

RESPONSE TO COMMENTS

“LICENSING OF PRIVATE INVESTIGATORS AND SECURITY GUARDS”

Title 153 Series 34

The West Virginia Secretary of State (SOS) responds to the comments received as follows:

COMMENTS RECEIVED FROM THE COMMISSIONER OF THE BUREAU FOR CHILD SUPPORT ENFORCEMENT

COMMENT 1: Pursuant to W.Va. Code §48-15-303(a), as a licensing authority, the SOS must verify a child support obligation, arrearage and determine if the applicant is subject to a child support subpoena or warrant. Subject to the code, a court may direct the SOS to revoke, suspend or deny the license due to non-payment.

RESPONSE: Upon review by the SOS, the recommendation is included in the revised Rule in Section 4.6., 4.6.a., 4.6.b. for private investigators, as well as 7.3., 7.3.a., and 7.3.b. for security guards.

COMMENTS RECEIVED FROM THE CENTRAL WEST VIRGINIA CHAPTER OF THE PISP WV ORGANIZATION

COMMENT: Supports the recommendations of the PISP Statewide Chapter.

RESPONSE: No response required.

COMMENTS RECEIVED FROM THE PRIVATE INVESTIGATORS AND SECURITY PROFESSIONALS OF WEST VIRGINIA (PISP WV)

COMMENT 1: Request adding “suspended” to language of 4.1.c.

RESPONSE: Added suggested language.

COMMENT 2: Consider limiting experience with appropriate timeframe (*i.e.* past five years or less instead of open ended)

RESPONSE: Unable to limit timeframe based on W.Va. Code §30-18-2(a)(7)E) .

COMMENT 3: Consider changing “pistol” to “firearm”

RESPONSE: Added “firearm” to section 4.1.i.1.

COMMENT 4: Consider adding “domestic violence” language to list of convictions barring qualifications for licensure.

RESPONSE: Because of the position of trust placed in private investigation and security professionals, and because licensed persons could employ the use of a firearm in the performance of their duties, and because W.Va. Code §61-7-7 (and 18 U.S.C. §922) would prohibit the possession of firearms by such individuals, the SOS included identical language from W.Va. Code §61-7-7(a)(8) within 4.1.i.8. and 7.1.i.8..

COMMENT 5: Consider adding FEL before “Bureau of Alcohol Tobacco and Firearms.

RESPONSE: Did not include Federal Explosive License (“FEL”) as a qualifier as the intent of the limiting language is to ensure, as have many other states, that individuals investigating fire and explosion incidents meet or exceed N.F.P.A. 1033. An FEL does not meet N.F.P.A. 1033 requirements.

COMMENT 6: Consider adding BATF or WVSFC to 4.5.c. to be consistent with 4.5.b.

RESPONSE: Incorporated suggestion into 4.5.c.

COMMENT 7: Consider deleting “arrested” in 5.4.a.

RESPONSE: Cannot modify language as it comes directly from W.Va. Code §30-18-3(d)(1).

COMMENT 8: Consider adding “passport sized” before full-faced.

RESPONSE: Added suggested language to 5.6., 6.2.d., 8.7., and 9.2.d.

COMMENT 9: Consider deleting “one set of person’s fingerprints” with “completion of submission of fingerprints by vendor determined by WVSOS.”

RESPONSE: Incorporated language as requested.

COMMENT 10: Consider adding “domestic violence” language to list of convictions barring qualifications for licensure.

RESPONSE: See response to Comment 4 above.

COMMENT 11: Asserts that language of 10.2 is confusing and misleading as “this is how subcontractors are able to obtain experience hours so they can count towards obtaining their own license.”

RESPONSE: This language is taken directly from W.Va. Code §30-18-8(b) as prohibited conduct. If this has been the practice of private investigators and security guards in the past it has been unlawful. Licensed firms MAY NOT subcontract with unlicensed individuals. THEY MAY have an employee of a firm working under the firm’s license to obtain the requisite hours pursuant to W.Va. Code §30-18-2(a)(7)(C). An “employee” is not a “subcontractor” for the purpose of licensing under this law. This prohibited conduct remains in full force and effect.

COMMENT 12: Consider replacing “one year” for two to up to five years.

RESPONSE: W.Va. Code §30-18-9 states, “licenses granted under the provisions of this article 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...” That being said, the SOS included language in 11.2 permitting the payment of multi-year renewal fees pursuant to W.Va. Code §59-1-2(i).

COMMENT 13: Claims the limitation for a misdemeanor fine in West Virginia is \$2,500.

RESPONSE: The SOS is unaware of this claimed cap in state code. See W.Va. Code 50-2-3. Nevertheless, the penalties are a restatement of those set forth in W.Va. Code §30-18-11(a).

Steve Connolly

From: Talmage, Heidi L <Heidi.L.Talmage@wv.gov>
Sent: Tuesday, July 25, 2017 2:56 PM
To: Steve Connolly
Cc: Kimberling, Beverly A
Subject: FW: Kimberly Mason re private investigators licensing
Attachments: Kimberly Mason re private investigators licensing.pdf

Steve,

I'm sending you a scanned copy of the BCSE's comments regarding the proposed rule for private investigator licensing, in case the original does not arrive before close of business tomorrow. I'll be on vacation July 26 - August 1. If you have any questions or concerns in my absence, please contact Commissioner Jacob's office at 304-558-0909.

