

CHAPTER 122

An Act to amend and reenact §§ 9-182, 9-183.1, 9-183.3, 9-183.4, 9-183.6, 9-183.7, 9-183.9, 9-183.11, and 9-183.12 of the Code of Virginia, relating to the Department of Criminal Justice Services; regulation of private security services; penalties.

[H 865]

Approved March 13, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 9-182, 9-183.1, 9-183.3, 9-183.4, 9-183.6, 9-183.7, 9-183.9, 9-183.11, and 9-183.12 of the Code of Virginia are amended and reenacted as follows:

§ 9-182. Compulsory training standards for private security services business personnel.

A. The Board shall have the power to issue regulations pursuant to Chapter 1.1:1 (§ 9-6.14:1 et seq.) of this title, establishing compulsory minimum, entry-level, in-service, and advanced training standards for persons employed by private security services businesses in classifications defined in § 9-183.1. The regulations may include provisions delegating to the Board's staff the right to inspect the facilities and programs of persons conducting training to ensure compliance with the law and its regulations. In establishing by regulation compulsory training standards for each of the classifications defined in § 9-183.1, the Board shall be guided by the policy of this section which is to secure the public safety and welfare against incompetent or unqualified persons engaging in the activities regulated by this section and Article 2.1 (§ 9-183.1 et seq.) of Chapter 27 of this title. The regulations may provide for exemption from such training for persons having previous employment as law-enforcement officers for a state or the federal government; however, no such exemption shall be granted to persons having less than five continuous years of such employment, nor shall an exemption be provided for any person whose employment as a law-enforcement officer was terminated because of his misconduct or incompetence. The regulations may include provisions for partial exemption from such training for persons having previous training which meets or exceeds the minimum training standards and has been approved by the Department, or for persons employed in classifications defined in § 9-183.1; however, no such exemption shall be granted to persons having less than five continuous years of such employment, nor shall an exemption be provided for any person whose employment as a private security services business employee was terminated because of his misconduct or incompetence.

B. *The Board shall have the power to enter into an agreement with other states for reciprocity or recognition of private security services businesses and their employees, duly licensed by such states. The agreements shall allow those businesses and their employees to provide and perform private security services within the Commonwealth to secure the public safety and welfare against incompetent, unqualified, unscrupulous, or unfit persons engaging in the activities of private security services businesses.*

~~B.~~ C. The Board shall have the power to promulgate regulations pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.) to secure the public safety and welfare against incompetent, unqualified, unscrupulous, or unfit persons engaging in the activities of private security services businesses as follows:

1. To establish the qualifications of applicants for registration, *certification*, or licensure under Article 2.1 (§ 9-183.1) of Chapter 27 of this title;

2. To examine, or cause to be examined, the qualifications of each applicant for registration, *certification*, or licensure, including when necessary the preparation, administration and grading of examinations;

3. To certify *qualified applicants for private security training schools and instructors* or license qualified applicants as practitioners of private security services businesses;

4. To levy and collect fees for registration, *certification*, or licensure and renewal that are sufficient to cover all expenses for administration and operation of a program of registration, *certification*, and licensure for private security services businesses *and training schools*;

5. To promulgate regulations necessary to ensure continued competency, and to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system promulgated by the Board;

6. To receive complaints concerning the conduct of any person whose activities are regulated by the Board, to conduct investigations, and to take appropriate disciplinary action if warranted; and

7. To revoke, suspend or fail to renew a registration, *certification*, or license for just cause as enumerated in regulations of the Board.

~~C~~. *D.* In promulgating its regulations under subsections A and ~~B~~ *C* of this section, the Board shall seek the advice of the Private Security Services Advisory Board established pursuant to § 9-183.5.

§ 9-183.1. Definitions.

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

"Alarm respondent" means a natural person 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 security officer, as defined below, who carries or has immediate access to a firearm ~~or other deadly weapon~~ 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.

"Board" means the Criminal Justice Services Board or any successor board or agency.

