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**SENATE BILL NO. 296**

Offered January 13, 2016

Prefiled January 8, 2016

A *BILL to amend and reenact § 19.2-13 of the Code of Virginia, relating to special conservators of the peace; criminal history record information check required.*

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Patron—DeSteph

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 19.2-13 of the Code of Virginia is amended and reenacted as follows:****§ 19.2-13. Special conservators of the peace; authority; jurisdiction; registration; liability of employers; penalty; report.**

A. Upon the submission of an application, which shall include the results of a background investigation, *including the results of a criminal history record information check*, from (i) any sheriff or chief of police of any county, city, or town; (ii) any corporation authorized to do business in the Commonwealth; (iii) the owner, proprietor, or authorized custodian of any place within the Commonwealth; or (iv) any museum owned and managed by the Commonwealth, a circuit court judge of any county or city shall appoint special conservators of the peace who shall serve as such for such length of time as the court may designate, but not exceeding four years under any one appointment, during which time the court shall retain jurisdiction over the appointment order, upon a showing by the applicant of a necessity for the security of property or the peace and presentation of evidence that the person or persons to be appointed as a special conservator of the peace possess a valid registration issued by the Department of Criminal Justice Services in accordance with the provisions of subsection

C. Upon an application made pursuant to clause (ii), (iii), or (iv), the court shall, prior to entering the order of appointment, transmit a copy of the application to the local attorney for the Commonwealth and the local sheriff or chief of police who may submit to the court a sworn, written statement indicating whether the order of appointment should be granted. However, a judge may deny the appointment for good cause, and shall state the specific reasons for the denial in writing in the order denying the appointment. A judge also may revoke the appointment order for good cause shown, upon the filing of a sworn petition by the attorney for the Commonwealth, sheriff, or chief of police for any locality in which the special conservator of the peace is authorized to serve or by the Department of Criminal Justice Services. Prior to revocation, a hearing shall be set and the special conservator of the peace shall be given notice and the opportunity to be heard. The judge may temporarily suspend the appointment pending the hearing for good cause shown. A hearing on the petition shall be heard by the court as soon as practicable. If the appointment order is suspended or revoked, the clerk of court shall notify the Department of Criminal Justice Services, the Department of State Police, the applicable local law-enforcement agencies in all cities and counties where the special conservator of the peace is authorized to serve, and the employer of the special conservator of the peace.

The order of appointment may provide that a special conservator of the peace shall have all the powers, functions, duties, responsibilities and authority of any other conservator of the peace within such geographical limitations as the court may deem appropriate within the confines of the county, city or town that makes application or on the real property where the corporate applicant is located, or any real property contiguous to such real property, limited, except as provided in subsection F, to the city or county wherein application has been made, whenever such special conservator of the peace is engaged in the performance of his duties as such. The order may provide that the special conservator of the peace shall have the authority to make an arrest outside of such geographical limitations if the arrest results from a close pursuit that was initiated when the special conservator of the peace was within the confines of the area wherein he has been authorized to have the powers and authority of a special conservator of the peace; the order may further delineate a geographical limitation or distance beyond which the special conservator of the peace may not effectuate such an arrest that follows from a close pursuit. The order shall require the special conservator of the peace to comply with the provisions of the United States Constitution and the Constitution of Virginia. The order shall not identify the special conservator of the peace as a law-enforcement officer pursuant to § 9.1-101. The order may provide, however, that the special conservator of the peace is a "law-enforcement officer" for the purposes of Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2 or Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, but such designation shall not qualify the special conservator of the peace as a "qualified law-enforcement officer" or "qualified retired law-enforcement officer" within the meaning of the federal

