



January 20th, 2015

Lisa D. McGee - Regulatory Manager
Division of Law Enforcement and Security Services
Virginia Department of Criminal Justice Services
1100 Bank Street
Richmond, VA 23219

Ref: HB 2129

Dear Ms. McGee

Thank you for requesting that the Private Investigator's Association of Virginia, Inc. (PIAVA) review HB 2129 [Barriers to licensure or registration; private security services businesses] which have been proposed for adoption by the House of Delegates. Per your request we have provided commentary in light of our perception of the respective merit and potential impact upon the private investigative industry in Virginia. We do not support the passage of HB 2129 as drafted for the following reasons, but we would support it if it were amended as outlined below.

HB 2129 Barriers to licensure or registration; private security services businesses; bail bondsmen etc.

Introduced by: T. Montgomery "Monty" Mason

SUMMARY AS INTRODUCED:

Barriers to licensure or registration; private security services businesses; bail bondsmen; bail enforcement agents; special conservators of the peace. Prohibits persons who are currently the subject of a protective order or who are required to register as a sex offender from obtaining a license or registration from the Department of Criminal Justice Services for the private security industry, bail bonding industry, and special conservators of the peace program.

FULL TEXT

[01/14/15 House: Prefiled and ordered printed; offered 01/14/15 15101831D pdf](#)

POSITION: OPPOSED BY PIAVA AS DRAFTED; SUPPORTED WITH AMENDMENT

COMMENTARY:

We believe 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 have respectfully suggested to Del. Mason an amendment to HB 2129 that would protect the due process rights of the subject of a protective order by prohibiting the licensure, registration or employment of a private investigator 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. An effective explanation and discussion of protective orders is found in the Department's publication: "Protective Orders in Virginia – A Victim's Perspective". From a review of that publication, it should be 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, which carry 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).

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 can 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 (§9.1-139K of the Code of Virginia), which lists specific misdemeanors (including sexual offenses, see section (v) of §9.1-139K of the Code of Virginia), and includes all felonies (including sexual offenses), upon which a criminal conviction would prohibit an individual from being licensed, registered, or employed as a private investigator, in addition to the existing DCJS complaint and adjudication procedures related to misconduct by a private investigator, are sufficient to protect the citizens of the Commonwealth. The lesser standard of proof required to obtain a civil protective order, and the very particular prohibitions listed in a protective order, should not be 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, or (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.”

Lisa, once again I wish to thank you for asking PIAVA to review and provide input to the Department on this proposed legislation. Please let me know if we can be of any further assistance.

Sincerely,



Kenneth P. D'Angelo
President