



January 20th, 2015

Delegate T. Montgomery "Monty" Mason
General Assembly Building
P.O. Box 406
Richmond, VA 23218

Ref: HB 2129 [Barriers to licensure or registration; private security services businesses]

Dear Delegate Mason:

The Private Investigator's Association of Virginia, Inc. (PIAVA) believes that it clearly benefits the citizenry of the Commonwealth of Virginia for meaningful standards to be established for the qualification, training, registration and licensure of personnel authorized to perform private investigative services in the Commonwealth. Not only can the actions of a private investigator impact public safety, they can also have a significant impact upon the efficacy of our system of criminal justice; upon the adjudication of matters of civil litigation; upon the conduct of business by entities throughout the state; and/or upon the rights and privileges of citizens of the Commonwealth. While the Private Investigator's Association of Virginia, Inc. (PIAVA) fully supports the establishment and maintenance of such standards, and its members are committed to achievement of the highest standards of professionalism in the delivery of private investigative services, it is sensitive to the efficacy of the language used in statute and regulation to achieve that purpose.

Although we agree in principle with the spirit which we believe prompted the introduction of the proposed legislation, we do not support its adoption as drafted. Alternatively, we respectfully suggest an amendment to HB 2129 that would protect the due process rights of the subject of a protective order by prohibiting licensure, registration or employment by a private security services business only upon his/her conviction for the criminal offense of violating a protective order.

We believe that a discussion of the merit of inclusion of "**currently the subject of a protective order**" as a bar to licensure, registration or employment as a private investigator should begin with an understanding and appreciation of the terms and circumstances which may be involved in the issuance of a protective order. A review of the various types of protective orders, and the proceedings related to their issuance, makes it clear that 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, requiring a significantly lower standard of proof than the "beyond a reasonable doubt" necessary 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).

By barring the employment of any registrant who is subject to a protective order, the proposed statute would mandate that a licensed private security business terminate an employee who has only been accused of wrongdoing, and possibly prior to the individual's opportunity to respond to the allegations. Protective orders can be issued for a period spanning anywhere from three days to two years. In a worst case

scenario, a Permanent Protective Order could be issued based on the lower civil standard of proof, and a registrant would then be rendered unemployable for up to two years or more, as Permanent Protective Orders can also be renewed after two years.

We believe that the existing statute and the current DCJS adjudication procedures related to misconduct by a private investigator are sufficient to protect the safety of the citizens of the Commonwealth. (Note: §9.1-139K of the Code of Virginia lists specific misdemeanors (including sexual offenses) and includes all felonies, upon which a criminal conviction would prohibit an individual from being licensed, registered, or employed as a private investigator). We do not believe that the lesser standard of proof required to obtain a civil protective order, and the very particular prohibitions listed in a protective order, should be deemed sufficient to bar an otherwise qualified individual from being registered, licensed or employed as a private investigator, even temporarily. Therefore, we must respectfully oppose HB 2129, as drafted.

PROPOSED AMENDMENT TO HB 2129:

PIAVA would support HB 2129, if it was amended to include “(vii) violation of a protective order”, with the misdemeanors already listed in §9.1-139K of the Code of Virginia, and by removing the language, “or who is currently the subject of a protective order within the Commonwealth or another state”.

HB 2129 (at p. 2 of 5), as revised by PIAVA’s amendment, is set forth below:

§9.1-139 of the Code of Virginia

“K. No person with a criminal conviction for a misdemeanor involving (i) moral turpitude, (ii) assault and battery, (iii) damage to real or personal property, (iv) controlled substances or imitation controlled substances as defined in Article 1 (§18.2-247 et seq.) of Chapter 7 of Title 18.2, (v) prohibited sexual behavior as defined in Article 7 (§18.2-61 et seq.) of Chapter 4 of Title 18.2, (vi) firearms, or **(vii) violation of a protective order, or with a criminal conviction for any felony or who is required to register as a sex offender pursuant to Chapter 9 (§9.1-100 et seq.) by a substantially similar law of any other state, the United States, or any foreign jurisdiction** shall be (a) employed as a registered or certified employee by a private security services business or training school, or (b) issued a private security services registration, certification as an unarmed security officer, electronic security employee or technician’s assistant, a private security services training school instructor or instructor certification, compliance agent certification, or a private security services business license, except that, upon written request, the Director of the Department may waive such prohibition.”

On behalf of PIAVA, I appreciate your time and consideration of our position. Please contact me with any questions or if I can assist you by providing further input regarding this legislation. I have included a briefing paper summarizing our position with this letter.

Sincerely,



Kenneth P. D’Angelo
President