



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Secretary Of State TITLE-SERIES: 153-34  
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No  
RULE NAME: 153-34 Licensing of Private Investigators and Security Guards

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: 30-18-10(b)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The statutory authority for this rule states, "The Secretary of State may propose for promulgation in accordance with the provisions of chapter twenty-nine-a of this code legislative rules necessary for the administration and enforcement of this article and for the issuance, suspension and revocation of licenses issued under the provisions of this article." The language largely mirrors the statutory language of 30-18-1 et seq. However, the rule clarifies many provisions relating to issuance, renewal, and appeal.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/26/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/26/2017

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

WVSOS website; direct email of proposed rule to professional service organization.

**SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:**

**SUMMARY OF CONTENT:** Provides definitions applicable to licensure; provides exemptions from licensure as a PI; provides qualifications for licensure as a private investigator; provides requirements for PI firms; sets forth requirements for licensure as security guard; requirements for SG firm; lists prohibited conduct; renewal process; appellate procedures; waivers and extensions; provides for reactivation of licensure; restates statutory penalties; limits actions for damages; and creates a severability clause.

**STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:**

There is no existing rule for administrative processes of the WVSOS in handling licensure. This would clarify ambiguous issues relating to licensure and renewal which are currently absent. It also places all relevant provisions in a unified document.

**SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:**

**A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:**

The office anticipates an increase in revenue due to reactivation in licensure and easing the process.

**B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:**

We believe more economic activity by competition created by a larger industry of these professionals.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2017 Increase/Decrease (use "-")	2018 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	70740.00	.00	70740.00
<b>Personal Services</b>	61060.00	.00	61060.00
<b>Current Expenses</b>	9680.00	.00	9680.00
<b>Repairs and Alterations</b>	.00	.00	.00
<b>Assets</b>	.00	.00	.00
<b>Other</b>	.00	.00	.00
<b>2. Estimated Total Revenues</b>	77681.50	9191.95	86873.45

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The office anticipates an increase in revenue due to reactivation in licensure and easing the process.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.**

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TITLE 153  
LEGISLATIVE RULE  
SECRETARY OF STATE

SERIES 34  
LICENSING OF PRIVATE INVESTIGATORS AND SECURITY GUARDS

**§153-34-1. General.**

1.1. Scope. – This legislative rule governs the administration and enforcement for the issuance, suspension and revocation of licenses issued by the Secretary of State for private investigator and security guard license renewal.

1.2. Authority. – W. Va. Code §30-18-10

1.3. Filing Date. – \_\_\_\_\_

1.4. Effective Date. – \_\_\_\_\_

1.5. Sunset provision. This rule shall terminate and have no further force and effect after five (5) years from the effective date.

**§153-34-2. Definitions.**

2.1. "Applicant" means a person who files a completed application as required by this rule to be licensed to conduct a private investigation business or a security guard business. When a person other than a natural person is applying for a license, the applicant shall be the person whose qualifications are presented to meet the experience or education requirements of this rule.

2.2. "Private investigation business" means the business of doing an investigation or investigations, for hire, reward or any other type of remuneration, to obtain information about:

2.2.a. A crime which is alleged to have occurred or is threatened to occur;

2.2.b. The habits, activities, conduct, movements, location, associations, transactions, reputation or character of any person;

2.2.c. The credibility of witnesses or other persons;

2.2.d. The location or recovery of lost or stolen property;

2.2.e. The causes or origins of any fire, accident or injury to any property, real or personal, or to identify or locate any person or persons responsible for any such fire, accident or injury;

2.2.f. The truth or falsity of any statement or representation, whether written or oral, or of any type of depiction;

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2.2.g. Any matters which constitute evidence or which may lead to the discovery of evidence to be used before any judicial or quasi-judicial tribunal, including, but not limited to, civil or criminal courts, administrative agencies, investigating committees, or boards of award or arbitration;

2.2.h. The whereabouts of any missing or kidnapped person;

2.2.i. The affiliation, connection or relationship of any person with any corporation or other business entity, union, organization, society or association, or with any official, member or representative thereof;

2.2.j. Any person or persons seeking employment in the place of any employee or employees who have quit work by reason of any strike; or

2.2.k. The conduct, honesty, efficiency, loyalty or activities of employees, agents, contractors and subcontractors.

2.3 "Firm license" means the license held by a person whom the secretary of state has authorized to operate a private detective investigative firm or security guard firm after such person has filed and completed an application pursuant to the application requirements contained in sections five or eight and has satisfied the eligibility requirements contained in sections four or seven.

