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**HOUSE BILL NO. 2603**

Offered January 22, 2009

*A BILL to amend and reenact §§ 9.1-138, 9.1-139, 9.1-140, and 9.1-143 of the Code of Virginia and to repeal § 9.1-140.1 of the Code of Virginia and the second through the fifth enactments of Chapter 638 of the Acts of Assembly of 2008, relating to the Department of Criminal Justice Services; regulation of locksmiths.*

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 Patron—Fralin
 

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Referred to Committee on General Laws

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

**1. That §§ 9.1-138, 9.1-139, 9.1-140, and 9.1-143 of the Code of Virginia are amended and reenacted as follows:**

§ 9.1-138. Definitions.

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

"Alarm respondent" means an individual who responds to the signal of an alarm for the purpose of detecting an intrusion of the home, business or property of the end user.

"Armed" means a private security registrant who carries or has immediate access to a firearm in the performance of his duties.

"Armed security officer" means a natural person employed to (i) safeguard and protect persons and property or (ii) deter theft, loss, or concealment of any tangible or intangible personal property on the premises he is contracted to protect, and who carries or has access to a firearm in the performance of his duties.

"Armored car personnel" means persons who transport or offer to transport under armed security from one place to another, money, negotiable instruments or other valuables in a specially equipped motor vehicle with a high degree of security and certainty of delivery.

"Business advertising material" means display advertisements in telephone directories, letterhead, business cards, local newspaper advertising and contracts.

"Central station dispatcher" means an individual who monitors burglar alarm signal devices, burglar alarms or any other electrical, mechanical or electronic device used (i) to prevent or detect burglary, theft, shoplifting, pilferage or similar losses; (ii) to prevent or detect intrusion; or (iii) primarily to summon aid for other emergencies.

"Certification" means the method of regulation indicating that qualified persons have met the minimum requirements as private security services training schools, private security services instructors, compliance agents, or certified detector canine handler examiners.

"Compliance agent" means an individual who owns or is employed by a licensed private security services business to ensure the compliance of the private security services business with this title.

"Courier" means any armed person who transports or offers to transport from one place to another documents or other papers, negotiable or nonnegotiable instruments, or other small items of value that require expeditious services.

"Detector canine" means any dog that detects drugs or explosives or both drugs and explosives.

"Detector canine handler" means any individual who uses a detector canine in the performance of private security duties.

"Detector canine handler examiner" means any individual who examines the proficiency and reliability of detector canines and detector canine handlers in the detection of drugs or explosives or both drugs and explosives.

"Detector canine team" means the detector canine handler and his detector canine performing private security duties.

"Electronic security business" means any person who engages in the business of or undertakes to (i) install, service, maintain, design or consult in the design of any electronic security equipment to an end user; (ii) respond to or cause a response to electronic security equipment for an end user; or (iii) have access to confidential information concerning the design, extent, status, password, contact list, or location of an end user's electronic security equipment.

"Electronic security employee" means an individual who is employed by an electronic security business in any capacity which may give him access to information concerning the design, extent, status, password, contact list, or location of an end user's electronic security equipment.

"Electronic security equipment" means (i) electronic or mechanical alarm signaling devices including

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burglar alarms or holdup alarms used to safeguard and protect persons and property; or (ii) cameras used to detect intrusions, concealment or theft, to safeguard and protect persons and property. This shall not include tags, labels, and other devices that are attached or affixed to items offered for sale, library books, and other protected articles as part of an electronic article surveillance and theft detection and deterrence system.

"Electronic security sales representative" means an individual who sells electronic security equipment on behalf of an electronic security business to the end user.

"Electronic security technician" means an individual who installs, services, maintains or repairs electronic security equipment.

"Electronic security technician's assistant" means an individual who works as a laborer under the supervision of the electronic security technician in the course of his normal duties, but who may not make connections to any electronic security equipment.

"Employed" means to be in an employer/employee relationship where the employee is providing work in exchange for compensation and the employer directly controls the employee's conduct and pays some taxes on behalf of the employee. The term "employed" shall not be construed to include independent contractors.

"End user" means any person who purchases or leases electronic security equipment for use in that person's home or business.

"Firearms training verification" means the verification of successful completion of either initial or retraining requirements for handgun or shotgun training, or both.

