

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 922

An Act to amend and reenact §§ 9.1-143, 15.2-1737, and 19.2-13, as it is currently effective and as it shall become effective, of the Code of Virginia, and to amend the Code of Virginia by adding in Chapter 1 of Title 9.1 an article numbered 4.1, consisting of sections numbered 9.1-150.1 through 9.1-150.4, relating to appointment of special conservators of the peace; penalty.

[S 1240]

Approved March 23, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-143, 15.2-1737 and 19.2-13, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 1 of Title 9.1 an article numbered 4.1, consisting of sections numbered 9.1-150.1 through 9.1-150.4, as follows:

§ 9.1-143. Private Security Services Advisory Board; membership.

The Private Security Services Advisory Board is established as an advisory board within the meaning of § 2.2-2100, in the executive branch of state government. The Private Security Services Advisory Board shall consist of ~~eleven~~ 12 members as follows: two members shall be private investigators; two shall be representatives of electronic security businesses; three shall be representatives of private security services businesses providing security officers, armed couriers or guard dog handlers; one shall be a representative of a private security services business providing armored car personnel; one shall be a representative of a private security services business involving personal protection specialists; one shall be a certified private security services instructor; *one shall be a special conservator of the peace appointed pursuant to § 19.2-13*; and one shall be a representative of law enforcement. The Private Security Services Advisory Board shall be appointed by the Criminal Justice Services Board and shall advise the Criminal Justice Services Board on all issues relating to regulation of private security services businesses.

Article 4.1.

Special Conservators of the Peace.

§ 9.1-150.1. *Definitions.*

In addition to the definitions set forth in § 9.1-101, as used in this article, unless the context requires a different meaning:

"Special conservator of the peace" means any individual appointed pursuant to § 19.2-13 on or after September 15, 2004.

§ 9.1-150.2. *Powers of Criminal Justice Services Board relating to special conservators of the peace appointed pursuant to § 19.2-13.*

The Board may adopt regulations establishing compulsory minimum, entry-level, in-service, and advanced training standards for special conservators of the peace. The regulations may include provisions delegating to the Board's staff the right to inspect the facilities and programs of persons conducting training to ensure compliance with the law and its regulations. In establishing compulsory training standards for special conservators of the peace, the Board shall ensure the public safety and welfare against incompetent or unqualified persons engaging in the activities regulated by this section. The regulations may provide for exemption from training of persons having previous employment as law-enforcement officers for a state or the federal government. However, no such exemption shall be granted to persons having less than five continuous years of such employment, nor shall an exemption be provided for any person whose employment as a law-enforcement officer was terminated because of his misconduct or incompetence. The regulations may include provisions for partial exemption from such training for persons having previous training that meets or exceeds the minimum training standards and has been approved by the Department. The Board may also adopt regulations that (i) establish the qualifications of applicants for registration; (ii) cause to be examined the qualifications of each applicant for registration; (iii) provide for collection of fees for registration and renewal that are sufficient to cover all expenses for administration and operation of a program of registration; (iv) ensure continued competency and prevent deceptive or misleading practices by practitioners; (v) effectively administer the regulatory system promulgated by the Board; (vi) provide for receipt of complaints concerning the conduct of any person whose activities are regulated by the Board; (vii) provide for investigations, and appropriate disciplinary action if warranted; and (viii) allow the Board to revoke, suspend or refuse to renew a registration, certification, or license for just cause as enumerated in regulations of the Board. The Board shall not adopt compulsory, minimum, entry-level training standards in excess of 24 hours for unarmed special conservators of the peace or in excess of 40 hours for armed special conservators of the peace. In adopting its regulations, the Board shall seek

the advice of the Private Security Services Advisory Board established pursuant to § 9.1-143.

§ 9.1-150.3. Powers of Department of Criminal Justice Services relating to special conservators of the peace appointed pursuant to § 19.2-13.

A. In addition to the powers otherwise conferred upon it by law, the Department may (i) charge each applicant for registration a nonrefundable fee as established by the Board to cover the costs of the Department for processing an application for registration, and enforcement of the regulations, and other costs associated with the maintenance of the program of regulation; (ii) charge nonrefundable fees for private security services training as established by the Board for processing school certifications and enforcement of training standards; and (iii) conduct investigations to determine the suitability of applicants for registration, including a drug and alcohol screening. For purposes of this investigation, the Department shall require the applicant to provide personal descriptive information to be forwarded, along with the applicant's fingerprints, to the Central Criminal Records Exchange for the purpose of conducting a Virginia criminal history records search. The Central Criminal Records Exchange shall forward the fingerprints and personal description to the Federal Bureau of Investigation for the purpose of obtaining a national criminal record check.