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59 Law Enforcement Officer Safety Act, 18 U.S.C. § 926(B) et seq., and the order of appointment shall  
60 specifically state this. Upon request and for good cause shown, the order may also provide that the  
61 special conservator of the peace is authorized to use the seal of the Commonwealth in a badge or other  
62 credential of office as the court may deem appropriate. Upon request and for good cause shown, the  
63 order may also provide that the special conservator of the peace may use the title "police" on any badge  
64 or uniform worn in the performance of his duties as such. The order may also provide that a special  
65 conservator of the peace who has completed the minimum training standards established by the Criminal  
66 Justice Services Board, has the authority to affect arrests, using up to the same amount of force as  
67 would be allowed to a law-enforcement officer employed by the Commonwealth or any of its political  
68 subdivisions when making a lawful arrest. The order shall prohibit blue flashing lights, but upon request  
69 and for good cause shown may provide that the special conservator of the peace may use flashing lights  
70 and sirens on any vehicle used by the special conservator of the peace when he is in the performance of  
71 his duties. Prior to granting an application for appointment, the circuit court shall ensure that the  
72 applicant has met the registration requirements established by the Criminal Justice Services Board.

73 B. All applications and orders for appointments of special conservators of the peace shall be  
74 submitted on forms developed by the Office of the Executive Secretary of the Supreme Court of  
75 Virginia in consultation with the Department of Criminal Justice Services and shall specify the duties for  
76 which the applicant is qualified. The applications and orders shall specify the geographic limitations  
77 consistent with subsection A.

78 C. No person shall seek appointment as a special conservator of the peace from a circuit court judge  
79 without possessing a valid registration issued by the Department of Criminal Justice Services, except as  
80 provided in this section. Applicants for registration may submit an application on or after January 1,  
81 2004. A temporary registration may be issued in accordance with regulations established by the Criminal  
82 Justice Services Board while awaiting the results of a state and national fingerprint search. However, no  
83 person shall be issued a temporary registration until he has (i) complied with, or been exempted from  
84 the compulsory minimum training standards as set forth in this section; (ii) submitted his fingerprints on  
85 a form provided by the Department to be used for the conduct of a national criminal records search and  
86 a Virginia criminal history records search; (iii) submitted the results of a background investigation,  
87 *including the results of a criminal history record information check*, performed by any state or local  
88 law-enforcement agency, which may, at its discretion, charge a reasonable fee to the applicant and  
89 which may include a review of the applicant's school records, employment records, or interviews with  
90 persons possessing general knowledge of the applicant's character and fitness for such appointment; and  
91 (iv) met all other requirements of this article and Board regulations. No person with a criminal  
92 conviction for a misdemeanor involving (a) moral turpitude, (b) assault and battery, (c) damage to real  
93 or personal property, (d) controlled substances or imitation controlled substances as defined in Article 1  
94 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, (e) prohibited sexual behavior as described in Article 7  
95 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or (f) firearms, or any felony, or who is required to  
96 register with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et  
97 seq.) of Title 9.1, *or who would be prohibited from possessing, transporting, or purchasing a firearm*  
98 *based on the results of a criminal history record information check* shall be eligible for registration or  
99 appointment as a special conservator of the peace. A special conservator of the peace shall report if he  
100 is arrested for, charged with, or convicted of any misdemeanor or felony offense to the Department of  
101 Criminal Justice Services and the chief law-enforcement officer of all localities in which he is authorized  
102 to serve within  $\bar{3}$  *three* days of such arrest. Any appointment for a special conservator of the peace shall  
103 be eligible for suspension and revocation after a hearing pursuant to subsection A if the special  
104 conservator of the peace is convicted of any offense listed in clauses (a) through (f) or of any felony.  
105 All appointments for special conservators of the peace shall become void on September 15, 2004, unless  
106 they have obtained a valid registration issued by the Department of Criminal Justice Services.

107 D. Each person registered as or seeking registration as a special conservator of the peace shall be  
108 covered by evidence of a policy of liability insurance or self-insurance in an amount and with coverage  
109 as fixed by the Board. Any person who is aggrieved by the misconduct of any person registered as a  
110 special conservator of the peace and recovers a judgment against the registrant, which is unsatisfied in  
111 whole or in part, may bring an action in his own name against the insurance policy of the registrant.

