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SENATE BILL NO. 409

Offered January 9, 2008

Prefiled January 8, 2008

A *BILL to amend and reenact § 19.2-13 of the Code of Virginia, relating to disqualification for appointment as special conservator of the peace.*

Patron—Puckett

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-13 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-13. Special conservators of the peace; authority; jurisdiction; registration; bond; liability of employers; penalty; report.

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, except as provided in subsection E, 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 Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2. 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 may also provide that a special conservator of the peace who has completed the minimum training standards established by the Department of Criminal Justice Services, has the authority to affect arrests, using up to the same amount of force as would be allowed to a law-enforcement officer employed by the Commonwealth or any of its political subdivisions when making a lawful arrest. 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 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~~ ~~misdemeanor~~ criminal offense 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, or (f) ~~firearms~~, or (g) any felony, or for any Class 1 misdemeanor involving firearms shall be registered as a special conservator of the peace. All appointments for special conservators of the peace shall become void on September 15, 2004, unless they have obtained a valid registration issued by the Department of Criminal Justice Services.

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,

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SB409

59 conditioned upon the faithful and honest conduct of his business or employment; or (ii) evidence of a
60 policy of liability insurance or self-insurance in an amount and with coverage as fixed by the Board.
61 Any person who is aggrieved by the misconduct of any person registered as a special conservator of the
62 peace and recovers a judgment against the registrant, which is unsatisfied in whole or in part, may bring
63 an action in his own name against the bond or insurance policy of the registrant.

64 D. Individuals listed in § 19.2-12, individuals who have complied with or been exempted pursuant to
65 subsection A of § 9.1-141, individuals employed as law-enforcement officers as defined in § 9.1-101
66 who have met the minimum qualifications set forth in § 15.2-1705 shall be exempt from the
67 requirements in subsections A through C. Further, individuals appointed under subsection A and
68 employed by a private corporation or entity that meets the requirements of subdivision (ii) of the
69 definition of criminal justice agency in § 9.1-101, shall be exempt from the registration requirements of
70 subsection A and from subsections B and C provided they have met the minimum qualifications set
71 forth in § 15.2-1705. The Department of Criminal Justice Services shall, upon request by the circuit
72 court, provide evidence to the circuit court of such employment prior to appointing an individual special
73 conservator of the peace. The employing agency shall notify the circuit court within 30 days after the
74 date such individual has left employment and all powers of the special conservator of the peace shall be
75 void. Failure to provide such notification shall be punishable by a fine of \$250 plus an additional \$50
76 per day for each day such notice is not provided.

77 E. When the application is made, the circuit court shall specify in the order of appointment the name
78 of the sheriff or chief of police of the applicant county, city, town or the name of the corporation,
79 business or other applicant and the geographic jurisdiction of the special conservator of the peace. Court
80 appointments shall be limited to the judicial circuit wherein application has been made. In the case of a
81 corporation or other business, the court appointment may also include, for good cause shown, any real
82 property owned or leased by the corporation or business, including any subsidiaries, in other specifically
83 named cities and counties, but shall provide that the powers of the special conservator of the peace do
84 not extend beyond the boundaries of such real property. Effective July 1, 2004, the clerk of the
85 appointing circuit court shall transmit a copy of the order of appointment that shall specify the following
86 information: the person's complete name, address, date of birth, social security number, gender, race,
87 height, weight, color of hair, color of eyes, firearm authority or limitation as set forth in subsection F,
88 date of the order, and other information as may be required by the Department of State Police. The
89 Department of State Police shall enter the person's name and other information into the Virginia
90 Criminal Information Network established and maintained by the Department pursuant to Chapter 2
91 (§ 52-12 et seq.) of Title 52. The Department of State Police may charge a fee not to exceed \$10 to
92 cover its costs associated with processing these orders. Each special conservator of the peace so
93 appointed on application shall present his credentials to the chief of police or sheriff or his designee of
94 all jurisdictions where he has conservator powers. If his powers are limited to certain areas owned or
95 leased by a corporation or business, he shall also provide notice of the exact physical addresses of those
96 areas. Each special conservator shall provide a temporary registration letter issued by the Department of
97 Criminal Justice Services prior to seeking an appointment by the circuit court. Once the applicant
98 receives the appointment from the circuit court the applicant shall file the appointment order with the
99 Department of Criminal Justice Services in order to receive his special conservator of the peace photo
100 registration card.

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

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

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