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HOUSE BILL NO. 1961

Offered January 14, 2009

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A BILL to amend and reenact §§ 9.1-400, 9.1-801, 19.2-81, 28.2-106, 29.1-100, 29.1-200, 29.1-204, 29.1-205, and 29.1-355 of the Code of Virginia and to repeal § 29.1-217 of the Code of Virginia, relating to elimination of the position of special conservation police officer.

Patron—Mathieson

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-400, 9.1-801, 19.2-81, 28.2-106, 29.1-100, 29.1-200, 29.1-204, 29.1-205, and 29.1-355 of the Code of Virginia are amended and reenacted as follows:

§ 9.1-400. Title of chapter; definitions.

A. This chapter shall be known and designated as the Line of Duty Act.

B. As used in this chapter, unless the context requires a different meaning:

"Beneficiary" means the spouse of a deceased person and such persons as are entitled to take under the will of a deceased person if testate, or as his heirs at law if intestate.

"Deceased person" means any individual whose death occurs on or after April 8, 1972, as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1, 27-40.2, 51.1-813, and 65.2-402, as a law-enforcement officer of the Commonwealth or any of its political subdivisions; a correctional officer as defined in § 53.1-1; a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a police chaplain; a member of any fire company or department or rescue squad that has been recognized by an ordinance or a resolution of the governing body of any county, city or town of the Commonwealth as an integral part of the official safety program of such county, city or town; a member of the Virginia National Guard or the Virginia State Defense Force while such member is serving in the Virginia National Guard or the Virginia State Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Board; any ~~regular or special~~ conservation police officer who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to the provisions of § 29.1-200; any commissioned forest warden appointed under the provisions of § 10.1-1135; any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § 28.2-900; any Department of Emergency Management hazardous materials officer; any other employee of the Department of Emergency Management who is performing official duties of the agency, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that has been or is later declared to exist under the authority of the Governor in accordance with § 44-146.28; any employee of any county, city, or town performing official emergency management or emergency services duties in cooperation with the Department of Emergency Management, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that has been or is later declared to exist under the authority of the Governor in accordance with § 44-146.28 or a local emergency, as defined in § 44-146.16, declared by a local governing body; any nonfirefighter regional hazardous materials emergency response team member; or any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115.

"Disabled person" means any individual who, as the direct or proximate result of the performance of his duty in any position listed in the definition of deceased person in this section, has become mentally or physically incapacitated so as to prevent the further performance of duty where such incapacity is likely to be permanent. The term shall also include any state employee included in the definition of a deceased person who was disabled on or after January 1, 1966.

"Line of duty" means any action the deceased or disabled person was obligated or authorized to perform by rule, regulation, condition of employment or service, or law.

§ 9.1-801. Public safety officer defined.

As used in this chapter, the term "public safety officer" includes a law-enforcement officer of this Commonwealth or any of its political subdivisions; a correctional officer as defined in § 53.1-1; a correctional officer employed at a juvenile correctional facility as the term is defined in § 66-25.3; a jail officer; a regional jail or jail farm superintendent; a member of any fire company or department or rescue squad that has been recognized by an ordinance or resolution of the governing body of any county, city or town of this Commonwealth as an integral part of the official safety program of such

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59 county, city or town; an arson investigator; a member of the Virginia National Guard or the Virginia
60 State Defense Force while such a member is serving in the Virginia National Guard or the Virginia
61 State Defense Force on official state duty or federal duty under Title 32 of the United States Code; any
62 special agent of the Virginia Alcoholic Beverage Control Board; any police agent appointed under the
63 provisions of § 56-353; any ~~regular or special~~ conservation police officer who receives compensation
64 from a county, city or town or from the Commonwealth appointed pursuant to § 29.1-200; any
65 commissioned forest warden appointed pursuant to § 10.1-1135; any member or employee of the
66 Virginia Marine Resources Commission granted the power to arrest pursuant to § 28.2-900; any
67 Department of Emergency Management hazardous materials officer; any nonfirefighter regional
68 hazardous materials emergency response team member; any investigator who is a full-time sworn
69 member of the security division of the State Lottery Department; any full-time sworn member of the
70 enforcement division of the Department of Motor Vehicles meeting the Department of Criminal Justice
71 Services qualifications, when fulfilling duties pursuant to § 46.2-217; any campus police officer
72 appointed under the provisions of Chapter 17 (§ 23-232 et seq.) of Title 23; and any conservation officer
73 of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115.