2.4 "Person" means a natural person, a group of persons or individuals acting individually or as a group, a corporation, company, partnership, association, society, firm, or any business organization or entity organized or existing under the laws of this or any other state or country;

2.5 "Private detective" or "private investigator" means a person who is licensed pursuant to the provisions of this rule to conduct a private investigation business and who conducts such business individually and independently from any private detective or investigative firm;

2.6 "Private detective or investigative firm" means any private detective agency or business or any investigative agency or business that is operated by a licensed private detective or investigator and which employs one or more other persons who actually conduct the private investigation business.

2.7. "Security guard" means a person who is licensed pursuant to the provisions of this article to conduct a security guard business and who conducts such business individually and independently from a security guard firm.

2.8. "Security guard business" means the business of furnishing, for hire, reward or other remuneration, watchmen, guards, bodyguards, private patrolmen or other persons, to:

2.8.a. Protect property, real or personal, or any person;

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2.8.b. To prevent theft, unlawful taking, misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, notes or other valuable documents, papers and articles of value; or

2.8.c. To furnish for hire, guard dogs or armored motor vehicle security services, in connection with the protection of persons or property;

2.9. "Security guard firm" means any security guard agency or business that is operated by a licensed security guard and which employs one or more other persons who actually conduct a security guard business.

### **§153-34-3. Exemptions.**

3.1. "Private detective" or "private investigator" does not include:

3.1.a. Any individual while acting as an adjuster for an insurance company or companies;

3.1.b. Individuals employed exclusively and regularly by only one employer in connection with the affairs of such employer only;

3.1.c. An officer or employee of the United States, or any law-enforcement officer of this state or any political subdivision thereof, while such officer or employee is engaged in the performance of his official duties or while working for a private employer in his off-duty hours;

3.1.d. Attorneys or counselors-at-law or any employee or representative of such attorney or counselor;

3.1.e. Any corporation duly authorized by this state to operate central burglar or fire alarm protection business; or

3.1.f. Any investigator of crime appointed by a prosecuting attorney of a county pursuant to the provisions of section two, article four, chapter seven of the code of West Virginia.

3.2. "Security guard" does not include a person who is employed exclusively and regularly by only one employer in connection with the affairs of such employer only, or a person who is otherwise hereinafter excluded from the requirements of this rule.

3.3. "Security guard business" does not include any activities or duties for which it is necessary to be trained and certified as a law-enforcement officer in accordance with the provisions of article twenty-nine, chapter thirty of the code of West Virginia.

**§153-34-4. Qualifications for Licensure to Conduct Private Investigation Business.**

4.1. In order to be eligible for any license to conduct the private investigation business, an applicant shall:

4.1.a. Be at least eighteen years of age;

4.1.b. Be a citizen of the United States or an alien who is legally residing within the United States;

4.1.c. Not have had any previous license to conduct a private investigation business or to conduct a security guard business suspended, or revoked, or any application for any such licenses or registrations denied by the appropriate governmental authority in this or any other state or territory;

4.1.d. Not have been declared incompetent by reason of mental defect or disease by any court of competent jurisdiction unless a court has subsequently determined that the applicant's competency has been restored;

4.1.e. Not suffer from habitual drunkenness or from narcotics addiction or dependence;

4.1.f. Be of good moral character;

4.1.g. Have a minimum of two years of verified, full-time experience, education or training in any one of the following areas, or some combination thereof:

4.1.g.1. Course work that is relevant to the private investigation business at an accredited college or university;

4.1.g.2. Employment as a member of any United States government investigative agency, employment as a member of a state or local law-enforcement agency or service as a sheriff;

4.1.g.3. Employment by a licensed private investigative or detective agency for the purpose of conducting the private investigation business;

4.1.g.4. Service as a magistrate in this state; or

4.1.g.5. Any other substantially equivalent training or experience;

4.1.h. Not have been convicted of a felony in this state or any other state or territory;

4.1.i. Not have been convicted of any of the following:

4.1.i.1. Illegally using, carrying or possessing a pistol, firearm, or other dangerous weapon;

4.1.i.2. Making or possessing burglar's instruments;

4.1.i.3. Buying or receiving stolen property;

4.1.i.4. Entering a building unlawfully;

4.1.i.5. Aiding an inmate's escape from prison;

4.1.i.6. Possessing or distributing illicit drugs;

4.1.i.7. Any misdemeanor involving moral turpitude or for which dishonesty of character is a necessary element;

4.1.i.8. Any misdemeanor crime of domestic violence as defined in 18 U. S. C. §921(a)(33), or a misdemeanor offense of assault or battery either under section twenty-eight, article two of this chapter or subsection (b) or (c), section nine, article two of this chapter in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense, or a misdemeanor offense with similar essential elements in a jurisdiction other than this state;

4.1.j. Not have violated any provision of this rule.