"General public" means individuals who have access to areas open to all and not restricted to any particular class of the community.

"Key cutting" means making duplicate keys from an existing key and includes no other locksmith services.

"License number" means the official number issued to a private security services business licensed by the Department.

"Locksmith" means any individual that performs locksmith services, or advertises or represents to the general public that the individual is a locksmith even if the specific term locksmith is substituted with any other term by which a reasonable person could construe that the individual possesses special skills relating to locks or locking devices, including use of the words lock technician, lockman, safe technician, safeman, boxman, unlocking technician, lock installer, lock opener, physical security technician or similar descriptions.

"Locksmith services" mean selling, servicing, rebuilding, repairing, rekeying, repinning, changing the combination to an electronic or mechanical locking device; programming either keys to a device or the device to accept electronic controlled keys; originating keys for locks or copying keys; adjusting or installing locks or deadbolts; mechanical or electronic locking devices, egress control devices, safes, and vaults; opening, defeating or bypassing locks or latching mechanisms in a manner other than intended by the manufacturer; with or without compensation for the general public or on property not his own nor under his own control or authority.

"Natural person" means an individual person.

"Personal protection specialist" means any individual who engages in the duties of providing close protection from bodily harm to any person.

"Private investigator" means any individual who engages in the business of, or accepts employment to make, investigations to obtain information on (i) crimes or civil wrongs; (ii) the location, disposition, or recovery of stolen property; (iii) the cause of accidents, fires, damages, or injuries to persons or to property; or (iv) evidence to be used before any court, board, officer, or investigative committee.

"Private security services business" means any person engaged in the business of providing, or who undertakes to provide, armored car personnel, security officers, personal protection specialists, private investigators, couriers, security canine handlers, security canine teams, detector canine handlers, detector canine teams, alarm respondents, locksmiths, central station dispatchers, electronic security employees, electronic security sales representatives or electronic security technicians and their assistants to another person under contract, express or implied.

"Private security services instructor" means any individual certified by the Department to provide mandated instruction in private security subjects for a certified private security services training school.

"Private security services registrant" means any qualified individual who has met the requirements under this article to perform the duties of alarm respondent, locksmith, armored car personnel, central station dispatcher, courier, electronic security sales representative, electronic security technician, electronic security technician's assistant, personal protection specialist, private investigator, security canine handler, detector canine handler, unarmed security officer or armed security officer.

"Private security services training school" means any person certified by the Department to provide instruction in private security subjects for the training of private security services business personnel in accordance with this article.

"Registration" means a method of regulation whereby certain personnel employed by a private security services business are required to register with the Department pursuant to this article.

"Registration category" means any one of the following categories: (i) unarmed security officer and armed security officer/courier, (ii) security canine handler, (iii) armored car personnel, (iv) private investigator, (v) personal protection specialist, (vi) alarm respondent, (vii) central station dispatcher, (viii) electronic security sales representative, (ix) electronic security technician, (x) electronic technician's assistant, *or* (xi) detector canine handler; ~~or (xii) locksmith.~~

"Security canine" means a dog that has attended, completed, and been certified as a security canine by a certified security canine handler instructor in accordance with approved Department procedures and certification guidelines. "Security canines" shall not include detector dogs.

"Security canine handler" means any individual who utilizes his security canine in the performance of private security duties.

"Security canine team" means the security canine handler and his security canine performing private security duties.

"Supervisor" means any individual who directly or indirectly supervises registered or certified private security services business personnel.

"Unarmed security officer" means a natural person who performs the functions of observation, detection, reporting, or notification of appropriate authorities or designated agents regarding persons or property on the premises he is contracted to protect, and who does not carry or have access to a firearm in the performance of his duties.

§ 9.1-139. Licensing, certification, and registration required; qualifications; temporary licenses.

A. No person shall engage in the private security services business or solicit private security business in the Commonwealth without having obtained a license from the Department. No person shall be issued a private security services business license until a compliance agent is designated in writing on forms provided by the Department. The compliance agent shall ensure the compliance of the private security services business with this article and shall meet the qualifications and perform the duties required by the regulations adopted by the Board. A compliance agent shall have either a minimum of (i) three years of managerial or supervisory experience in a private security services business; with a federal, state or local law-enforcement agency; or in a related field or (ii) five years of experience in a private security services business; with a federal, state or local law-enforcement agency; or in a related field.