B. The Director or his designee may make an ex parte application to the circuit court for the city or county wherein evidence sought is kept or wherein a licensee does business for the issuance of a subpoena duces tecum in furtherance of the investigation of a sworn complaint within the jurisdiction of the Department or the Board to request production of any relevant records, documents and physical or other evidence of any person, partnership, association or corporation licensed or regulated by the Department pursuant to this article. The court may issue and compel compliance with such a subpoena upon a showing of reasonable cause. Upon determining that reasonable cause exists to believe that evidence may be destroyed or altered, the court may issue a subpoena duces tecum requiring the immediate production of evidence. Costs of the investigation and adjudication of violations of this article or Board regulations may be recovered. All costs recovered shall be deposited into the state treasury to the credit of the Conservators of the Peace Regulatory Fund. Such proceedings shall be brought in the name of the Commonwealth by the Department in the circuit court of the city or county in which the unlawful act occurred or in which the defendant resides. The Director, or agents appointed by him, shall have the authority to administer oaths or affirmations for the purpose of receiving complaints and conducting investigations of violations of this article, or any regulation promulgated hereunder and to serve process issued by the Department or the Board.

§ 9.1-150.4. Unlawful conduct; penalties.

A. It shall be unlawful for any person to (i) misrepresent facts in an application for registration; (ii) willfully refuse to furnish the Department information or records required or requested pursuant to statute or regulation; or (iii) violate any statute or regulation governing the practice of special conservators of the peace regulated by this article or § 19.2-13.

B. Any person registered by the Department pursuant to § 19.2-13 who the Department or the Board determines has violated any statute or Board regulation and who is not criminally prosecuted shall be subject to a monetary penalty not to exceed \$2,500 for each violation. The penalty may be sued for and recovered in the name of the Commonwealth and shall be paid into the state treasury to the credit of the Literary Fund in accordance with § 19.2-353.

C. Any person who is convicted of a willful violation of the provisions of this article or § 19.2-13 is guilty of a Class 1 misdemeanor. Any person convicted of a third or subsequent offense under this article or § 19.2-13 during a 36-month period is guilty of a Class 6 felony.

§ 15.2-1737. Circuit courts may appoint special police officers.

A. The circuit court for any locality may, upon the application of, and a showing of a necessity for the security of property or the peace by, the sheriff or chief of police, appoint special police officers for a locality within its jurisdiction. Effective July 1, 2002, no person employed by a local school board as a school security officer, as defined in § 9.1-101, shall be eligible for appointment as a special police officer for purposes of maintaining safety in a public school in the Commonwealth.

The special police officers shall be suitable and discreet persons and shall serve as such for such length of time as the court may designate, but not exceeding four years under any one appointment. Such person or persons so appointed shall be conservators of the peace under the supervision of the person or agency making application for the appointment, who shall likewise be civilly liable for any wrongful action or conduct committed by the appointee while within the scope of his employment.

B. The court shall, prior to appointment, order the applicant to conduct a background investigation, in accordance with clause A (ii) of § 15.2-1705 of each prospective appointee who is not a law-enforcement officer as defined in § 9.1-101.

C. All appointments made pursuant to this section shall become void on September 15, 2004, and any officers so appointed shall no longer be eligible to serve.

§ 19.2-13. (Effective until July 1, 2003) Special conservators of the peace; authority; jurisdiction; bond; liability of employers; penalty.

