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SENATE BILL NO. 90

Offered January 11, 2012

Prefiled January 9, 2012

A *BILL to amend and reenact §§ 9.1-139 and 9.1-140 of the Code of Virginia, relating to definition of private investigator; out-of-state private security services.*

Patron—Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 9.1-139 and 9.1-140 of the Code of Virginia are amended and reenacted as follows:**

§ 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, locksmiths, 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.

G. A temporary certification as a private security instructor or private security training school 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 certification as a private security services instructor until he has (i) met the education, training and experience requirements established by the Board and (ii) submitted his fingerprints to be used for the conduct of a National Criminal Records search and a Virginia Criminal History Records search. No person shall be issued a

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59 temporary certification as a private security services training school until (a) he has designated a training
60 director, (b) each principal of the training school has submitted his fingerprints to be used for the
61 conduct of a National Criminal Records search and a Virginia Criminal History Records search, and (c)
62 he has met all other requirements of this article and Board regulations.

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

69 I. No person shall be employed as an electronic security employee, electronic security technician's
70 assistant, unarmed alarm respondent, locksmith, central station dispatcher, electronic security sales
71 representative, electronic security technician or supervisor until he has submitted his fingerprints to the
72 Department to be used for the conduct of a National Criminal Records search and a Virginia Criminal
73 History Records search. The provisions of this subsection shall not apply to an out-of-state central
74 station dispatcher meeting the requirements of subdivision 1920 of § 9.1-140.

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

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

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

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

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

107 § 9.1-140. Exceptions from article; training requirements for out-of-state central station dispatchers.

108 The provisions of this article shall not apply to:

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

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

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

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

118 5. A person receiving compensation for private employment as a security officer, or receiving
119 compensation under the terms of a contract, express or implied, as a security officer, who is also a
120 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. *Private security services businesses from other states, being duly licensed in those states, that contract with a private security services business licensed by the Commonwealth for the performance of services limited to those set forth under the definition of "private investigator" as set forth in § 9.1-138. Any such contract pursuant to this subdivision shall be limited to a specific investigation.*

12. 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.

13. An end user.

14. 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.

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

16. 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.

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

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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

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

182 2526. Taxicab and towing businesses performing locksmith services that do not represent themselves
183 to the general public as locksmiths.

184 2627. Contractors licensed under Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 performing locksmith
185 services when acting within the scope of such license who do not represent themselves to the general
186 public as locksmiths.

187 2728. Any contractor as defined in § 54.1-1100 (i) who is exempt from the licensure requirements of
188 Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, (ii) where the total value referred to in a single contract
189 or project is less than \$1,000, (iii) when the performance of locksmith services is ancillary to the work
190 performed by such contractor, and (iv) who does not represent himself to the general public as a
191 locksmith.

192 2829. Any individual, employed by a retail merchant that also holds a private security services
193 business license as a locksmith, where such individual's duties relating to such license are limited to key
194 cutting and the key cutting is performed under the direct supervision of the licensee.

195 2930. Any individual engaged in (i) computer or digital forensic services as defined in § 9.1-138 or
196 in the acquisition, review, or analysis of digital or computer-based information, in order to obtain or
197 furnish information for evidentiary purposes or to provide expert testimony before a court, or (ii)
198 network or system vulnerability testing, including network scans and risk assessment and analysis of
199 computers connected to a network.