B. No person shall act as private security services training school or solicit students for private security training in the Commonwealth without being certified by the Department. No person shall be issued a private security services training school certification until a school director is designated in writing on forms provided by the Department. The school director shall ensure the compliance of the school with the provisions of this article and shall meet the qualifications and perform the duties required by the regulations adopted by the Board.

~~C. (Effective until October 1, 2008) No person shall be employed by a licensed private security services business in the Commonwealth as armored car personnel, courier, armed security officer, detector canine handler, unarmed security officer, security canine handler, private investigator, personal protection specialist, alarm respondent, central station dispatcher, electronic security sales representative, electronic security technician's assistant, or electronic security technician without possessing a valid registration issued by the Department, except as provided in this article.~~

C. (Effective October 1, 2008) No person shall be employed by a licensed private security services business in the Commonwealth as armored car personnel, courier, armed security officer, detector canine handler, unarmed security officer, security canine handler, private investigator, personal protection specialist, alarm respondent, ~~locksmith~~, central station dispatcher, electronic security sales representative, electronic security technician's assistant, or electronic security technician without possessing a valid registration issued by the Department, except as provided in this article.

D. A temporary license may be issued in accordance with Board regulations for the purpose of awaiting the results of the state and national fingerprint search. However, no person shall be issued a temporary license until (i) he has designated a compliance agent who has complied with the compulsory minimum training standards established by the Board pursuant to subsection A of § 9.1-141 for compliance agents, (ii) each principal of the business has submitted his fingerprints for a National Criminal Records search and a Virginia Criminal History Records search, and (iii) he has met all other requirements of this article and Board regulations.

E. No person shall be employed by a licensed private security services business in the Commonwealth unless such person is certified or registered in accordance with this chapter.

F. A temporary registration may be issued in accordance with Board regulations for the purpose of awaiting the results of the 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 established by the Board, pursuant to subsection A of § 9.1-141, for armored car

182 personnel, couriers, armed security officers, detector canine handlers, unarmed security officers, security  
183 canine handlers, private investigators, personal protection specialists, alarm respondents, ~~locksmith~~,  
184 central station dispatchers, electronic security sales representatives, electronic security technician's  
185 assistants, or electronic security technicians, (ii) submitted his fingerprints to be used for the conduct of  
186 a National Criminal Records search and a Virginia Criminal History Records search, and (iii) met all  
187 other requirements of this article and Board regulations.

188 G. A temporary certification as a private security instructor or private security training school may be  
189 issued in accordance with Board regulations for the purpose of awaiting the results of the state and  
190 national fingerprint search. However, no person shall be issued a temporary certification as a private  
191 security services instructor until he has (i) met the education, training and experience requirements  
192 established by the Board and (ii) submitted his fingerprints to be used for the conduct of a National  
193 Criminal Records search and a Virginia Criminal History Records search. No person shall be issued a  
194 temporary certification as a private security services training school until (a) he has designated a training  
195 director, (b) each principal of the training school has submitted his fingerprints to be used for the  
196 conduct of a National Criminal Records search and a Virginia Criminal History Records search, and (c)  
197 he has met all other requirements of this article and Board regulations.

198 H. A licensed private security services business in the Commonwealth shall not employ as an  
199 unarmed security officer, electronic security technician's assistant, unarmed alarm respondent, central  
200 station dispatcher, electronic security sales representative, ~~locksmith~~, or electronic security technician,  
201 any person who has not complied with, or been exempted from, the compulsory minimum training  
202 standards established by the Board, pursuant to subsection A of § 9.1-141, except that such person may  
203 be so employed for not more than 90 days while completing compulsory minimum training standards.

204 I. No person shall be employed as an electronic security employee, electronic security technician's  
205 assistant, unarmed alarm respondent, ~~locksmith~~, central station dispatcher, electronic security sales  
206 representative, electronic security technician or supervisor until he has submitted his fingerprints to the  
207 Department to be used for the conduct of a National Criminal Records search and a Virginia Criminal  
208 History Records search. The provisions of this subsection shall not apply to an out-of-state central  
209 station dispatcher meeting the requirements of subdivision 19 of § 9.1-140.

