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## 2015 GENERAL ASSEMBLY SESSION – PIAVA’S LEGISLATIVE EFFORTS

The Board of the Private Investigators Association of Virginia (PIAVA) decided in 2014 to take an active role in the legislative process during the 2015 General Assembly session in order to promote and protect the interests of registered private investigators and licensed private investigation businesses in Virginia. The Board identified two priorities: 1) to have the Department of Criminal Justice Services (DCJS) again issue photo ID cards to private security service registrants, and 2) to rescind the DCJS regulatory restriction that prohibited licensed private investigation businesses from utilizing private investigator registrants as independent contractors.

After first meeting with and exchanging views with DCJS, it was decided that the only alternative to realize PIAVA’s two priorities was to amend existing statutes by supporting the passage of legislation. To that end, PIAVA worked diligently before and during the 2015 General Assembly’s short six week session (January 14 thru February 28, 2015) in support of two bills (HB 1718 and HB 2265). Once the session began, PIAVA also came out against a newly introduced bill (HB 2129) that would have adversely affected the due process rights of all those in the private security services industry.

PIAVA’s legislative efforts consisted of numerous trips to Richmond to testify before Subcommittees and Committees of the General Assembly, as well as the solicitation of support from Delegates and Senators by in person visits, contacts with staff, and the distribution of letters and position papers. PIAVA also collaborated with other industry organizations such as the Private Security Services Advisory Board (PSSAB) and the Professional Investigative and Security Association (PISA) to achieve its goals.

PIAVA’s Vice President testified before the Photo ID Committee of PSSAB on December 17, 2014, and it endorsed a legislative initiative to require photo IDs. PSSAB then held a previously unscheduled meeting on January 19, 2015 to review HB 2265, as well as HB 1718 and HB 2129. PIAVA’s Vice President and a Board member spoke in favor of HB 2265 and HB 1718, and in opposition to HB 2129. PSSAB voted to send letters to the General Assembly in support of HB 1718 and HB 2265, and in opposition to HB 2129.

### **HB 1718 – A bill to permit a licensed private security services business to hire a registered private investigator or personal protection specialist as an independent contractor**

In the summer of 2014, PIAVA met with leaders of the Professional Investigative and Security Association (PISA) and Delegate James LeMunyon to review issues affecting the private security services (PSS) industry. Out of that meeting, came a commitment by Del. LeMunyon to sponsor legislation to allow licensed PSS businesses to hire registered private investigators and personal protection specialists as independent contractors. The creation of a statutory authorization through legislation would override DCJS’s regulatory prohibition on the utilization of independent contractors. PIAVA worked with Del. LeMunyon on drafting the language of what he would introduce as HB 1718 on January 14, 2015.

HB 1718 was referred to the House Militia, Police and Public Safety Committee and assigned to Subcommittee #2. The Subcommittee held a hearing on February 5, 2015, at which PIAVA's President and a PIAVA member testified in support of HB 1718. During the hearing, a Delegate expressed concern about registrants acting as independent contractors not being required to be covered by insurance, but the Subcommittee passed the bill by 8-0.

PIAVA's position had been that insurance coverage was a business or registrant decision that should not be addressed by statute. However, when it became clear that the bill would likely not pass the full Committee without an insurance requirement, PIAVA assisted with drafting a substitute amendment. The new language required DCJS to determine what "reasonable amount" of comprehensive general liability insurance coverage a private investigator would be required to maintain while acting as an independent contractor.

On February 6, 2015, the full Committee passed the amended HB 1718 by 21-0. The House passed the bill by 100-0. PIAVA's Vice President testified before the Senate Courts of Justice Committee on February 18, 2015, and it was passed by a vote of 11-2. The Senate passed HB 1718 by 38-2. The legislation was signed by the Governor on March 16, 2015.

As the legislation required DCJS to determine the required amount of insurance that a registered PI would have to maintain when acting as an independent contractor, DCJS was required to initiate a regulatory process, which as of January 31, 2017, is ongoing. To check on the status of the regulations use the following link <http://townhall.virginia.gov/L/viewstage.cfm?stageid=7615>

### **HB 2265 – A bill to require the Department of Criminal Justice Services to issue a photo ID card to private security services registrants**

In 2014, PIAVA continued to urge DCJS to again issue photo ID cards to private security services (PSS) registrants as it had prior to its adoption in 2012 of a regulation requiring the issuance of a non-photo ID registration card. PIAVA met with the Director of DCJS and sent letters urging reconsideration of its policy to not issue photo ID cards, but DCJS took the position that it would not issue photo ID cards absent a statutory requirement. Therefore, PIAVA set the creation of a statutory requirement as its second legislative priority for the 2015 Session.