74 § 19.2-81. Arrest without warrant authorized in certain cases.

75 The following officers shall have the powers of arrest as provided in this section:

- 76 1. Members of the State Police force of the Commonwealth;
- 77 2. Sheriffs of the various counties and cities, and their deputies;
- 78 3. Members of any county police force or any duly constituted police force of any city or town of
79 the Commonwealth;
- 80 4. The Commissioner, members and employees of the Marine Resources Commission granted the
81 power of arrest pursuant to § 28.2-900;
- 82 5. ~~Regular conservation~~Conservation police officers appointed pursuant to § 29.1-200;
- 83 6. United States Coast Guard and United States Coast Guard Reserve commissioned, warrant, and
84 petty officers authorized under § 29.1-205 to make arrests;
- 85 7. The special policemen of the counties as provided by § 15.2-1737, provided such officers are in
86 uniform, or displaying a badge of office;
- 87 8. Conservation officers appointed pursuant to § 10.1-115; and
- 88 9. Full-time sworn members of the enforcement division of the Department of Motor Vehicles
89 appointed pursuant to § 46.2-217.

90 Such officers may arrest, without a warrant, any person who commits any crime in the presence of
91 the officer and any person whom he has reasonable grounds or probable cause to suspect of having
92 committed a felony not in his presence.

93 Any such officer may arrest without a warrant any person whom the officer has probable cause to
94 suspect of operating a watercraft or motor boat (i) while intoxicated in violation of subsection B of
95 § 29.1-738 or (ii) in violation of an order issued pursuant to § 29.1-738.4, in his presence, and may
96 thereafter transfer custody of the person suspected of the violation to another officer, who may obtain a
97 warrant based upon statements made to him by the arresting officer.

98 Any such officer may, at the scene of any accident involving a motor vehicle, watercraft as defined
99 in § 29.1-712 or motorboat, or at any hospital or medical facility to which any person involved in such
100 accident has been transported, or in the apprehension of any person charged with the theft of any motor
101 vehicle, on any of the highways or waters of the Commonwealth, upon reasonable grounds to believe,
102 based upon personal investigation, including information obtained from eyewitnesses, that a crime has
103 been committed by any person then and there present, apprehend such person without a warrant of
104 arrest. For purposes of this section, "the scene of any accident" shall include a reasonable location where
105 a vehicle or person involved in an accident has been moved at the direction of a law-enforcement officer
106 to facilitate the clearing of the highway or to ensure the safety of the motoring public. In addition, such
107 officer may, within three hours of the occurrence of any such accident involving a motor vehicle, arrest
108 without a warrant at any location any person whom the officer has probable cause to suspect of driving
109 or operating such motor vehicle while intoxicated in violation of § 18.2-266, 18.2-266.1, 46.2-341.24, or
110 a substantially similar ordinance of any county, city, or town in the Commonwealth.

111 Such officers may arrest, without a warrant or a capias, persons duly charged with a crime in another
112 jurisdiction upon receipt of a photocopy of a warrant or a capias, telegram, computer printout, facsimile
113 printout, a radio, telephone or teletype message, in which photocopy of a warrant, telegram, computer
114 printout, facsimile printout, radio, telephone or teletype message shall be given the name or a reasonably
115 accurate description of such person wanted and the crime alleged.

116 Such officers may arrest, without a warrant or a capias, for an alleged misdemeanor not committed in
117 his presence when the officer receives a radio message from his department or other law-enforcement
118 agency within the Commonwealth that a warrant or capias for such offense is on file.

