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**HOUSE BILL NO. 776**

Offered January 13, 2010

Prefiled January 12, 2010

*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.*

Patron—Cleaveland

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.

"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.

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

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

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

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

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

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

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

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

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

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

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

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

98 "Natural person" means an individual person.

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

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

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

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

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

118 "Private security services training school" means any person certified by the Department to provide  
119 instruction in private security subjects for the training of private security services business personnel in  
120 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. 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 personnel, couriers, armed security officers, detector canine handlers, unarmed security officers, security canine handlers, private investigators, personal protection specialists, alarm respondents, ~~locksmith~~, central station dispatchers, electronic security sales representatives, electronic security technician's assistants, or electronic security technicians, (ii) submitted his fingerprints 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.

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

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

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

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

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

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

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

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

236 § 9.1-140. Exceptions from article; training requirements for out-of-state central station dispatchers.

237 The provisions of this article shall not apply to:

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

240 2. A person, except a private investigator as defined in § 9.1-138, engaged exclusively in the  
241 business of obtaining and furnishing information regarding an individual's financial rating or a person  
242 engaged in the business of a consumer reporting agency as defined by the Federal Fair Credit Reporting  
243 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 conducted at the business location who do not represent themselves to the general public as locksmiths.
23. Law enforcement, fire, rescue, emergency service personnel, or other persons performing locksmith services in an emergency situation without compensation and who do not represent themselves to the general public as locksmiths.
24. Motor vehicle dealers as defined in § 46.2-1500 performing locksmith services who do not represent themselves to the general public as locksmiths.

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

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

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

315 28. Any individual, employed by a retail merchant that also holds a private security services business  
316 license as a locksmith, where such individual's duties relating to such license are limited to key cutting  
317 and the key cutting is performed under the direct supervision of the licensee.

318 § 9.1-143. Private Security Services Advisory Board; membership.

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

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