

# 2007 SESSION

INTRODUCED

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## HOUSE BILL NO. 2759

Offered January 10, 2007

Prefiled January 10, 2007

A *BILL to amend and reenact § 19.2-54 of the Code of Virginia, relating to search warrant affidavits; delivery by mail.*

Patron—Hurt

Referred to Committee for Courts of Justice

### Be it enacted by the General Assembly of Virginia:

#### 1. That § 19.2-54 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-54. Affidavit preliminary to issuance of search warrant; general search warrant prohibited; effect of failure to file affidavit.

No search warrant shall be issued until there is filed with the officer authorized to issue the same an affidavit of some person reasonably describing the place, thing, or person to be searched, the things or persons to be searched for thereunder, alleging briefly material facts, constituting the probable cause for the issuance of such warrant and alleging substantially the offense in relation to which such search is to be made and that the object, thing, or person searched for constitutes evidence of the commission of such offense. The affidavit may be filed by electronically transmitted facsimile process. Such affidavit shall be certified by the officer who issues such warrant and delivered *or mailed by certified mail, return receipt requested*, by such officer or other officer authorized to certify such warrants to the clerk of the circuit court of the county or city wherein the search is made within seven days after the issuance of such warrant and shall by such clerk be preserved as a record and shall at all times be subject to inspection by the public; however such affidavit may be temporarily sealed by the appropriate court upon application of the attorney for the Commonwealth for good cause shown in an ex parte hearing. Any individual arrested and claiming to be aggrieved by such search and seizure or any person who claims to be entitled to lawful possession of such property seized may move the appropriate court for the unsealing of such affidavit, and the burden of proof with respect to continued sealing shall be upon the Commonwealth. Each such clerk shall maintain an index of all such affidavits filed in his office in order to facilitate inspection. No such warrant shall be issued on an affidavit omitting such essentials, and no general warrant for the search of a house, place, compartment, vehicle or baggage shall be issued. The term "affidavit" as used in this section, means statements made under oath or affirmation and preserved verbatim.

Failure of the officer issuing such warrant to file the required affidavit shall not invalidate any search made under the warrant unless such failure shall continue for a period of thirty days. If the affidavit is filed prior to the expiration of the thirty-day period, nevertheless, evidence obtained in any such search shall not be admissible until a reasonable time after the filing of the required affidavit.

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HB2759