Heidi L. Talmage
General Counsel
Bureau for Child Support Enforcement
350 Capitol St., Room 147
Charleston WV 25301

Heidi.L.talmage@wv.gov

304-356-4737
304-558-4092 (fax)



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Bureau for Child Support Enforcement

350 Capitol Street, Room 147
Charleston, West Virginia 25301
Telephone: (304) 558-3780 Fax: (304) 558-4092

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

July 25, 2017

Kimberly Mason, Investigative Analyst
Office of the Secretary of State
State Capitol Building
Charleston, WV 25305

RE: Comments regarding CSR 153-34-1 et seq.
Licensing of Private Investigators and Security Guards

Dear Ms. Mason:

Thank you for the opportunity to comment upon the Secretary of State's proposed legislative rule. The Bureau for Child Support Enforcement is submitting these comments in its capacity as the statewide administrator of the child support enforcement program, pursuant to West Virginia Code § 48-18-101. Please consider the comments to the extent that they can further our agency's responsibility regarding suspension of professional licenses, pursuant to W.Va. Code §48-15-101 et seq. This article allows a court to direct a licensing agency to revoke, suspend or deny a professional license due to non-payment of support. Upon terms satisfactory to the court, the right to obtain a license may be re-instated.

Pursuant to West Virginia Code §48-15-303(a), each licensing authority shall require applicants to certify on the license application form that the applicant does not have a child support obligation, that the applicant does have such an obligation but any arrearage amount does not equal or exceed the amount payable for six months, or that the applicant is not the subject of a child-support related subpoena or warrant. We suggest that the statutory language be copied into proposed sections 153-34-5 and 8, dealing with license application forms. However, please note that the West Virginia Supreme Court of Appeals has interpreted W.Va. Code §48-15-303(b) to mean that there must first be a hearing before the license is denied. *Dababnah v. Dababnah*, 207 W.Va. 585, 534 S.E.2d 781 (2000). Therefore, any reference to administrative suspension, denial, or revocation of a license must also reference a hearing.

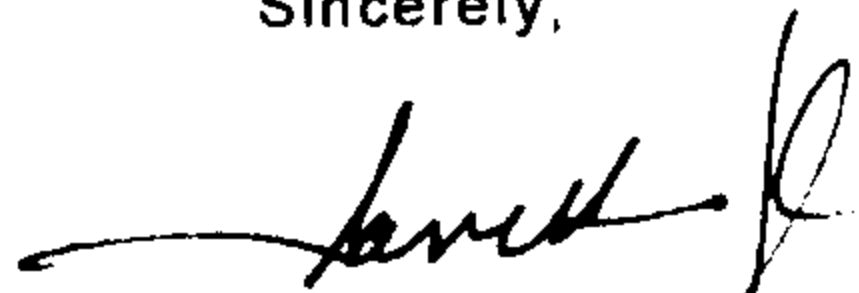
Proposed subsection 153-34-4.1.c as drafted provides for non-issuance of a license due to previous revocation or denial. In light of the possibility that revocation or denial based on non-payment of support may be a temporary matter until a suitable payment plan is instituted, we suggest that you add language to

subsection 4.2 such as "... or when the revocation or denial is based on non-payment of support, when the court or Bureau for Child Support Enforcement certifies compliance with court orders for the payment of current child support and arrearage." We have the same comments for proposed subsection 153-34-7.2.

We suggest adding an additional subsection to 153-34-14 to state that if the license was denied, suspended or revoked for non-payment of support, that the license shall not be approved, renewed or reinstated until the court or Bureau for Child Support Enforcement certifies compliance with court orders for the payment of current child support and arrearage. (W.Va. Code §48-15-301 (b)). We are mindful that the heading of this section currently does not address an application denial, only reinstatement or reactivation. Accordingly, the title may need to be altered.

If you have any questions or concerns regarding these comments, please feel free to contact me at 304-558-0909 or my General Counsel, Heidi Talmage, at 304-356-4737. I appreciate your consideration of our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett M. Jacobs", written over a horizontal line.