4.2. The provisions of this section shall not prevent the issuance of a license to any person who, subsequent to his or her conviction, shall have received an executive pardon therefor, removing this disability.

4.3. Any person who qualifies for a private investigator's license shall also be qualified to conduct security guard business upon notifying the secretary of state in writing that the person will be conducting such business.

4.4. No person may be employed as a licensed private investigator while serving as magistrate.

4.5. Any private investigator who conducts fire or arson investigations in this state shall be:

4.5.a. Licensed in accordance with this rule; and

4.5.b. Certified as a "CFI" and/or "CFEI" by the National Association of Fire Investigators, International Association of Arson Investigators, Bureau of Alcohol, Tobacco & Firearms, or the West Virginia State Fire Commission.

4.5.c. Upon revocation of his or her certification by either the National Association of Fire Investigators, International Association of Arson Investigators, Bureau of Alcohol, Tobacco & Firearms, or the West Virginia State Fire Commission, a private investigator who conducts fire or arson investigations shall cease the practice of fire or arson investigation.

4.5.d. Fire or arson investigation by a licensee under this chapter shall be prohibited without certification.

4.6. Any person applying for licensure must certify in the application, under penalty of false swearing, whether or not they have a child support obligation, or that they do not have a child support obligation arrearage amount equal to or in excess of six months, or are not subject of a child-support related subpoena or warrant.

4.6.a. A license shall not be granted for any person having an arrearage equal to or greater than six months or have failed to comply with a warrant or subpoena in a paternity or child support proceeding.

4.6.b. Denial, suspension or revocation based on this provision shall be in effect until and unless approval, renewal or reinstatement is authorized by a court of competent jurisdiction or the West Virginia Bureau of Child Support Enforcement.

**§153-34-5. Application Requirements for a License to Conduct the Private Investigation Business.**

5.1. To be licensed to be a private detective, a private investigator or to operate a private detective or investigative firm, each applicant shall complete and file a written application, under oath, with the secretary of state and in such form as the secretary may prescribe.

5.2. On the application each applicant shall provide the following information: The applicant's name, birth date, citizenship, physical description, military service, current residence, residences for the preceding seven years, qualifying education or experience, the location of each of his or her offices in this state and any other information requested by the secretary of state in order to comply with the requirements of this rule.

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

5.4. The applicant shall provide:

5.4.a. Information in the application about whether the applicant has ever been arrested for or convicted of any crime or wrongs, either done or threatened, against the government of the United States;

5.4.b. Information about offenses against the laws of West Virginia or any state; and

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5.4.c. Any facts as may be required by the secretary of state to show the good character, competency and integrity of the applicant.

5.4.d. Qualify for a firm license, the applicant shall provide such information for each person who will be authorized to conduct the private investigation business and for each officer, member or partner of the firm.

5.5. As part of the application, each applicant shall give the secretary of state permission to review the records held by the division of public safety for any convictions that may be on record for the applicant.

5.6. For each applicant for a license and for each officer, member and partner of the firm applying for a license, the application shall be accompanied by one recent passport sized full-face photograph and completion of submission of fingerprints by a vendor designated by the secretary of state.

5.7. For each applicant, the application shall be accompanied by:

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

5.7.b. A nonrefundable application processing service charge of fifty dollars, which shall be payable to the secretary of state to offset the cost of license review and criminal investigation background report from the department of public safety, along with a license fee of one hundred dollars if the applicant is an individual, or two hundred dollars if the applicant is a firm, or five hundred dollars if the applicant is a nonresident of West Virginia or a foreign corporation or business entity. The license fee shall be deposited to the general revenue fund, and shall be refunded only if the license is denied.

5.8. All applicants for private detective or private investigator licenses or for private investigation firm licenses shall file in the office of secretary of state a surety bond. Such bond shall:

5.8.a. Be in the sum of two thousand five hundred dollars and conditioned upon the faithful and honest conduct of such business by such applicant;

5.8.b. Be written by a company recognized and approved by the insurance commissioner of West Virginia and approved by the attorney general of West Virginia with respect to its form;

5.8.c. Be in favor of the state of West Virginia for any person who is damaged by any violation of this article. The bond must also be in favor of any person damaged by such a violation.