"Business advertising material" means telephone directories, stationery, business cards, local newspaper advertising and contracts.

"Central station dispatcher" means a natural person who monitors burglar alarm signal devices, burglar alarms or any other electrical, mechanical or electronic device used to prevent or detect burglary, theft, shoplifting, pilferage or similar losses; used to prevent or detect intrusion; or used 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, unarmed security officers, electronic security employees, or electronic security technician's assistants.

"Compliance agent" means a natural person 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.

"Department" means the Department of Criminal Justice Services or any successor agency.

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

"Electronic security equipment" means electronic or mechanical alarm signaling devices including burglar alarms or holdup alarms or cameras used to detect intrusions, concealment or theft. "Electronic security equipment" shall not include tags, labels, and other devices which use radio frequency-based technology and which 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 a natural person who sells electronic security equipment on behalf of an electronic security business to the end user.

"Electronic security technician" means a natural person who installs, services, maintains or repairs electronic security equipment.

"Electronic security technician's assistant" means a natural person 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.

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

"Guard dog handler" means any person employed by a private security services business to handle dogs in the performance of duty in protection of property ~~or persons~~.

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

"Person" means any individual, group of individuals, firm, company, corporation, partnership, business, trust, association, or other legal entity.

"Personal protection specialist," ~~on and after July 1, 1995,~~ means any *natural* person who engages in

the business duties of providing close protection from bodily harm to another any person.

"Private investigator" means any natural person 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, ~~(i) armored car personnel, security officers, personal protection specialists, private investigators, couriers, or guard dog security canine handlers to another person under contract, express or implied or (ii)~~ , security canine teams, alarm respondents, 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 natural person 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 natural person who has met the requirements under this article to perform the duties of alarm respondent, armored car personnel, central station dispatcher, courier, electronic security sales representative, electronic security technician, personal protection specialist, private investigator, security canine handler, 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 obtain a registration from the Department pursuant to this article.

"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 canine" shall not include detector dogs.

"Security canine handler" means any natural person 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.

"Security officer" means any natural person employed by a private security services business to (i) safeguard and protect persons and property or ~~to~~ (ii) prevent theft, loss, or concealment of any tangible or intangible personal property on the premises contracted to protect.

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

"Unarmed security officer" means a security officer who does not carry or have immediate access to a firearm or other deadly weapon in the performance of his duties.

§ 9-183.3. Licensing, certification, and registration.

A. No person shall engage in the private security services business or solicit private security business, including, on and after July 1, 1995, the electronic security business in this 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 assure the compliance of the private security services business with this article and shall meet the qualifications and perform the duties required by the regulations promulgated by the Department Board.

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 compliance of such school with the provisions of this article and shall meet the qualifications and perform the duties required by the regulations promulgated by the Board.

~~B.~~ C. No person shall be employed by a licensed private security services business in this the Commonwealth as armored car personnel, courier, armed security officer, guard dog security canine handler, or private investigator without possessing a valid registration issued by the Department. On and after July 1, 1995, no person shall be employed as an, personal protection specialist, alarm respondent, central station dispatcher, electronic security sales representative, 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 § 9-182 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 the regulations of the Board.

~~C. E.~~ 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 § 9-182, for armored car personnel, couriers, armed security officers, ~~guard dog security canine~~ handlers, private investigators, personal protection specialist, alarm respondents, central station dispatchers, electronic security sales representatives or electronic security technicians and, (ii) submitted his fingerprints to be used for the conduct of a National Criminal Records search and a Virginia Criminal History Records search, ~~and the results of such searches have been submitted to the Department;~~ however, a temporary registration may be issued as provided in the regulation for the purpose of awaiting the results of the state and national fingerprint search and (iii) met all other requirements of this article and the regulations of the Board.