Garrett M. Jacobs
Commissioner

Steve Connolly

From: Kim Mason
Sent: Wednesday, July 26, 2017 3:50 PM
To: Steve Connolly
Subject: FW: PISPWV Suggested Changes to Proposed Changes Title-Series 153-34

FYI

Kimberly Mason
Investigative Analyst
West Virginia Secretary of State
State Capitol
Charleston, WV 25305
304-558-6000
www.wvsos.com

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From: Chris Signorelli [mailto:chris.signorelli@securityamerica.com]
Sent: Wednesday, July 26, 2017 3:40 PM
To: Kim Mason <KMason@wvsos.com>
Subject: RE: PISPWV Suggested Changes to Proposed Changes Title-Series 153-34

Ms. Mason,

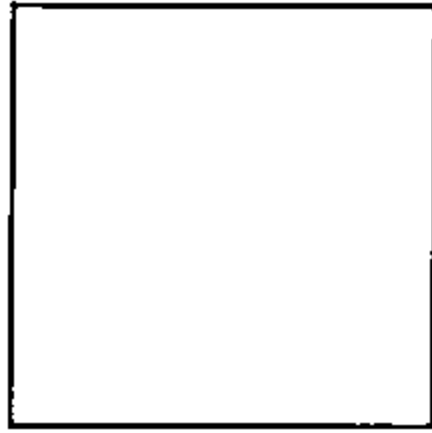
The Central WV Chapter of ASIS also backs PISPWV in the suggested changes. I am the Chapter Chair. We look forward to working together with the Secretary of State's office. Thanks for your time.

Chris Signorelli
President
888-832-6732 x103
304-925-4747 x103



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From: Lisa Turley [mailto:lisapi@suddenlink.net]
Sent: Wednesday, July 26, 2017 1:19 PM
To: kmason@wvsos.com
Cc: president@pispwv.org
Subject: PISPWV Suggested Changes to Proposed Changes Title-Series 153-34

Dear Ms. Mason – Thank you for speaking with me earlier in regards to PISPWV submitting response to Title-Series 153-34. Our organization members were given the opportunity to review the proposed changes and those suggestions were submitted to our legislative committee. This committee discussed those items and the organization is submitting the attached response. We look forward to working with the new administration on any future and on-going proposed changes as we seek to always improve our profession. Please confirm your receipt of our response as we understand the deadline is today. If you have any questions don't hesitate to call me. Thank you.

Respectfully.

Lisa Turley
Secretary/Legislative Chair
PISPWV



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Steve Connolly

From: Lisa Turley <lisapi@suddenlink.net>
Sent: Wednesday, July 26, 2017 2:02 PM
To: Steve Connolly; president@pispwv.org
Cc: Lisa Turley
Subject: [Scan] 2017-07-26 12:53 - PISPWV response to 153-34
Attachments: 2017-07-26 12-53.pdf

Steve - let me know if you still have problems. Thanks for letting me know.

--

Sent with Genius Scan for iOS.
<http://dl.tglapp.com/genius-scan>

Lisa



July 26, 2017

Ms. Kimberly Mason, Investigative Analyst
Office of the Secretary of State
State Capitol Building
1900 Kanawha Boulevard East
Suite 157-K
Charleston, WV 25305

RE: PISP WV Response to Proposed Changes to Title-Series §153-34

Dear Ms. Mason,

After submitting the proposed changes to the membership and meeting with the legislative committee the following suggestions are made for your consideration.

- 4.1.c. -----after revoked add/consider "suspended" to the language.
- 4.1.g.5 ----consider verified experience relative to time of application (i.e. experience within appropriate time frame i.e. past five years or less instead of open ended)
- 4.1.i.1.consider removing "pistol" and replacing with "Firearm" to be more inclusive
- Consider adding 4.1.i.8. "Domestic Violence"
- 4.5.b.consider adding "FEL" before Bureau of Alcohol Tobacco & Firearms
- 4.5.c.consider adding "Bureau of Alcohol Tobacco & Firearms or West Virginia State Fire Commission" to be consistent with 4.5.b.
- 5.4.a.consider deleting "arrested" as the wording is submission of guilt
- 5.6.consider adding "passport sized" in before "full-face"
- 5.6consider deleting "one complete set of the person's fingerprints" and replacing with "completion of submission of fingerprints by vendor determined by WVSOS"

Consider adding 7.1.i.8. "Domestic Violence"

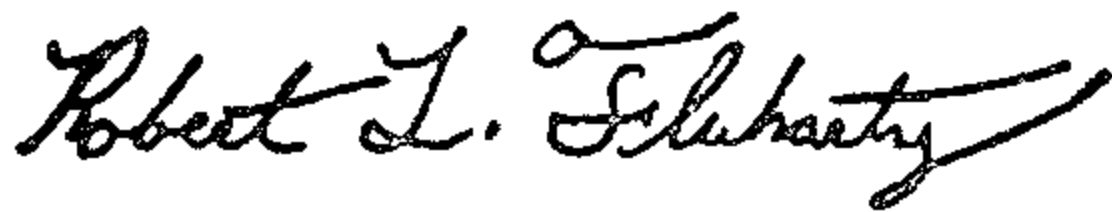
10.2 wording in the last sentence is confusing and misleading as licensed firms and investigators can subcontract work under their license – this is also how subcontractors are able to obtain experience hours so they can count towards obtaining their own license.

11.1 ...consider replacing "one year" for two up to five year terms.

15.1 Under current West Virginia law, isn't the highest misdemeanor fine is \$2,500 not \$5,000? Can the Title mandate an amount higher?

In advance, PISPWV, the only state organization that represents both private investigators and security professionals appreciates your consideration of the revisions above and looks forward to working with the WVSOS office to improve the standards of the profession.

Sincerely,



Robert Fluharty
President