A. Upon the application of any sheriff or chief of police of any county, city, town or any corporation authorized to do business in the Commonwealth or the owner, proprietor or authorized custodian of any

place within the Commonwealth and the showing of a necessity for the security of property or the peace, a circuit court judge of any county or city, in his discretion, may appoint one or more special conservators of the peace who shall serve as such for such length of time as the court may designate, but not exceeding four years under any one appointment. The order of appointment may provide that a special conservator of the peace shall have all the powers, functions, duties, responsibilities and authority of any other conservator of the peace within such geographical limitations as the court may deem appropriate *within the confines of the county, city or town that makes application or within the county, city or town where the corporate applicant is located, limited to the judicial circuit wherein application has been made*, whenever such special conservator of the peace is engaged in the performance of his duties as such. The order may also provide that the special conservator of the peace is a "law-enforcement officer" for the purposes of §§ 37.1-67.01 and 37.1-67.1. *The order may also provide that the special conservator of the peace may use the title "police" on any badge or uniform worn in the performance of his duties as such. The order also may (i) require the local sheriff or chief of police to conduct a background investigation which may include a review of the applicant's school records, employment records, or interviews with persons possessing general knowledge of the applicant's character and fitness for such appointment and (ii) limit the use of flashing lights and sirens on personal vehicles used by the conservator in the performance of his duties.* Prior to granting an application for appointment, the circuit court shall ~~order the local law-enforcement agency to conduct a background investigation, in accordance with § 15.2-1705 (ii), of the prospective appointee and file a report of such investigation with the court unless the prospective appointee is a police officer as defined in § 9.1-101. The local law-enforcement agency may charge the prospective appointee a reasonable fee not to exceed the lesser of the actual cost to the local law-enforcement agency or \$300 for the time and costs expended in preparing the investigative report. ensure that the applicant has met the registration requirements established by the Criminal Justice Services Board.~~

B. Effective September 15, 2004, no person shall seek appointment as a special conservator of the peace from a circuit court judge without possessing a valid registration issued by the Department of Criminal Justice Services, except as provided in this section. Applicants for registration may submit an application on or after January 1, 2004. A temporary registration may be issued in accordance with regulations established by the Criminal Justice Services Board while awaiting the results of a state and national fingerprint search. However, no person shall be issued a temporary registration until he has (i) complied with, or been exempted from the compulsory minimum training standards as set forth in this section, (ii) submitted his fingerprints on a form provided by the Department to be used for the conduct of a national criminal records search and a Virginia criminal history records search, and (iii) met all other requirements of this article and Board regulations. No person with a criminal conviction for a misdemeanor involving (a) moral turpitude, (b) assault and battery, (c) damage to real or personal property, (d) controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, (e) prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, (f) firearms, or (g) any felony, shall be registered as a special conservator of the peace.

C. Each person registered as or seeking registration as a special conservator of the peace shall be covered by (i) a cash bond, or a surety bond executed by a surety company authorized to do business in the Commonwealth, in a reasonable amount to be fixed by the Board, not to be less than \$10,000, conditioned upon the faithful and honest conduct of his business or employment; or (ii) evidence of a policy of liability insurance or self-insurance in an amount and with coverage as fixed by the Board. Any person who is aggrieved by the misconduct of any person registered as a special conservator of the peace and recovers a judgment against the registrant, which is unsatisfied in whole or in part, may bring an action in his own name against the bond or insurance policy of the registrant.

D. Individuals listed in § 19.2-12, individuals who have complied with or been exempted pursuant to subsection A of § 9.1-141, and individuals employed as law-enforcement officers or private police officers as defined in § 9.1-101 who have met the minimum qualifications set forth in § 15.2-1705, shall be exempt from the requirements in subsections A through C. The Department of Criminal Justice Services shall, upon request by the circuit court, provide evidence to the circuit court of such employment prior to appointing an individual special conservator of the peace. The employing agency shall notify the circuit court within 30 days after the date such individual has left employment and all powers of the special conservator of the peace shall be void. Failure to provide such notification shall be punishable by a fine of \$250 plus an additional \$50 per day for each day such notice is not provided.

E. When the application is made by a corporation, the circuit court shall specify in the order of appointment the name of the sheriff or chief of police of the applicant county, city, town or the name of the corporation and the geographic jurisdiction of the special conservator of the peace, and this jurisdiction may include any or all counties and cities of the Commonwealth wherein the corporation does business. The clerk of the appointing circuit court shall certify a copy of the order of appointment to the circuit court of every jurisdiction specified in said order, and Court appointments shall be limited to the judicial circuit wherein application has been made. Each special conservator of the peace so

appointed on application of a corporation shall present his credentials to the chief of police or sheriff or his designee of all such jurisdictions the jurisdiction. Each special conservator shall provide a photocopy of his conservator identification card.