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

~~D. G.~~ A licensed private security services business in ~~this~~ the Commonwealth shall not employ as an unarmed security officer, *electronic security technician's assistant, unarmed alarm respondent, central station dispatcher, electronic security sales representative, or electronic security technician*, any person who has not complied with, or been exempted from, the compulsory minimum training standards established by the Board, pursuant to subsection A of § 9-182 ~~for unarmed security officers~~, except that such person may be so employed for not more than ninety days while completing compulsory minimum training standards.

H. No person shall be employed as an *electronic security employee, electronic security technician's assistant, unarmed alarm respondent, central station dispatcher, electronic security sales representative, electronic security technician, or supervisor* until he has submitted his fingerprints to the Department to be used for the conduct of a National Criminal Records search and a Virginia Criminal History Records search.

~~E. I.~~ The compliance agent of each licensed private security services business in the Commonwealth shall maintain documentary evidence that each ~~(i) unarmed security officer employee private security registrant and certified employee employed by his private security services business~~ has complied with, or been exempted from, the compulsory minimum training standards required by the Board ~~for unarmed security officers~~ and that an investigation to determine suitability of each unarmed security officer employee has been conducted, except that any such unarmed security officer, upon initiating a request for such investigation under the provisions of subdivision 11 of subsection A of § 19.2-389, may be employed for up to thirty days pending completion of such investigation and ~~(ii) electronic security technician's assistant has complied with, or has been exempted from, the compulsory minimum training standards required by the Board for electronic security technician's assistants.~~

J. No person with a criminal record of a misdemeanor involving moral turpitude or any felony shall be (i) employed ~~an unarmed security officer~~ as a registered or certified employee by a private security services business or training school or (ii) issued a private security services registration, certification as an unarmed security officer, *electronic security employee or technician's assistant, a private security services training school or instructor certification, compliance agent certification, or a private security services business license*, except that, upon written request, the Director of the Department of Criminal Justice Services may waive such prohibition.

F. A licensed private security services business in the Commonwealth shall not employ as an *electronic security technician's assistant, unarmed alarm respondent, central station dispatcher, electronic security sales representative, or electronic security technician*, any person who has not complied with, or been exempted from, the compulsory minimum training standards established by the Board pursuant to subsection A of § 9-182 ~~for electronic security technicians' assistants, unarmed alarm respondents, central station dispatchers, electronic security sales representatives, and electronic security technicians~~, except

that such person may be employed for not more than ninety days while completing the compulsory minimum training standards.

No person shall be employed as an electronic security technician's assistant, unarmed alarm respondent, central station dispatcher, electronic security sales representative, or electronic security technician until he has submitted his fingerprints to the Department to be used for the conduct of a National Criminal Records search and a Virginia Criminal History Records search.

G. On and after July 1, 1994, no person shall be employed as an electronic security employee until (i) he has submitted his fingerprints to be used for the conduct of a national criminal records search and a Virginia criminal history records search and (ii) the results of the searches have been submitted to the Department. However, a temporary authorization to work may be issued while awaiting the results of the searches.

H. K. The Department may grant a temporary exemption from the requirement of a license or application for a , *certification*, or registration for a period of not more than thirty days in a situation deemed an emergency by the Department.

I. For a period of one year from July 1, 1995, any person subject to the provisions of subsections A, B and C of this section who has actually been employed by an electronic security business as an electronic security technician for a period of three years, a central station dispatcher for a period of one year, an electronic security sales representative for a period of one year, or an alarm respondent for a period of one year immediately preceding the date of application, may be registered; however, the Department shall require such person to submit satisfactory proof of his (i) full-time active engagement in such employment for such period and (ii) compliance with all applicable fees and requirements set forth in this chapter. The renewal of any registration shall be contingent upon the fulfillment of all rules and regulations promulgated by the Board.

J. For a period of one year from July 1, 1995, any person subject to the provisions of subsections A, B and C of this section who has actually been employed as a personal protection specialist for the three years immediately preceding the date of application, may be registered; however, the Department shall require such person to submit satisfactory documentation that he has (i) successfully completed personal protection training approved by the Department, (ii) been engaged in such employment for such period, and (iii) complied with all applicable fees and requirements set forth in this chapter. The renewal of any registration shall be contingent upon the fulfillment of all rules and regulations promulgated by the Board.