5.9. Any person claiming against the bond required by this rule for a violation of this rule may maintain an action at law against any licensed individual or firm and against the surety. The surety

shall be liable only for damages awarded under section sixteen of this rule and not the punitive damages permitted under that section. The aggregate liability of the surety to all persons damaged by a person or firm licensed under this rule may not exceed the amount of the bond.

**§153-34-6. Requirements for Employees Conducting the Private Investigation Business Under a Firm License.**

6.1. Any person who has a private detective firm or investigative firm license shall be responsible for supervising any employee or other individual who conducts the private investigation business under the authority of such person's firm license, regardless of whether such employee or other individual receives compensation for conducting such business. Such supervision shall include providing any education or training that is reasonably necessary to ensure compliance with the requirements of this rule.

6.2. Any employee or individual who conducts the private investigation business under the authority of a private detective or investigative firm license shall:

6.2.a. Satisfy the requirements of this rule, except that such person need not satisfy the education and training requirements contained in subdivision 4.1.g. of section four; and

6.2.b. Authorize the secretary of state to review the records held by the department of military affairs and public safety for any convictions that may be on record for such employee or individual.

6.2.c. A holder of a private detective or investigative firm license is prohibited from authorizing any individual or employee to conduct a private investigation business if such individual does not comply with the requirements of this section.

6.2.d. For every employee or individual who conducts the business of private investigation under the authority of a private detective or investigative firm license, the holder of such license must maintain a recent passport sized full-face photograph and one complete set of fingerprints on file at such firm's central business location in this state. Upon request, the holder of the firm license must release the photographs and fingerprints to the secretary of state.

**§153-34-7. Eligibility Requirements to be Licensed to Conduct Security Guard Business.**

7.1. In order to be eligible for any license to conduct security guard business, an applicant shall:

7.1.a. Be at least eighteen years of age;

7.1.b. Be a citizen of the United states or an alien who is legally residing within the United States;

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7.1.c. Not have had any previous license to conduct security guard business or to conduct the private investigation business revoked or any application for any such licenses or registrations denied by the appropriate governmental authority in this or any other state or territory;

7.1.d. Not have been declared incompetent by reason of mental defect or disease by any court of competent jurisdiction unless said court has subsequently determined that the applicant's competency has been restored;

7.1.e. Not suffer from habitual drunkenness or from narcotics addiction or dependence;

7.1.f. Be of good moral character;

7.1.g. Have had at least one (1) year verified, full time employment conducting security guard business or conducting the private investigation business working for a licensed firm or have one (1) year of substantially equivalent training or experience;

7.1.h. Not have been convicted of a felony in this state or any other state or territory;

7.1.i. Not have been convicted of any of the following:

7.1.i.1. Illegally using, carrying or possessing a pistol or other dangerous weapon;

7.1.i.2. Making or possessing burglar's instruments;

7.1.i.3. Buying or receiving stolen property;

7.1.i.4. Entering a building unlawfully;

7.1.i.5. Aiding an inmate's escape from prison;

7.1.i.6. Possessing or distributing illicit drugs;

7.1.i.7. Any misdemeanor involving moral turpitude or for which dishonesty of character is a necessary element;

7.1.i.8. Any misdemeanor crime of domestic violence as defined in 18 U. S. C. §921(a)(33), or a misdemeanor offense of assault or battery either under section twenty-eight, article two of this chapter or subsection (b) or (c), section nine, article two of this chapter in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense, or a misdemeanor offense with similar essential elements in a jurisdiction other than this state;

7.1.j. Not having violated any provision of this rule.

7.2. The provisions of this section shall not prevent the issuance of a license to any person who, subsequent to his conviction, shall have received an executive pardon therefor, removing this disability.

7.3. Any person applying for licensure must certify in the application, under penalty of false swearing, whether or not they have a child support obligation, or that they do not have a child support obligation arrearage amount equal to or in excess of six months, or are not subject of a child-support related subpoena or warrant.

7.3.a. A license shall not be granted for any person having an arrearage equal to or greater than six months or have failed to comply with a warrant or subpoena in a paternity or child support proceeding.

7.3.b. Denial, suspension or revocation based on this provision shall be in effect until and unless approval, renewal or reinstatement is authorized by a court of competent jurisdiction or the West Virginia Bureau of Child Support Enforcement.

