



# COMMONWEALTH of VIRGINIA

## Department of Criminal Justice Services

Francine C. Ecker  
Director

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June 9, 2015

Mr. Kenneth D'Angelo  
President  
Private Investigators Association of Virginia (PIAVA)  
P.O. Box 1115  
Fairfax, VA 22038

Dear Mr. D'Angelo:

I am in receipt of your May 27, 2015, letter in which you ask of the status regarding the Department of Criminal Justice Services' (DCJS) implementation of House Bill 1718 and request the opportunity for your association to provide comments to the ensuing regulation.

I appreciate PIAVA's interest in participating in the regulatory process to establish the liability insurance requirements for private investigators and personal protection specialists hired as independent contractors. DCJS intends to be fully inclusive in this process with all stakeholders. You will be pleased to learn there are several opportunities for PIAVA and other interested parties to share their perspectives and opinions about what is a reasonable amount of liability insurance.

As you know, state law requires all agencies comply with the Administrative Process Act (see *Virginia Code* §§2.2-4000–4032) before implementing any new regulatory requirements created by new legislation, including HB1718's requirement that DCJS establish a reasonable amount of liability insurance for independent contractors. This process includes multiple opportunities for public input, including meetings of the Criminal Justice Services Board (CJSB), which is the regulatory authority over all of DCJS' programs, and meetings of the Private Security Services Advisory Board (PSSAB), which advises the CJSB on matters related to private security. PIAVA may speak publicly at any of these meetings, regardless of agenda items. Public input is also available during three separate phases of the regulatory process that occurs through the Commonwealth's Town Hall.

You are correct that HB1718 does not become law until July 1, 2015, however the enabling language does not mandate actual implementation on July 1<sup>st</sup>, nor does it provide for an exemption from the Administrative Process Act. In preparation for the regulatory process, DCJS has begun identifying subject matter insurance experts to assist in developing an appropriate and reasonable amount of general liability insurance to protect both the licensees and the public from liability. DCJS welcomes opinions from your association in developing a recommendation to the CJSB for their regulatory approval. DCJS has already received a letter of opinion from another organization advising what it recommends as an appropriate amount of liability insurance.

Recognizing that the regulatory process required by the APA is typically lengthy (the average is 18 months from start to finish), DCJS has consulted with the Attorney General's Office to identify any potential methods to implement these regulatory changes faster than the standard process. It should please you to know that it

Mr. Kenneth D'Angelo  
June 9, 2015  
Page Two

has been determined that DCJS can *attempt* to fast track these regulations if the proposed language is non-controversial. The success of fast tracked regulations is largely dependent on the public and the number of comments received during the appropriate public input stages. If, during the public comment period, an objection to the fast-track regulation is received from specific members of the General Assembly or ten or more members of the public, then publication of the fast-track regulation will serve as the Notice of Intended Regulatory Action (NOIRA) and the standard rulemaking process is followed to promulgate the regulation.

If the fast track process is successful, we estimate the earliest the regulations can be promulgated is March 2016. However, that estimate largely depends upon actions of third parties, such as public input, the Attorney General's Office, the Department of Planning and Budget and the Governor's Office.

If the fast track process is *not* successful, we estimate the regulatory process will be complete by January 2017, with the same caveat as described above. The Town Hall process is the best way to stay informed as to which stage the regulatory action is in. The Town Hall website can be accessed at: <http://townhall.virginia.gov/index.cfm>.

Our estimated timelines of the administrative process are attached for your information (and are subject to change). As you know, the CJSB must also receive advice from the PSSAB before approving any regulatory changes affecting liability insurance. DCJS provided this same information to the PSSAB at their recent meeting on June 2, 2015, and requested that the PSSAB work with the agency and the industry in establishing a recommendation for the CJSB. The attached timeline accounts for that consultation and delineates future estimated dates of industry involvement.

I understand the industry is eager to engage in independent contracting for these two professions and DCJS is making every effort to implement the regulations as quickly as possible within the confines of the law. I hope this information is helpful to you as we approach the regulatory process. You have my assurance that DCJS will fully include the PSSAB, industry associations and other interested parties as we move forward.

Sincerely,



Francine C. Ecker  
Director

Attachment

c: The Honorable James M. LeMunyon, House District 67  
The Honorable Marcus B. Simon  
Sheriff Charles Jett, Chairman, Criminal Justice Services Board  
Mr. Daniel Schmitt, Chairman, Private Security Services Advisory Board

**PSS Regulatory Action – Compliance with 2015 Code Amendments  
Estimated APA Schedule**

<b>Virginia Administrative Code</b>	<b>6 VAC 20-174 (New PSS Registered Personnel Regulation)</b>
<b>Regulation title</b>	<b>Regulations Relating to Private Security Services Registered Personnel</b>
<b>Action title</b>	<b>Amend Regulations to Conform to HB1718 (2015) - Establish insurance requirements for private investigators and personal protection specialists working as independent contractors</b>