210 J. The compliance agent of each licensed private security services business in the Commonwealth  
211 shall maintain documentary evidence that each private security registrant and certified employee  
212 employed by his private security services business has complied with, or been exempted from, the  
213 compulsory minimum training standards required by the Board. Before January 1, 2003, the compliance  
214 agent shall ensure that an investigation to determine suitability of each unarmed security officer  
215 employee has been conducted, except that any such unarmed security officer, upon initiating a request  
216 for such investigation under the provisions of subdivision 11 of subsection A of § 19.2-389, may be  
217 employed for up to 30 days pending completion of such investigation. After January 1, 2003, no person  
218 shall be employed as an unarmed security officer until he has submitted his fingerprints to the  
219 Department for the conduct of a National Criminal Records search and a Virginia Criminal History  
220 Records search. Any person who was employed as an unarmed security officer prior to January 1, 2003,  
221 shall submit his fingerprints to the Department in accordance with subsection B of § 9.1-145.

222 K. No person with a criminal conviction for a misdemeanor involving (i) moral turpitude, (ii) assault  
223 and battery, (iii) damage to real or personal property, (iv) controlled substances or imitation controlled  
224 substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, (v) prohibited sexual  
225 behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or (vi) firearms, or any  
226 felony shall be (a) employed as a registered or certified employee by a private security services business  
227 or training school, or (b) issued a private security services registration, certification as an unarmed  
228 security officer, electronic security employee or technician's assistant, a private security services training  
229 school or instructor certification, compliance agent certification, or a private security services business  
230 license, except that, upon written request, the Director of the Department may waive such prohibition.

231 L. The Department may grant a temporary exemption from the requirement for licensure,  
232 certification, or registration for a period of not more than 30 days in a situation deemed an emergency  
233 by the Department.

234 M. All private security services businesses and private security services training schools in the  
235 Commonwealth shall include their license or certification number on all business advertising materials.

236 N. A licensed private security services business in the Commonwealth shall not employ as armored  
237 car personnel any person who has not complied with, or been exempted from, the compulsory minimum  
238 training standards established by the Board pursuant to subsection A of § 9.1-141, except such person  
239 may serve as a driver of an armored car for not more than 90 days while completing compulsory  
240 minimum training standards, provided such person does not possess or have access to a firearm while  
241 serving as a driver.

242 § 9.1-140. Exceptions from article; training requirements for out-of-state central station dispatchers.

243 The provisions of this article shall not apply to:

1. An officer or employee of the United States, the Commonwealth, or a political subdivision of either, while the officer or employee is performing his official duties.

2. A person, except a private investigator as defined in § 9.1-138, engaged exclusively in the business of obtaining and furnishing information regarding an individual's financial rating or a person engaged in the business of a consumer reporting agency as defined by the Federal Fair Credit Reporting Act.

3. An attorney or certified public accountant licensed to practice in Virginia or his employees.

4. The legal owner of personal property which has been sold under any security agreement while performing acts relating to the repossession of such property.

5. A person receiving compensation for private employment as a security officer, or receiving compensation under the terms of a contract, express or implied, as a security officer, who is also a law-enforcement officer as defined by § 9.1-101 and employed by the Commonwealth or any of its political subdivisions.

6. Any person appointed under § 46.2-2003 or 56-353 while engaged in the employment contemplated thereunder, unless they have successfully completed training mandated by the Department.

7. Persons who conduct investigations as a part of the services being provided as a claims adjuster, by a claims adjuster who maintains an ongoing claims adjusting business, and any natural person employed by the claims adjuster to conduct investigations for the claims adjuster as a part of the services being provided as a claims adjuster.

8. Any natural person otherwise required to be registered pursuant to § 9.1-139 who is employed by a business that is not a private security services business for the performance of his duties for his employer. Any such employee, however, who carries a firearm and is in direct contact with the general public in the performance of his duties shall possess a valid registration with the Department as required by this article.

9. Persons, sometimes known as "shoppers," employed to purchase goods or services solely for the purpose of determining or assessing the efficiency, loyalty, courtesy, or honesty of the employees of a business establishment.