**§153-34-8. Application Requirements for a License to Conduct Security Guard Business.**

8.1. To be licensed as a security guard or to operate a security guard firm, each applicant shall complete and file a written application, under oath, with the secretary of state and in such form as the secretary may prescribe.

8.2. On the application, each applicant shall provide the following information: The applicant's name, birth date, citizenship, physical description, military service, current residence, residences for the preceding seven years, qualifying education or experience, the location of each of his or her offices in this state and any other information requested by the secretary of state in order to comply with the requirements of this rule.

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

8.4. The applicant shall provide:

8.4.a. Information in the application about whether the applicant has ever been arrested for or convicted of any crime or wrongs, either done or threatened, against the government of the United States;

8.4.b. Information about offenses against the laws of West Virginia or any state; and

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8.4.c. Any facts as may be required by the secretary of state to show the good character, competency and integrity of the applicant.

8.5. To qualify for a firm license, the applicant shall provide such information for each person who would be authorized to conduct security guard business under the applicant's firm license and for each officer, member or partner in the firm.

8.6. As part of the application, each applicant shall give the secretary of state permission to review the records held by the department of public safety for any convictions that may be on record for the applicant.

8.7. For each applicant for a license and for each officer, member and partner of the firm applying for a license, the application shall be accompanied by one recent passport sized full-face photograph and one complete set of the person's fingerprints.

8.8. For each applicant, the application shall be accompanied by:

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

8.8.b. A nonrefundable application processing service charge of fifty dollars, which shall be payable to the secretary of state to offset the cost of license review and criminal investigation background report from the department of public safety, along with a license fee of one hundred dollars if the applicant is an individual, or two hundred dollars if the applicant is a firm, or five hundred dollars if the applicant is a nonresident of West Virginia or a foreign corporation or business entity. The license fee shall be refunded only if the license is denied.

8.9. All applicants for security guard licenses or security guard firm licenses shall file in the office of secretary of state a surety bond. Such bond shall:

8.9.a. Be in the sum of two thousand five hundred dollars and conditioned upon the faithful and honest conduct of such business by such applicant;

8.9.b. Be written by a company recognized and approved by the insurance commissioner of West Virginia and approved by the attorney general of West Virginia with respect to its form;

8.9.c. Be in favor of the state of West Virginia for any person who is damaged by any violation of this article. The bond must also be in favor of any person damaged by such a violation.

8.10. Any person claiming against the bond required by this for a violation of this rule may maintain an action at law against any licensed individual or firm and against the surety. The surety shall be liable only for damages awarded under section sixteen of this rule and not the punitive damages permitted under that section. The aggregate liability of the surety to all persons damaged by a person or firm licensed under this article may not exceed the amount of the bond.

**§153-34-9. Requirements for Employees Conducting Security Guard Business under a Firm License**

9.1. Any person who has a security guard firm license shall be responsible for supervising any employee or other individual who conducts security guard business under the authority of such person's firm license, regardless of whether such employee or other individual receives compensation for conducting such business. Such supervision shall include providing any education or training that is reasonably necessary to ensure compliance with the requirements of this article.

9.2. Any employee or individual who conducts security guard business under the authority of a firm license shall:

9.2.a. Satisfy the requirements of this rule, except that such person need not satisfy the prior employment requirements contained in subdivision 7.1.g. of section seven of this rule; and

9.2.b. Authorize the secretary of state to review the records held by the department of military affairs and public safety for any convictions that may be on record for such employee or individual.

9.2.c. A holder of a security guard firm license is prohibited from authorizing any individual or employee to conduct security guard business if such individual does not comply with the requirements of this rule.

9.2.d. For every employee or individual who conducts security guard business under the authority of a security guard firm license, the holder of such license must maintain a recent passport sized full-face photograph and one (1) complete set of fingerprints on file at such firm's central business location in this state. Upon request, the holder of the firm license must release the photographs and fingerprints to the secretary of state.

**§153-34-10. Prohibited Conduct.**

10.1. No person shall engage in the private investigation business or security guard business without having first obtained from the secretary of state a license to conduct such business.

10.2. All licensed persons, including private detectives, private investigators, security guards, private detective or investigative firms and security guard firms, are prohibited from transferring their licenses to an unlicensed person, firm or agency. This prohibition includes contracting or subcontracting with an unlicensed person, firm or agency to conduct the private investigation business or security guard business.