<b>NOIRA STAGE</b>			
<b>TASK</b>	<b>ALLOTTED TIME</b>	<b>DESIRED DATE</b>	<b>ACTUAL DATE</b>
Establish informal advisory group, consult experts, determine reasonable amount, develop regulatory language	Once bill is signed until proposed regulations are submitted.	May-Dec 2015	
PSSAB Meeting – Notify members		6/2/2015	
Complete Agency Background Document for NOIRA (No text required at this time)		6/15/2015	
Provide copy of NOIRA package to OAG		6/19/2015	
OAG Certification Completed		6/30/2015	
Submit NOIRA package to DPB		7/1/2015	
DPB Review Completed – Submit to Secretary	14 days	7/15/2015	
Secretary Review Completed – Submit to Governor	14 days	7/29/2015	
Governor Review Completed	No minimum time	8/18/2015	
<u>NOIRA</u> submitted to Registrar	14 days	8/19/2015	
Send Email Notification to industry		8/28/2015	
Town hall Registered Users Email Notification		8/28/2015	
<b>Register Publishes NOIRA</b>	Min. 14 days	9/7/2015	
PSSAB Meeting – Provide Update/Discuss		9/15/2015	
CJSB Meeting –Provide Update/Discuss		9/17/2015	
<b><u>NOIRA</u> Public Comment Period – End date</b>	30 days	10/7/2015	
Complete a summary comment matrix - Forward to PSSAB and CJSB Members		Oct 2015	

**PSS Regulatory Action – Compliance with 2015 Code Amendments  
Estimated APA Schedule**

Continue to work on proposed text and background document.		Oct-Nov 2015	
PSSAB Meeting – Determines Recommendation to CJSB		12/1/2015	
CJSB Meeting – DCJS and PSSAB present recommendations; CJSB approves final language		12/10/2015	
Complete Final Regulatory Package (text and Agency Background Document)		12/18/2015	
<b>PROPOSED STAGE</b>			
<b>TASK</b>	<b>ALLOTTED TIME</b>	<b>DESIRED DATE</b>	<b>ACTUAL DATE</b>
Send copy of <u>Proposed</u> regulation to AG office for review before submission to DPB.		12/21/2015	
OAG Certification Completed		1/4/2016	
Submit the <u>Proposed</u> Regulatory Review Package to DPB. <b>NOTE:</b> Include Comment Summary Matrix	within 180 days of NOIRA Comment End date	1/5/2016	
DPB Review Completed – Economic Impact Analysis – Submitted to Secretary	45 days	2/19/2016	
Secretary Review Completed – Submit to Governor	14 days	3/5/2016	
Governor’s Office Review Completed	No Min. Time Set	4/27/2016	
Submit Proposed Regulatory package to the Registrar for publication	within 14 days after approval	4/28/2016	
Send Email Notification to industry		5/10/2017	
Town hall Registered Users email notification of upcoming publication		5/10/2017	
Registrar Published	Actual date	5/17/2016	
<u>Proposed</u> Written Public Comment Period End Date	60 days	7/16/2016	
Complete summary comment matrix		Aug 2016	
Complete Errata for any changes to Proposed		Aug 2016	

## PSS Regulatory Action – Compliance with 2015 Code Amendments Estimated APA Schedule

Public Hearing - CJSB	Actual Date	Sept 2016	
Revise proposed regulations as appropriate.		Sept 2016	
Complete Agency Background Document		Sept 2016	
<b>FINAL STAGE</b>			
<b>TASK</b>	<b>ALLOTTED TIME</b>	<b>DESIRED DATE</b>	<b>ACTUAL DATE</b>
Send <u>Final</u> Regulation to AG for review. (Only if significant changes since proposed)		10/1/2016	
Submit <u>Final</u> Adoption Regulatory Review to DPB	No more than 150 days after close of public comment	10/8/2016	
DPB Review Completed – Submitted to Secretary	14 days	10/22/2015	
Secretary Review Completed – Submitted to Governor	14 days	11/5/2016	
Governor’s Office Review Completed	No time set	12/7/2016	
<u>Final</u> regulatory package shall be submitted to the Registrar for publication		12/8/2016	
Send Email Notification to industry		12/17/2017	
Town hall Registered Users Notified of Upcoming Publication		12/17/2016	
Final Regulations Published in Register	Actual Date	12/27/2016	
<b>End of Public Comment and Effective Date of Regulations:</b>	<b>30 days</b>	<b>1/27/2017</b>	

## PSS Regulatory Action – Compliance with 2015 Code Amendments Estimated APA Schedule

### Fast Track

**NOTE:** If we anticipate no controversy with the insurance requirements we can attempt a fast track action. However, attempting a fast track that is not successful could put us back by 3 additional months with a final effective date in April 2017 (if we request approval at the September 2015 CJSB meeting).

TASK	ALLOTTED TIME	DESIRED DATE	ACTUAL DATE
Establish informal advisory group, consult experts, determine reasonable amount, develop regulatory language	Once bill is signed until proposed regulations are submitted.	May - August 2015	
PSSAB Meeting – Notify members		6/2/2015	
Prepare Draft Agency Statement		9/1/2015	
Prepare Draft Language		9/1/2015	
PSSAB Meeting – Determine advice to CJSB		9/15/2015	
CJSB Meeting – DCJS and PSSAB present recommendations; CJSB approves final language		9/17/2015	
Submit Regulation Package to OAG	No Time	9/18/2015	
Receive OAG Certification		9/25/2015	
Submit Regulation Package to DPB		9/28/2015	
DPB Approves Fast-track Process	10 days	10/13/2015	
DPB Review Completed – Submit to Secretary	30 days	11/12/2015	
Secretary Review Completed – Submit to Governor	14 days	12/8/2015	
<u>Governor Review Completed</u>	No time	1/5/2016	
Submit Regulatory package to the Registrar	within 14 days after approval	1/6/2016	
Send Email Notification to industry		1/15/2016	
Town hall Registered Users email notification of upcoming publication		1/15/2016	
Register Published	Actual date	1/25/2016	

## PSS Regulatory Action – Compliance with 2015 Code Amendments Estimated APA Schedule

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Written Public Comment Period End Date ** Number of comments cannot exceed nine!**	30 days	2/24/2016	
Regulation goes into effect	15 days	<b>3/11/2016</b>	