112 E. Effective July 1, 2015, all persons currently appointed or seeking appointment or reappointment as  
113 a special conservator of the peace are required to register with the Department of Criminal Justice  
114 Services, regardless of any other standing the person may have as a law-enforcement officer or other  
115 position requiring registration or licensure by the Department. The employer of any special conservator  
116 of the peace shall notify the circuit court, the Department of Criminal Justice Services, the Department  
117 of State Police, and the chief law-enforcement officer of all localities in which the special conservator of  
118 the peace is authorized to serve within 30 days after the date such individual has left employment and  
119 all powers of the special conservator of the peace shall be void. Failure to provide such notification  
120 shall be punishable by a fine of \$250 plus an additional \$50 per day for each day such notice is not

121 provided.

122 F. When the application is made by any sheriff or chief of police, the circuit court shall specify in  
 123 the order of appointment the name of the applicant authorized under subsection A and the geographic  
 124 jurisdiction of the special conservator of the peace. Such appointments shall be limited to the city or  
 125 county wherein application has been made. When the application is made by any corporation authorized  
 126 to do business in the Commonwealth, any owner, proprietor, or authorized custodian of any place within  
 127 the Commonwealth, or any museum owned and managed by the Commonwealth, the circuit court shall  
 128 specify in the order of appointment the name of the applicant authorized under subsection A and the  
 129 specific real property where the special conservator of the peace is authorized to serve. Such  
 130 appointments shall be limited to the specific real property within the county, city, or town wherein  
 131 application has been made. In the case of a corporation or other business, the court appointment may  
 132 also include, for good cause shown, any real property owned or leased by the corporation or business,  
 133 including any subsidiaries, in other specifically named cities and counties, but shall provide that the  
 134 powers of the special conservator of the peace do not extend beyond the boundaries of such real  
 135 property. The clerk of the appointing circuit court shall transmit to the Department of State Police, the  
 136 clerk of the circuit court of each locality where the special conservator of the peace is authorized to  
 137 serve, and the sheriff or chief of police of each such locality a copy of the order of appointment that  
 138 shall specify the following information: the person's complete name, address, date of birth, social  
 139 security number, gender, race, height, weight, color of hair, color of eyes, firearm authority or limitation  
 140 as set forth in subsection G, date of the order, and other information as may be required by the  
 141 Department of State Police. The Department of State Police shall enter the person's name and other  
 142 information into the Virginia Criminal Information Network established and maintained by the  
 143 Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. The Department of State Police may  
 144 charge a fee not to exceed \$10 to cover its costs associated with processing these orders. Each special  
 145 conservator of the peace so appointed on application shall present his credentials to the chief of police  
 146 or sheriff or his designee of all jurisdictions where he has conservator powers. If his powers are limited  
 147 to certain areas of real property owned or leased by a corporation or business, he shall also provide  
 148 notice of the exact physical addresses of those areas. Each special conservator shall provide to the  
 149 circuit court a temporary registration letter issued by the Department of Criminal Justice Services to  
 150 include the results of the background check prior to seeking an appointment by the circuit court. Once  
 151 the applicant receives the appointment from the circuit court the applicant shall file the appointment  
 152 order and a copy of the application with the Department of Criminal Justice Services in order to receive  
 153 his special conservator of the peace registration document. If the court appointment includes any real  
 154 property owned or leased by the corporation or business in other specifically named cities and counties  
 155 not within the city or county wherein application has been made, the clerk of the appointing court shall  
 156 transmit a copy of the order of appointment to (i) the clerk of the circuit court for each jurisdiction  
 157 where the special conservator of the peace is authorized to serve and (ii) the sheriff or chief of police of  
 158 each jurisdiction where the special conservator of the peace is authorized to serve.

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

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

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

170 H. The governing body of any locality or the sheriff of a county where no police department has  
 171 been established may enter into mutual aid agreements with any entity employing special conservators of  
 172 the peace that is located in such locality for the use of their joint forces and their equipment and  
 173 materials to maintain peace and good order. Any law-enforcement officer or special conservator of the  
 174 peace, while performing his duty under any such agreement, shall have the same authority as lawfully  
 175 conferred on him within his own jurisdiction.