Every person initially appointed on or after July 1, 1996, as a special conservator of the peace pursuant to the provisions of this section, before entering upon the duties of such office, shall be required by the court to enter into a bond with approved security before the clerk of the circuit court of the county or city wherein such duties are to be performed, in the penalty of such sum as may be fixed by the court, conditioned upon the faithful performance of such duties. Such bond shall be conditioned upon the faithful performance of such duties in any locality in which he is authorized to act pursuant to the order of the court. No such bond shall be required, however, if such person so appointed has met the minimum entry-level law-enforcement training requirements established by the Department of Criminal Justice Services under § 9.1-102 within three years of the date of initial appointment or has been employed as a law-enforcement officer as defined by § 9.1-101 within the preceding three years.

If any such special conservator of the peace is the employee, agent or servant of another, his appointment as special conservator of the peace shall not relieve his employer, principal or master, from civil liability to another arising out of any wrongful action or conduct committed by such special conservator of the peace while within the scope of his employment.

Effective July 1, 2002, no person employed by a local school board as a school security officer, as defined in § 9.1-101, shall be eligible for appointment as a conservator for purposes of maintaining safety in a public school in the Commonwealth. All appointments of special conservators of the peace granted to school security officers as defined in § 9.1-101 prior to July 1, 2002, are void.

B F. The court may limit or prohibit the carrying of weapons by any special conservator of the peace initially appointed on or after July 1, 1996, while the appointee is within the scope of his employment as such.

G. The Department of Criminal Justice Services shall report to the Virginia State Crime Commission by December 1, 2003, the status of the regulations, applications and fees required by this section. If the order of appointment does not prohibit the carrying of weapons, the court may require that the appointee meet the minimum entry training requirements established by the Department of Criminal Justice Service under § 9.1-102 for law-enforcement officers within twelve months of his appointment.

§ 19.2-13. (Effective July 1, 2003) Special conservators of the peace; authority; jurisdiction; bond; liability of employers; penalty.

A. Upon the application of any sheriff or chief of police of any county, city, town or any corporation authorized to do business in the Commonwealth or the owner, proprietor or authorized custodian of any place within the Commonwealth and the showing of a necessity for the security of property or the peace, a circuit court judge of any county or city, in his discretion, may appoint one or more special conservators of the peace who shall serve as such for such length of time as the court may designate, but not exceeding four years under any one appointment. The order of appointment may provide that a special conservator of the peace shall have all the powers, functions, duties, responsibilities and authority of any other special conservator of the peace within such geographical limitations as the court may deem appropriate within the confines of the county, city or town that makes application or within the county, city or town where the corporate applicant is located, limited to the judicial circuit wherein application has been made, whenever such special conservator of the peace is engaged in the performance of his duties as such. The order may also provide that the special conservator of the peace is a "law-enforcement officer" for the purposes of §§ 37.1-67.01 and 37.1-67.1. The order may also provide that the special conservator of the peace may use the title "police" on any badge or uniform worn in the performance of his duties as such. The order also may (i) require the local sheriff or chief of police to conduct a background investigation which may include a review of the applicant's school records, employment records, or interviews with persons possessing general knowledge of the applicant's character and fitness for such appointment and (ii) limit the use of flashing lights and sirens on personal vehicles used by the conservator in the performance of his duties. Prior to granting an application for appointment, the circuit court shall order the local law-enforcement agency to conduct a background investigation, in accordance with § 15.2-1705 (ii), of the prospective appointee and file a report of such investigation with the court unless the prospective appointee is a police officer as defined in § 9.1-101. The local law-enforcement agency may charge the prospective appointee a reasonable fee not to exceed the lesser of the actual cost to the local law-enforcement agency or \$300 for the time and costs expended in preparing the investigative report. ensure that the applicant has met the registration requirements established by the Criminal Justice Services Board.

B. Effective September 15, 2004, no person shall seek appointment as a special conservator of the peace from a circuit court judge without possessing a valid registration issued by the Department of Criminal Justice Services, except as provided in this section. Applicants for registration may submit an application on or after January 1, 2004. A temporary registration may be issued in accordance with regulations established by the Criminal Justice Services Board while awaiting the results of a state and national fingerprint search. However, no person shall be issued a temporary registration until he has (i) complied with, or been exempted from the compulsory minimum training standards as set forth in this

section, (ii) submitted his fingerprints on a form provided by the Department to be used for the conduct of a national criminal records search and a Virginia criminal history records search, and (iii) met all other requirements of this article and Board regulations. No person with a criminal conviction for a misdemeanor involving (a) moral turpitude, (b) assault and battery, (c) damage to real or personal property, (d) controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, (e) prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, (f) firearms, or (g) any felony, shall be registered as a special conservator of the peace.