K. L. On or after July 1, 1997, All private security services businesses *and private security services training schools* in the Commonwealth shall include their license *or certification* number on all business advertising materials.

§ 9-183.4. Powers of Department.

In addition to the powers otherwise conferred upon it by law, the Department shall have the power to:

1. Charge each applicant for licensure, *certification* or registration a nonrefundable fee as established by the Board to cover the costs of the Department for processing an application for a registration, *certification* or license, and enforcement of these regulations, and other costs associated with the maintenance of this program of regulation.

2. Charge nonrefundable fees for private security services training as established by the Board for processing school ~~registrations~~ *certifications* and enforcement of training standards.

3. Conduct investigations to determine the suitability of applicants for registration, licensure, or ~~instructor approval~~ *certification of compliance agents, training schools and instructors*. For purposes of this investigation, the Department shall have access to criminal history record information maintained by the Central Criminal Records Exchange of the Department of State Police and shall conduct a background investigation, to include a National Criminal Records search and a Virginia Criminal History Records search.

4. The Director, or agents appointed by him, are vested with the authority to administer oaths or affirmations for the purpose of receiving complaints and conducting investigations of violations of this article, or any regulation promulgated pursuant to authority given by this article. Information concerning alleged criminal violations shall be turned over to law-enforcement officers in appropriate jurisdictions. Agents shall be vested with authority to serve such paper or process issued by the Department or the Board under regulations approved by the Board.

5. In addition to the authority granted in § 9-6.14:13 to issue subpoenas, the Director or a designated subordinate shall have the right to make an ex parte application to the circuit court for the city or county wherein evidence sought is kept or wherein a licensee does business, for the issuance of a subpoena duces tecum in furtherance of the investigation of a sworn complaint within the jurisdiction of the Department or the Board to request production of any relevant records, documents and physical or other evidence of any person, partnership, association or corporation licensed or regulated by the

Department pursuant to this article. The court shall be authorized to issue and compel compliance with such a subpoena upon a showing of reasonable cause. Upon determining that reasonable cause exists to believe that evidence may be destroyed or altered, the court may issue a subpoena duces tecum requiring the immediate production of evidence.

6. *Recover costs of the investigation and adjudication of violations of this article or the regulations of the Board. Such costs may be recovered from the respondent when a sanction is imposed to fine or place on probation, suspend, revoke, or deny the issuance of any license, certification, or registration. Such costs shall be in addition to any monetary penalty which may be imposed. All costs recovered shall be deposited into the state treasury to the credit of the Private Security Services Regulatory Fund.*

§ 9-183.6. Bond or insurance required.

A. Every person licensed as a private security services business under subsection A of § 9-183.3 or certified as a private security services training school under subsection B of § 9-183.3 shall, at the time of receiving the license or certification and before the license or certification shall be operative, file with the Department (i) a cash bond or evidence that the licensee or certificate holder is covered by a surety bond, executed by a surety company authorized to do business in this Commonwealth, in a reasonable amount to be fixed by the Department, conditioned upon the faithful and honest conduct of his business or employment; or (ii) evidence of a policy of liability insurance in an amount and with coverage as fixed by the Department. *The bond or liability insurance shall be maintained for so long as the licensee or certificate holder is licensed or certified by the Department.*

B. If any person aggrieved by the misconduct of any person licensed or certified under subsections A or B of § 9-183.3 recovers judgment against the licensee or certificate holder, such person may, after the return unsatisfied, either in whole or in part, of any execution issued upon such judgment, maintain an action in his own name upon the bond of the licensee or certificate holder.

§ 9-183.7. Fingerprints required.

Each applicant for registration, licensure or certification as a compliance agent, or private security services training school or instructor under the provisions of this article and every person employed as an electronic security employee or electronic security technician's assistant shall submit his fingerprints to the Department on a form provided by the Department.

