investigators and personal security specialists who are acting as private contractors are required to have and maintain at \$1,000,000 and c) require that private security businesses maintain a minimum general liability insurance, or surety bond, limit of \$1,000,000. The first two of these changes emanate from Chapter 202 of the 2015 Acts of the Assembly.³

¹ New information was received through public comment prompting this revision and reissue of the economic impact analysis. Specifically, a comment eluded to conversations between insurance agency representatives and DCJS which lead to new information about average claims under general liability policies for private security forces.

² See proposed stage economic impact analysis:
http://townhall.virginia.gov/l/GetFile.cfm?File=C:\TownHall\docroot\51\4457\7615\EIA_DCJS_7615_v2.pdf

³ <http://leg1.state.va.us/cgi-bin/legp504.exe?151+ful+CHAP0202>

Result of Analysis

Benefits likely outweigh costs for one proposed change. Costs likely outweigh benefits for at least one proposed change.

Estimated Economic Impact

In 2015, the General Assembly passed a bill which allows private security services firms to hire private investigators and personal protection specialists who are registered with the Department of Criminal Justice Services (DCJS) as private contractors. This legislation also stipulates that such private contractors maintain general liability insurance in an amount to be set by DCJS and that they present proof of insurance to the businesses with whom they contract. In response to this legislation, the Board now proposes to amend these regulations so to allow private security services businesses to privately contract with registered private investigators and personal security specialists so long as these individuals have at least \$1,000,000 in general liability insurance and the private security businesses contracting with them document that such insurance has been obtained. Currently, registered private investigators and personal security specialists would only have insurance if they were also licensed by DCJS as private security services businesses.

The insurance limits for such businesses are currently set at \$100,000 per incident and \$300,000 aggregate (lifetime). Alternately, these businesses can choose to have a surety bond in the amount of \$100,000. Private investigators and personal protection specialists who are currently licensed as private security services businesses and who choose to have a surety bond would not be able to increase the amount of that surety bond to \$1,000,000 and use it to meet the insurance requirement to be a private contractor. As mandated by the General Assembly, they would have to instead obtain general liability insurance in the amount required by DCJS. Private investigators and personal protection specialists who are licensed as businesses with DCJS and have insurance would incur costs to raise their insurance limits to one million dollars (if they do not already have insurance that meets or exceeds that limit).

Private investigators and personal protection specialists who are not licensed as private security services businesses would newly be subject to an insurance requirement⁴ and so would

⁴ Chapter 202 of the 2015 Acts of the Assembly requires that these individuals have general liability insurance “in a reasonable amount to be fixed by the Department”. The amount of insurance that is proposed by DCJS is \$1,000,000.

have to obtain \$1,000,000 in aggregate general liability insurance. Board staff reports that the required insurance in the amount of \$1,000,000 costs approximately \$500 to \$695 per year. Private investigators and personal protection specialist who would have to pay for this insurance would likely only choose to contract with private security services businesses if they expected the revenues from doing so to exceed their costs including insurance. Therefore, benefits will likely outweigh costs for allowing private security services businesses to hire private investigators and personal security specialists as private contractors.

As stated above, private security services businesses are currently required to have either a surety bond in the amount of \$100,000 or general liability insurance with limits of \$100,000 per incident and \$300,000 aggregate. DCJS's research division sampled 400 of the 1,804 private security businesses they license and found that 99% of the businesses sampled had more than \$100,000 worth of insurance and 93% had insurance limits at or greater than \$1,000,000. The Board now proposes to increase the amount of insurance or surety bonding that licensed private security services businesses must have to at least \$1,000,000. Board staff reports that this change is being proposed because most firms already have insurance in at least this amount. Board staff further reports that there have not been any incidences reported that would indicate that currently required insurance limits are inadequate.⁵ Two insurance industry representatives⁶ contacted by DCJS during the consideration of this proposed regulation, however, reportedly indicated to current insurance requirements were sufficient to cover actual claims made against private security businesses in Virginia.

Board staff estimates that the costs for \$1,000,000 of general liability insurance would likely range between \$500 and \$695 per year. Board staff further reported⁷ that the cost of an insurance policy with a \$100,000 liability limit would be the same as the cost of an insurance

⁵ After publication of the economic impact analysis (EIA) at the proposed stage of this regulatory action, Board staff found one court case where a jury awarded a plaintiff who sued a private security specialist \$8,000,000. This award appears to be an extreme outlier and does not appear to be indicative of normal insurance needs or insurance payouts in this industry.

⁶ DCJS had telephone conversations with representatives of Towne Insurance and the Campbell Group and invited a representative of the Private Investigator Association of Virginia (PIAVA) to listen in. The current President of PIAVA was PIAVA's representative for those phone calls and reported, in part, the content of those phone calls as part of his public comment during the proposed stage of this regulation.