C. Each person registered as or seeking registration as a special conservator of the peace shall be covered by (i) a cash bond, or a surety bond executed by a surety company authorized to do business in the Commonwealth, in a reasonable amount to be fixed by the Board, not to be less than \$10,000, conditioned upon the faithful and honest conduct of his business or employment; or (ii) evidence of a policy of liability insurance or self-insurance in an amount and with coverage as fixed by the Board. Any person who is aggrieved by the misconduct of any person registered as a special conservator of the peace and recovers a judgment against the registrant, which is unsatisfied in whole or in part, may bring an action in his own name against the bond or insurance policy of the registrant.

D. Individuals listed in § 19.2-12, individuals who have complied with or been exempted pursuant to subsection A of § 9.1-141, and individuals employed as law-enforcement officers or private police officers as defined in § 9.1-101 who have met the minimum qualifications set forth in § 15.2-1705, shall be exempt from the requirements in subsections A through C. The Department of Criminal Justice Services shall, upon request by the circuit court, provide evidence to the circuit court of such employment prior to appointing an individual special conservator of the peace. The employing agency shall notify the circuit court within 30 days after the date such individual has left employment and all powers of the special conservator of the peace shall be void. Failure to provide such notification shall be punishable by a fine of \$250 plus an additional \$50 per day for each day such notice is not provided.

E. When the application is made by a corporation, the circuit court shall specify in the order of appointment the name of the sheriff or chief of police of the applicant county, city, town or the name of the corporation and the geographic jurisdiction of the special conservator of the peace. Court appointments shall be limited to the judicial circuit wherein application has been made, and this jurisdiction may include any or all counties and cities of the Commonwealth wherein the corporation does business. Effective July 1, 2004, the clerk of the appointing circuit court shall transmit a copy of the order of appointment that shall specify the following information: the person's complete name, address, date of birth, social security number, gender, race, height, weight, color of hair, color of eyes, firearm authority or limitation as set forth in subsection B F, date of the order, and other information as may be required by the Department of State Police. The Department of State Police shall enter the person's name and other information into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Each special conservator of the peace so appointed on application of a corporation shall present his credentials to the chief of police or sheriff or his designee of all such jurisdictions the jurisdiction. Each special conservator shall provide a photocopy of his conservator identification card. The Department of State Police may charge a fee not to exceed ten dollars \$10 to cover its cost associated with processing these orders.

Every person initially appointed on or after July 1, 1996, as a special conservator of the peace pursuant to the provisions of this section, before entering upon the duties of such office, shall be required by the court to enter into a bond with approved security before the clerk of the circuit court of the county or city wherein such duties are to be performed, in the penalty of such sum as may be fixed by the court, conditioned upon the faithful performance of such duties. Such bond shall be conditioned upon the faithful performance of such duties in any locality in which he is authorized to act pursuant to the order of the court. No such bond shall be required, however, if such person so appointed has met the minimum entry-level law-enforcement training requirements established by the Department of Criminal Justice Services under § 9.1-102 within three years of the date of initial appointment or has been employed as a law-enforcement officer as defined by § 9.1-101 within the preceding three years.

If any such special conservator of the peace is the employee, agent or servant of another, his appointment as special conservator of the peace shall not relieve his employer, principal or master, from civil liability to another arising out of any wrongful action or conduct committed by such special conservator of the peace while within the scope of his employment.

Effective July 1, 2002, no person employed by a local school board as a school security officer, as defined in § 9.1-101, shall be eligible for appointment as a conservator for purposes of maintaining safety in a public school in the Commonwealth. All appointments of special conservators of the peace granted to school security officers as defined in § 9.1-101 prior to July 1, 2002 are void.

B. F. The court may limit or prohibit the carrying of weapons by any special conservator of the peace initially appointed on or after July 1, 1996, while the appointee is within the scope of his employment as such. If the order of appointment does not prohibit the carrying of weapons, the court

may require that the appointee meet the minimum entry training requirements established by the Department of Criminal Justice Service under ~~§ 9.1-102~~ for law enforcement officers within twelve months of his appointment.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.