119 Such officers may also arrest without a warrant for an alleged misdemeanor not committed in their
120 presence involving (i) shoplifting in violation of § 18.2-96 or 18.2-103 or a similar local ordinance, (ii)

carrying a weapon on school property in violation of § 18.2-308.1, (iii) assault and battery, (iv) brandishing a firearm in violation of § 18.2-282, or (v) destruction of property in violation of § 18.2-137, when such property is located on premises used for business or commercial purposes, or a similar local ordinance, when any such arrest is based on probable cause upon reasonable complaint of the person who observed the alleged offense. The arresting officer may issue a summons to any person arrested under this section for a misdemeanor violation involving shoplifting.

§ 28.2-106. Virginia Marine Police; law-enforcement responsibilities; qualifications; oath.

A. The law-enforcement division of the Commission shall be designated as the Virginia Marine Police. It shall exercise such powers and duties as the General Assembly may confer upon it by law and as provided in regulations adopted pursuant to law, including but not limited to:

1. Patrolling the tidal waters and shoreline of the Chesapeake Bay, its tidal tributaries, and territorial sea;

2. Enforcing marine fishery and habitat conservation laws and regulations;

3. Enforcing health laws pertaining to the harvesting of seafood from condemned areas;

4. Enforcing or assisting other agencies in enforcing laws pertaining to the removal of obstructions and abandoned vessels from the water, to boating operation and navigation, and to larceny on the water;

5. Providing for water-borne safety;

6. Conducting search and rescue activities; and

7. Protecting from terrorist attack federal and state water-related installations and other water-related locations within the tidal waters of the Commonwealth as may be designated by federal or state officials as important to national security.

B. Officers of the Virginia Marine Police shall have the same powers as (i) sheriffs and other law-enforcement officers to enforce all of the criminal laws of the Commonwealth, and (ii) regular conservation police officers appointed pursuant to Chapter 2 (§ 29.1-200 et seq.) of Title 29.1.

C. A person shall be (i) at least twenty-one years old and (ii) a high school graduate or equivalent to qualify for appointment as an officer.

D. Each officer shall qualify before the clerk of the circuit court of the county or city in which he resides, or in which his district may be, by taking the oaths prescribed by law.

§ 29.1-100. Definitions.

As used in and for the purposes of this title only, or in any of the regulations of the Board, unless the context clearly requires a different meaning:

"Bag or creel limit" means the quantity of game, fish or fur-bearing animals that may be taken, caught, or possessed during a period fixed by the Board.

"Board" means the Board of Game and Inland Fisheries.

"Closed season" means that period of time fixed by the Board during which wild animals, birds or fish may not be taken, captured, killed, pursued, hunted, trapped or possessed.

"Conservation police officers" means supervising officers; and regular ~~and special~~ conservation police officers.

"Department" means the Department of Game and Inland Fisheries.

"Director" means the Director of the Department of Game and Inland Fisheries.

"Firearm" means any weapon that will or is designed to or may readily be converted to expel single or multiple projectiles by the action of an explosion of a combustible material.

"Fishing" means taking, capturing, killing, or attempting to take, capture or kill any fish in and upon the inland waters of this Commonwealth.

"Fur-bearing animals" includes beaver, bobcat, fox, mink, muskrat, opossum, otter, raccoon, skunk, and weasel.

"Game" means wild animals and wild birds that are commonly hunted for sport or food.

"Game animals" means deer, bear, rabbit, fox, squirrel, bobcat and raccoon.

"Game fish" means trout (including all Salmonidae), all of the sunfish family (including largemouth bass, smallmouth bass and spotted bass, rock bass, bream, bluegill and crappie), walleye or pike perch, white bass, chain pickerel or jackfish, muskellunge, and northern pike, wherever such fish are found in the waters of this Commonwealth and rockfish or striped bass where found above tidewaters or in streams which are blocked from access from tidewaters by dams.