⁷ DCJS reported this in their response to the proposed stage EIA. Although this seems economically counter-intuitive, the Department of Planning and Budget obtained an insurance quote at this stage of this action where the cost was the same no matter the level of coverage.

policy with a \$1,000,000 liability limit. Assuming that DCJS's survey is representative of the entire population of private security services firms, about seven percent of firms licensed (about 126 firms) would incur additional costs for insurance equal to the cost for \$1,000,000 of insurance minus their current insurance costs. Given the Board's information on costs, affected entities may only see increased monetary costs for increased insurance limits if they currently have lower insurance costs than the \$500-\$695 estimated cost for \$1,000,000 worth of coverage. DPB does not have information on how many individuals might experience those higher insurance costs. One licensee who currently holds a surety bond estimates that increasing his bond from \$100,000 to \$1,000,000 will increase his costs for bonding from \$323 per year to \$1,200 per year.⁸ Additionally, businesses who now choose to carry higher insurance limits than currently required by law will lose the flexibility they currently enjoy to reset their insurance amounts as their business need change. The Department of Planning and Budget contacted one of the insurance industry representatives that DCJS talked to during regulatory development. He reported that most private security businesses carry at least \$1,000,000 in insurance but also reported that the average claim under such insurance policies is \$20,000-\$30,000 and that he has never had a claim for more than \$100,000. Since current insurance limits appear to be sufficient to cover, on average, current liability claims, it is likely that the costs of this proposed change outweigh its benefits to the extent any of the affected individuals experienced higher costs.

Businesses and Entities Affected

These proposed regulatory changes will affect all private security services businesses, including private investigators and personal protection specialists who are licensed as private security services businesses. Board staff reports that there are 1,804 private security businesses licensed by the DCJS. Board staff further reports that there are currently 1,805 private investigators and 522 personal protection specialists registered with the DCJS.

Localities Particularly Affected

No localities will be particularly affected by these proposed regulatory changes.

⁸ From Board research findings, it appears that very few licensees (likely less than five statewide) choose to carry a surety bond rather than insurance. While the cost increases for increasing surety bonds is likely much higher, it would affect far fewer businesses.

Projected Impact on Employment

These proposed regulatory changes may lead to private investigators and personal protection specialists being hired by private security services businesses as private contractors. This may not affect total employment as private contracting will likely serve as a substitute for other types of employment in these businesses. Higher insurance costs may affect whether marginally profitable private security services businesses choose to remain licensed.

Effects on the Use and Value of Private Property

These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Real Estate Development Costs

These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

Small Businesses:

Definition

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

Costs and Other Effects

Small business private security services firms, including private investigators and personal protection specialists, who do not already maintain liability insurance of at least \$1,000,000 will incur costs for increasing their insurance limits to that level. Board staff estimates, from a sample of 400 businesses, that 93% of private security services firms already have insurance that exceeds the proposed limit. Assuming that sample is representative, seven percent of the 1,804 private security firms licensed by the DCJS (about 126 firms) will incur additional costs for insurance. The additional costs incurred will equal the cost of the new, higher, limit for insurance minus the cost of these businesses' current insurance of less than \$1,000,000.

Alternative Method that Minimizes Adverse Impact

Since raising the insurance limits for private security services firms is a discretionary change based on information about what insurance these firms on average have, rather than what limits are minimally necessary to protect health and safety in the Commonwealth, the Board might further minimize additional costs by lowering the proposed insurance limits or leaving required insurance at current levels.

Adverse Impacts:

Businesses:

Private security services firms, including private investigators and personal protection specialists, who do not already maintain liability insurance of at least \$1,000,000 will incur costs for increasing their insurance limits to that level. Board staff estimates, from a sample of 400 businesses, that 93% of private security services firms already have insurance that exceeds the proposed limit. Assuming that sample is representative, seven percent of the 1,804 private security firms licensed by the DCJS (about 126 firms) may incur additional costs for insurance. The additional costs incurred will equal the cost of the new, higher, limit for insurance minus the cost of these businesses' current insurance of less than \$1,000,000.

Localities:

Localities in the Commonwealth are unlikely to see any adverse impacts on account of these proposed regulatory changes.

Other Entities:

No other entities are likely to be adversely affected by these proposed changes.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and

Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

Reissued Economic Impact Analysis: Pursuant to Code § 2.2-4007.04(E): The Department of Planning and Budget shall revise and reissue its economic impact analysis within the time limits set forth for the Department's review of regulations at the final stage pursuant to the Governor's executive order for executive branch review if any of the following conditions is present that would materially change the Department's analysis:

1. Public comment timely received at the proposed stage indicates significant errors in the economic impact analysis; or
2. There is significant or material difference between the agency's proposed economic impact analysis and the anticipated negative economic impacts to the business community as indicated by public comment.

The determination of whether a condition is present under this subsection shall be made by the Department and shall not be subject to judicial review.

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