In December 2015, Tom Kaschak (PIAVA member and a private investigator representative to the Private Security Services Advisory Board (PSSAB)) met with Delegate Hyland F. "Buddy" Fowler, Jr. and obtained Del. Fowler's commitment to introduce a bill to require DCJS to issue a photo ID card to PSS registrants, which he did on January 20, 2015 as HB 2265.

On January 29, 2015, Subcommittee #2 of the House Militia, Police and Public Safety Committee held a hearing to consider HB 2265. PIAVA's Vice President and a PIAVA member spoke in favor of the bill and the Subcommittee passed it by 8-0. Del. Fowler's office worked with DCJS and Department of Motor Vehicle (DMV) staff, with PIAVA's and PISA's input, to draft substitute language that would permit DMV to issue photo ID cards on behalf of DCJS, and for DCJS to collect a \$4 surcharge for each issued card to pass on to DMV to defray start-up costs for the program. The full Committee passed HB 2265 on January 30, 2015, and it was referred to the House Appropriations Committee because of the revenue component.

The Public Safety Subcommittee of the House Appropriations Committee held a hearing, at which a PIAVA representative testified, on a substitute to HB 2265 that clarified the language of the prior amendments, but kept the requirement to issue a photo ID, permitted DMV to issue it on behalf

of DCJS and maintained the \$4 surcharge for the cards for one year. The cards would have had to be issued beginning on July 1, 2016 to allow DCJS and DMV to set up the program. The Subcommittee and the full Appropriations Committee passed the substitute on February 4, 2015. The House passed HB 2265 by 100-0.

In the Senate, the bill was referred to the Courts of Justice Committee. On February 18, 2015, the Committee held a hearing, at which PIAVA's Vice President testified, and voted to pass the bill. Later that same afternoon, the Committee voted to reconsider the bill and voided its passage of HB 2265. This reconsideration was prompted by a Senator questioning whether a portion of HB 2265 dealing with photo IDs for special conservators of the peace (SCOPs) contradicted a previously passed Senate bill (SB 1194) that prohibited the issuance of photo IDs for SCOPs. Del. Fowler worked diligently to find a "fix" that would satisfy both the House and Senate in the short time remaining before the end of the Session. He believed he had reached a compromise that satisfied the Senate and the House and he expected the Committee to pass HB 2265, with amendments, on February 23, 2015. Unfortunately, the Committee failed to consider the amendments and the bill failed in Committee, thereby killing it for the session.

### **HB 2129 – A bill to create new barriers to licensure, registration and employment for persons subject to protective orders**

As introduced, HB 2129 would have prohibited persons who were currently the subject of a protective order or were required to register as a sex offender from obtaining a license or registration from the Department of Criminal Justice Services (DCJS), and prohibited licensed private security services business from employing such persons.

PIAVA came out strongly against the provisions related to protective orders on due process grounds. Protective Orders are issued by a judge or magistrate upon the sworn testimony of a petitioner, but certain protective orders are issued ex parte, i.e. without consideration of a response from the subject of the order. In addition, proceedings related to the issuance of protective order are civil, with a significantly lower standard of proof than the "beyond a reasonable doubt" required for a criminal conviction, and they are issued to prohibit contact with a particular person (or person's family), or location (such as a residence).

Protective Orders can be issued for anywhere from three days to two years. Therefore, in one possible scenario, under HB 2129 as introduced, a private investigator would have had to be fired because he became subject to a protective order that was good for only three days. In a worst case scenario, a Permanent Protective Order could be issued, based on the lower civil standard of proof, and a registrant would be rendered unemployable for two years or more (Permanent Protective Orders can be renewed after two years).

By barring the employment of any registrant who is subject to a protective order, HB 2129 would have mandated that a licensed private security business terminate an employee who had only been accused of wrongdoing, and possibly prior to the individual's opportunity to respond to the allegations. With these objections in mind, PIAVA's Vice President and a PIAVA member testified in opposition to the protective order provisions of HB 2129 at a Civil Law Subcommittee hearing (House Courts of Justice Committee) on January 26, 2015. DCJS staff spoke in favor of the HB 2265, and testified that it was a DCJS initiated bill, which was unknown until the hearing. As a direct result of PIAVA's testimony, the Subcommittee amended HB 2129 and removed the protective order provisions.