§ 9-183.9. Penalties.

A. It shall be a Class 1 misdemeanor for any person required to possess a registration under subsection B C of § 9-183.3 to be employed by a private security services business, *except as provided in this article*, as armored car personnel, courier, armed security officer, ~~guard dog~~ security canine handler, *personal protection specialist*, private investigator, alarm respondent, central station dispatcher, electronic security sales representative or electronic security technician, without possessing a valid registration.

B. It shall be a Class 1 misdemeanor for any person licensed or required to be licensed under subsection A of § 9-183.3 to employ or otherwise utilize, *except as provided in this article*, as armored car personnel, courier, armed security officer, ~~guard dog~~ security canine handler, *personal protection specialist*, private investigator, alarm respondent, central station dispatcher, electronic security sales representative or electronic security technician, any person not possessing a valid registration.

C. It shall be a Class 1 misdemeanor for any compliance agent employed or otherwise utilized by a person licensed or required to be licensed under subsection A of § 9-183.3, to employ or otherwise utilize as an unarmed security officer, except as provided in this article, any individual for whom the compliance agent does not possess documentary evidence of compliance with, or exemption from, the compulsory minimum training standards established by the Board for unarmed security officers and documentary evidence that an investigation to determine suitability has been conducted.

D. Except as provided by this article, it shall be a Class 1 misdemeanor for any compliance agent employed or otherwise utilized by a person licensed or required to be licensed under subsection A of § 9-183.3 to employ or otherwise utilize as an electronic security technician's assistant any individual for whom the compliance agent does not possess documentary evidence of compliance with, or exemption from, the compulsory minimum training standards established by the Board for electronic security technician's assistants.

E. *It shall be a Class 1 misdemeanor for any person required to possess an instructor certification under subsection D of § 9-183.3 to provide mandated instruction, except as provided in § 9-182 and regulations of the Board, without possessing a valid private security instructor certification.*

F. *It shall be a Class 1 misdemeanor for any person certified or required to be certified as a private security services training school under subsection B of § 9-183.3 to employ or otherwise utilize, except as provided in § 9-182 and the regulations of the Board, as a private security instructor, any person not possessing a valid instructor certification.*

§ 9-183.11. Unlawful conduct; powers of Department; penalty.

A. It shall be unlawful for any person, partnership, corporation or other entity to engage in any of

the following acts:

1. Practicing any trade or profession licensed, *certified or registered* under this article without obtaining the necessary license, *certification* or registration required by statute or regulation;

2. Materially misrepresenting facts in an application for licensure, *certification* or registration;

3. Willfully refusing to furnish the Department information or records required or requested pursuant to statute or regulation; and

4. Violating any statute or regulation governing the practice of the private security services businesses *or training schools* regulated by this article.

Any person who willfully engages in any unlawful act enumerated in this section shall be guilty of a Class 1 misdemeanor. Any person convicted of a third or subsequent offense under this section during a thirty-six-month period shall be guilty of a Class 6 felony.

B. In addition to the provisions of subsection A of this section, the Department may institute proceedings in equity to enjoin any person, partnership, corporation or any other entity from engaging in any unlawful act enumerated in this section. Such proceedings shall be brought in the name of the Commonwealth by the Department in the circuit court of the city or county in which the unlawful act occurred or in which the defendant resides.

§ 9-183.12. Same; monetary penalty.

Any person licensed, *certified* or registered by the Board pursuant to this article who violates any statute or regulation pertaining to the Board who is not criminally prosecuted shall be subject to the monetary penalty provided in this section. If the Board determines that a respondent is guilty of the violation complained of, the Board shall determine the amount of the monetary penalty for the violation, which shall not exceed \$2,500 for each violation. The penalty may be sued for and recovered in the name of the Commonwealth. *Such monetary penalty shall be paid into the state treasury to the credit of the Literary Fund in accordance with § 19.2-353.*