"Hunting and trapping" includes the act of or the attempted act of taking, hunting, trapping, pursuing, chasing, shooting, snaring or netting birds or animals, and assisting any person who is hunting, trapping or attempting to do so regardless of whether birds or animals are actually taken; however, when hunting and trapping are allowed, reference is made to such acts as being conducted by lawful means and in a lawful manner. The Board of Game and Inland Fisheries may authorize by regulation the pursuing or chasing of wild birds or wild animals during any closed hunting season where persons have no intent to take such birds or animals.

"Lawful," "by law," or "law" means the statutes of this Commonwealth or regulations adopted by the

182 Board which the Director is empowered to enforce.

183 "Migratory game birds" means doves, ducks, brant, geese, swan, coot, gallinules, sora and other rails,
184 snipe, woodcock and other species of birds on which open hunting seasons are set by federal
185 regulations.

186 "Muzzleloading pistol" means a firearm originally designed, made or intended to fire a projectile
187 (bullet) from one or more barrels when held in one hand and that is loaded from the muzzle or forward
188 end of the cylinder.

189 "Muzzleloading rifle" means a firearm firing a single projectile that is loaded along with the
190 propellant from the muzzle of the gun.

191 "Muzzleloading shotgun" means a firearm with a smooth bore firing multiple projectiles that are
192 loaded along with the propellant from the muzzle of the gun.

193 "Nonmigratory game birds" means grouse, bobwhite quail, turkey and all species of birds introduced
194 into the Commonwealth by the Board.

195 "Nuisance species" means blackbirds, crows, cowbirds, grackles, English sparrows, starlings, or those
196 species designated as such by regulations of the Board, and those species found committing or about to
197 commit depredation upon ornamental or shade trees, agricultural crops, wildlife, livestock or other
198 property or when concentrated in numbers and manners as to constitute a health hazard or other
199 nuisance. However, the term nuisance does not include (i) animals designated as endangered or
200 threatened pursuant to §§ 29.1-563, 29.1-564, and 29.1-566, (ii) animals classified as game or
201 fur-bearing animals, and (iii) those species protected by state or federal law.

202 "Open season" means that period of time fixed by the Board during which wild animals, wild birds
203 and fish may be taken, captured, killed, pursued, trapped or possessed.

204 "Pistol" means a weapon originally designed, made, and intended to fire a projectile (bullet) from
205 one or more barrels when held in one hand, and having one or more chambers as an integral part of or
206 permanently aligned with the bore and a short stock at an angle to and extending below the line of the
207 bore that is designed to be gripped by one hand.

208 "Possession" means the exercise of control of any wild animal, wild bird, fish or fur-bearing animal,
209 or any part of the carcass thereof.

210 "Properly licensed person" means a person who, while engaged in hunting, fishing or trapping, or in
211 any other activity permitted under this title, in and upon the lands and inland waters of this
212 Commonwealth, has upon his person all the licenses, permits and stamps required by law.

213 "Regulation" means a regulation duly adopted by the Board pursuant to the authority vested by the
214 provisions of this title.

215 "Revolver" means a projectile weapon of the pistol type, having a breechloading chambered cylinder
216 arranged so that the cocking of the hammer or movement of the trigger rotates it and brings the next
217 cartridge in line with the barrel for firing.

218 "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the
219 shoulder, and designed or redesigned and made or remade to use the energy of the explosive in a fixed
220 metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

221 "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from
222 the shoulder, and designed or redesigned and made or remade to use the energy of the explosive in a
223 fixed shotgun shell to fire through a smooth bore or rifled shotgun barrel either a number of ball shot or
224 a single projectile for each single pull of the trigger.

225 "Transportation" means the transportation, either upon the person or by any other means, of any wild
226 animal or wild bird or fish.

227 "Wildlife" means all species of wild animals, wild birds and freshwater fish in the public waters of
228 this Commonwealth.