10. Licensed or registered private investigators from other states entering Virginia during an investigation originating in their state of licensure or registration when the other state offers similar reciprocity to private investigators licensed and registered by the Commonwealth.

11. Unarmed regular employees of telephone public service companies where the regular duties of such employees consist of protecting the property of their employers and investigating the usage of telephone services and equipment furnished by their employers, their employers' affiliates, and other communications common carriers.

12. An end user.

13. A material supplier who renders advice concerning the use of products sold by an electronics security business and who does not provide installation, monitoring, repair or maintenance services for electronic security equipment.

14. Members of the security forces who are directly employed by electric public service companies.

15. Any professional engineer or architect licensed in accordance with Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 to practice in the Commonwealth, or his employees.

16. Any person who only performs telemarketing or schedules appointments without access to information concerning the electronic security equipment purchased by an end user.

17. Any certified forensic scientist employed as an expert witness for the purpose of possibly testifying as an expert witness.

18. Members of the security forces who are directly employed by shipyards engaged in the construction, design, overhaul or repair of nuclear vessels for the United States Navy.

19. An out-of-state central station dispatcher employed by a private security services business licensed by the Department provided he (i) possesses and maintains a valid license, registration, or certification as a central station dispatcher issued by the regulatory authority of the state in which he performs the monitoring duties and (ii) has submitted his fingerprints to the regulatory authority for the conduct of a national criminal history records search.

20. Any person, or independent contractor or employee of any person, who (i) exclusively contracts directly with an agency of the federal government to conduct background investigations and (ii) possesses credentials issued by such agency authorizing such person, subcontractor or employee to conduct background investigations.

21. Any person whose occupation is limited to the technical reconstruction of the cause of accidents involving motor vehicles as defined in § 46.2-100, regardless of whether the information resulting from the investigation is to be used before a court, board, officer, or investigative committee, and who is not otherwise a private investigator as defined in § 9.1-138.

22. Retail merchants performing locksmith services, selling locks or engaged in key cutting activities

305 conducted at the business location who do not represent themselves to the general public as locksmiths.  
306 23. Law enforcement, fire, rescue, emergency service personnel, or other persons performing  
307 locksmith services in an emergency situation without compensation and who do not represent themselves  
308 to the general public as locksmiths.

309 24. Motor vehicle dealers as defined in § 46.2-1500 performing locksmith services who do not  
310 represent themselves to the general public as locksmiths.

311 25. Taxicab and towing businesses performing locksmith services that do not represent themselves to  
312 the general public as locksmiths.

313 26. Contractors licensed under Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 performing locksmith  
314 services when acting within the scope of such license who do not represent themselves to the general  
315 public as locksmiths.

316 27. Any contractor as defined in § 54.1-1100 (i) who is exempt from the licensure requirements of  
317 Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, (ii) where the total value referred to in a single contract  
318 or project is less than \$1,000, (iii) when the performance of locksmith services is ancillary to the work  
319 performed by such contractor, and (iv) who does not represent himself to the general public as a  
320 locksmith.

321 § 9.1-143. Private Security Services Advisory Board; membership.

322 The Private Security Services Advisory Board is established as an advisory board within the meaning  
323 of § 2.2-2100, in the executive branch of state government. The Private Security Services Advisory  
324 Board shall consist of ~~15~~ 13 members as follows: two members shall be private investigators; two shall  
325 be representatives of electronic security businesses; ~~two members shall be representatives of locksmith~~  
326 ~~businesses~~; three shall be representatives of private security services businesses providing security  
327 officers, armed couriers or guard dog handlers; one shall be a representative of a private security  
328 services business providing armored car personnel; one shall be a representative of a private security  
329 services business involving personal protection specialists; one shall be a certified private security  
330 services instructor; one shall be a special conservator of the peace appointed pursuant to § 19.2-13; one  
331 shall be a licensed bail bondsman and one shall be a representative of law enforcement. The Private  
332 Security Services Advisory Board shall be appointed by the Criminal Justice Services Board and shall  
333 advise the Criminal Justice Services Board on all issues relating to regulation of private security services  
334 businesses.

335 2. That § 9.1-140.1 of the Code of Virginia and the second through the fifth enactments of Chapter  
336 638 of the Acts of Assembly of 2008 are repealed.