10.3. It is unlawful for any person subject to the provisions of this rule to knowingly commit any of the following:

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10.3.a. Employ any individual to perform the duties of an employee who has not first complied with all provisions of this rule and the adopted policies;

10.3.b. Falsely represent that a person is the holder of a valid license;

10.3.c. Make a false report with respect to any matter with which he or she is employed;

10.3.d. Divulge any information acquired from or for a client to persons other than the client or his or her authorized agent without express authorization to do so or unless required by law;

10.3.e. Accept employment which includes obtaining information intended for illegal purposes;

10.3.f. Authorize or permit another person to violate any provision of this rule or any rule of the secretary of state adopted for this rule.

10.4. The secretary of state may refuse to issue a license, or renewal, or suspend, revoke, impose probationary conditions, impose an administrative fine, issue a written reprimand, or any combination thereof regarding any licensee upon proof that the licensee or applicant violated this rule or engaged in the prohibited conduct outlined in this section.

### **§153-34-11. Renewal of License.**

11.1. A license granted under the provisions of this rule shall be in effect for one year from the date the certificate of license is issued and may be renewed for a period of one year by the secretary of state upon application, in such form as the secretary may prescribe, and upon payment of the fee and the filing of the surety bond. At the time of applying for renewal of a license, the secretary of state may require any person to provide additional information to reflect any changes in the original application or any previous renewal.

11.2. The secretary of state may authorize the payment of multi-year renewal fees through a pre-paid fund account as established by subsection (i), of Section Two, Article one, Chapter Fifty-Nine of the Code of West Virginia. *Provided*, nothing in this section shall preclude the requirement of annually renewing licensure by the person.

### **§153-34-12. Appeal of Denial.**

12.1. If an application or renewal is denied, the licensee shall have the right to appeal the decision of the secretary of state.

12.2. An appeal shall be:

12.2.a. In writing;

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12.2.b. Received by the secretary of state's office within fifteen (15) days after the date of the decision; and

12.2.c. Further proceedings shall be conducted in accordance with Title 153, Series 12 "Rules of Procedure for Contested Case Hearings Related to Licensing of Private Detectives and Security Guards."

### **§153-34-13. Waiver or Extensions of Time.**

13.1. On application, the secretary of state may grant a waiver or extension of time within which to fulfill the requirements of this rule in the following cases:

13.1.a. Medical disability of the licensee;

13.1.b. Illness of the licensee or an immediate family member;

13.1.c. Death or serious injury of an immediate family member;

13.1.d. Active military duty;

13.2. A written request for waiver of or extension of time involving medical disability or illness shall be:

13.2.a. Submitted by the licensee; and

13.2.b. Accompanied by a verifying document signed by a licensed physician.

13.3. A waiver of or extension of time within which to fulfill the requirements shall not exceed one (1) year.

13.4. If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee shall reapply for the waiver or extension.

### **§153-34-14. Requirements for Reinstatement or Reactivation of Licensure.**

14.1. A person requesting reinstatement or reactivation of private investigation licensure shall submit evidence of receiving six (6) hours of approved educational hours within a one (1) year period immediately preceding the date that reinstatement or reactivation is requested.

14.2. A person requesting reinstatement or reactivation of security guard licensure shall submit evidence of receiving three (3) hours of approved educational hours within a one (1) year period immediately preceding the date that reinstatement or reactivation is requested.

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14.3. The continuing education hours received in compliance with this section shall be approved by the secretary of state, and shall be in addition to all other requirements established in this rule and shall not be used to comply with the requirements of that section.

### **§153-34-15. Penalties.**

15.1. Any person, licensed or unlicensed, who violates any of the provisions of this rule is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$100 nor more than \$5,000 or be confined in jail for not more than one year, or both.

15.2 In the case of a violation of subsection 15.1. of this rule, a fine is assessed by the court for each day that an individual conducted the private investigation business or security guard business. In the case of a firm license, the fine is based on each day that the private investigative or security services were provided multiplied by the number of unauthorized persons providing those services.

### **§153-34-16. Action for Damages.**

16.1. Any individual who is injured by a violation of this article may bring an action for recovery of damages, including punitive damages plus reasonable attorney's fees and court costs.

### **§153-34-17. Severability.**

17.1. The sections of this rule are severable. Should any section be declared by judicial opinion unconstitutional or in any manner contrary to the laws of the State of West Virginia, that particular section shall be invalid and all other sections shall remain in full force and effect.