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230 § 29.1-200. Appointment of conservation police officers.

231 A. The Director shall appoint ~~regular and special~~ conservation police officers as he may deem
232 necessary to enforce the game and inland fish laws and shall issue a certificate of appointment to each
233 conservation police officer.

234 B. All appointments to sworn law-enforcement positions above the rank of conservation police
235 officer within the Department shall be made by the Director of the Department from among the sworn
236 conservation police officers, except for those positions designated in subdivision 20 of § 2.2-2905, or
237 whenever the Director determines, in writing, that a position requires knowledge, skills, or abilities such
238 that a sufficient pool of qualified candidates does not exist within the Department.

239 § 29.1-204. Assisting the Director; supervision.

240 The conservation police officers shall assist the Director in discharging his official duties. Each
241 ~~regular and special~~ conservation police officer shall be under the supervision of certain conservation
242 police officers specified by the Director.

243 § 29.1-205. Power to make arrests.

244 All conservation police officers are vested with the authority, upon displaying a badge or other
 245 credential of office, to issue a summons or to arrest any person found in the act of violating any of the
 246 provisions of the hunting, trapping, inland fish and boating laws.

247 Regular conservation police officers are vested with the same authority as sheriffs and other
 248 law-enforcement officers to enforce all of the criminal laws of the Commonwealth.

249 ~~Any special conservation police officer shall have general police power while performing his duty on~~
 250 ~~properties owned or controlled by the Board.~~

251 Any commissioned, warrant or petty officers of the United States Coast Guard and of the United
 252 States Coast Guard Reserve while engaged on active duty, in the conduct of their official duties in
 253 uniform, and any officers of the customs as defined by 19 U.S.C. § 1709 (b), in the conduct of their
 254 official duties in uniform, shall have the same power to make arrests under Chapter 7 (§ 29.1-700 et
 255 seq.) of Title 29.1 as conservation police officers.

256 § 29.1-355. Disposition of funds.

257 All moneys received from the sale of the special stamps shall be paid into the local treasury to the
 258 credit of a special damage stamp fund and identified by the year in which the moneys were collected.
 259 The special fund shall be used for the following purposes:

260 1. Payment for damages to crops, fruit trees, commercially grown Christmas trees, nursery stock,
 261 livestock, colonies of bees, bee equipment and appliances, as defined in § 3.1-610.1, or farm equipment
 262 that is caused by deer, elk, or bear at any time, or by big game hunters during hunting season; and

263 2. Payment of the actual and necessary costs of the administration of the provisions of this article,
 264 including the printing and distribution of the required stamps and the payment of reasonable fees to
 265 persons designated by a local governing body to inspect, evaluate, and confirm reported claims and
 266 adjust such claims; and

267 3. ~~In the discretion of the local governing body, payment of the costs of law enforcement directly~~
 268 ~~related to and incidental to carrying out the provisions of this article and the general game laws of the~~
 269 ~~Commonwealth; any person compensated to engage in such law-enforcement activities shall be approved~~
 270 ~~for such employment by the director and appointed to be a special conservation police officer in~~
 271 ~~accordance with the Board's standards and policies governing such appointment; and~~

272 4. In the discretion of the local governing body, administrative expenses related to the special
 273 stamps, support of a county volunteer fire prevention and suppression program when the program
 274 includes fire fighting on big game hunting lands open to the public, and support of local volunteer
 275 rescue squads whose services are available to hunters in distress. However, the money appropriated from
 276 the special damage stamp fund for these purposes shall not exceed, in the aggregate, in any calendar
 277 year, an amount equal to 25 percent of the amount paid into the special damage stamp fund during the
 278 fiscal year or previous calendar year. Once selecting the fiscal year or previous calendar year, the local
 279 governing body must continue to use that selected period of time in determining the amount of money
 280 to be appropriated from the special damage stamp fund.

281 **2. That § 29.1-217 of the Code of Virginia is repealed.**