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SENATE BILL NO. 98

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 9, 2022)

(Patron Prior to Substitute—Senator Hanger)

A *BILL to amend and reenact §§ 2.2-311, 19.2-74, 19.2-128, 28.2-901, 29.1-210, 54.1-306, 54.1-2506, and 54.1-4407 of the Code of Virginia, relating to promise to appear after the issuance of a summons.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-311, 19.2-74, 19.2-128, 28.2-901, 29.1-210, 54.1-306, 54.1-2506, and 54.1-4407 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-311. Enforcement of laws by the State Inspector General or investigators; police power of the Office of State Inspector General; training.

A. The State Inspector General may designate himself and no more than 30 members of the investigations unit of the Office to have the same powers as a sheriff or a law-enforcement officer in the investigation of allegations of criminal behavior affecting the operations of a state agency or nonstate agency pursuant to his duties as set forth in this chapter. Such employees shall be subject to any minimum training standards established by the Department of Criminal Justice Services under § 9.1-102 for law-enforcement officers prior to exercising any law-enforcement power under this subsection.

The State Inspector General and the Superintendent of the Virginia State Police shall enter into a Memorandum of Understanding setting forth the respective roles and responsibilities of their agencies, including but not limited to the categories of investigations that will be overseen by each agency and how to avoid redundancy or operation conflicts. The Memorandum of Understanding will be approved by the Governor's chief of staff and will be reviewed periodically at the request of either agency, but not less than every four years, and revised as agreed to by the agencies and endorsed by the Governor's chief of staff.

B. The State Inspector General or investigators as may be designated by him also shall have the authority to issue summonses for violations of the statutes that the State Inspector General is required to enforce. In the event *that* a person issued such a summons fails or refuses to discontinue the unlawful acts ~~or refuses to give a written promise to appear at the time and place specified in the summons~~, the investigator may appear before a magistrate or other issuing authority having jurisdiction to obtain a criminal warrant pursuant to § 19.2-72. *If any person refuses to give a written promise to appear for a summons issued under the provisions of this section, the State Inspector General or an investigator designated by him shall give such person notice of the time and place of the hearing, note such person's refusal to give his written promise to appear on the summons, and forthwith release him from custody.*

Any person who willfully violates his written promise to appear or fails to appear at the time and place specified in such summons or notice issued in accordance with this subsection shall be treated in accordance with the provisions of § 19.2-128, regardless of the disposition of, and in addition to, the charge upon which he was originally arrested.

C. All investigators appointed by the State Inspector General are vested with the authority to administer oaths or affirmations for the purpose of receiving complaints and conducting investigations of violations of the statutes and regulations that the State Inspector General is required to enforce. Such investigators are vested with the authority to obtain, serve, and execute any warrant, paper, or process issued by any court or magistrate or under the authority of the State Inspector General, and request and receive criminal history information under the provisions of § 19.2-389.

§ 19.2-74. Issuance and service of summons in place of warrant in misdemeanor case; issuance of summons by special conservators of the peace.

A. 1. Whenever any person is detained by or is in the custody of an arresting officer for any violation committed in such officer's presence which offense is a violation of any county, city or town ordinance or of any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title 46.2, or for offenses listed in subsection D of § 19.2-81, or an arrest on a warrant charging an offense for which a summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

Anything in this section to the contrary notwithstanding, if any person is believed by the arresting

60 officer to be likely to disregard a summons issued under the provisions of this subsection, or if any
61 person is reasonably believed by the arresting officer to be likely to cause harm to himself or to any
62 other person, a magistrate or other issuing authority having jurisdiction shall proceed according to the
63 provisions of § 19.2-82.

64 2. Whenever any person is detained by or is in the custody of an arresting officer for a violation of
65 any county, city, or town ordinance or of any provision of this Code, punishable as a Class 3 or Class 4
66 misdemeanor or any other misdemeanor for which he cannot receive a jail sentence, except as otherwise
67 provided in Title 46.2, or to the offense of public drunkenness as defined in § 18.2-388, the arresting
68 officer shall take the name and address of such person and issue a summons or otherwise notify him in
69 writing to appear at a time and place to be specified in such summons or notice. Upon the giving of
70 such person of his written promise to appear at such time and place, the officer shall forthwith release
71 him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the
72 officer may proceed according to the provisions of § 19.2-82.

73 3. Unless otherwise authorized by law, any person so summoned shall not be held in custody after
74 the issuance of such summons for the purpose of complying with the requirements of Chapter 23
75 (§ 19.2-387 et seq.). Reports to the Central Criminal Records Exchange concerning such persons shall be
76 made pursuant to subdivision A 2 of § 19.2-390 and subsection C of § 19.2-390.

77 ~~Any If any person refusing refuses to give such written promise to appear under the provisions of~~
78 ~~this section shall be taken immediately by the arresting or other police officer before a magistrate or~~
79 ~~other issuing authority having jurisdiction, who shall proceed according to provisions of § 19.2-82, the~~
80 ~~arresting officer shall give such person notice of the time and place of the hearing, note such person's~~
81 ~~refusal to give his written promise to appear on the summons, and forthwith release him from custody.~~

82 Any person who willfully violates his written promise to appear, ~~given or fails to appear at the time~~
83 ~~and place specified in such summons or notice issued in accordance with this section,~~ shall be treated in
84 accordance with the provisions of § 19.2-128, regardless of the disposition of, and in addition to, the
85 charge upon which he was originally arrested.

86 Any person charged with committing any violation of § 18.2-407 may be arrested and immediately
87 brought before a magistrate who shall proceed as provided in § 19.2-82.

88 B. Conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) may issue summonses
89 pursuant to this section, if such officers are in uniform or displaying a badge of office. On application,
90 the chief law-enforcement officer of the county or city shall supply each officer with a supply of
91 summons forms, for which such officer shall account pursuant to regulation of such chief
92 law-enforcement officer.

93 C. The summons used by a law-enforcement officer pursuant to this section shall be in form the
94 same as the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388. If
95 the summons is issued for an offense in violation of any county, city, or town ordinance that is similar
96 to any provision of this Code, the summons shall reference the offense using both the citation
97 corresponding to the county, city, or town ordinance and the specific provision of this Code.

98 **§ 19.2-128. Penalties for failure to appear.**

99 A. Whoever, having been released pursuant to this chapter or § 19.2-319 or on a summons pursuant
100 to § 2.2-311, 19.2-73, or § 19.2-74, willfully fails to appear before any court or judicial officer as
101 required, shall, after notice to all interested parties, incur a forfeiture of any security which may have
102 been given or pledged for his release, unless one of the parties can show good cause for excusing the
103 absence, or unless the court, in its sound discretion, shall determine that neither the interests of justice
104 nor the power of the court to conduct orderly proceedings will be served by such forfeiture.

105 B. Any person (i) charged with a felony offense or (ii) convicted of a felony offense and execution
106 of sentence is suspended pursuant to § 19.2-319 who willfully fails to appear before any court as
107 required shall be guilty of a Class 6 felony.

108 C. Any person (i) charged with a misdemeanor offense or (ii) convicted of a misdemeanor offense
109 and execution of sentence is suspended pursuant to § 19.2-319 who willfully fails to appear before any
110 court as required shall be guilty of a Class 1 misdemeanor.

111 **§ 28.2-901. Summons issued instead of being taken into custody; failure to appear.**

112 A. Whenever any person is detained by or is in the custody of an arresting officer for any violation
113 of the laws enforceable pursuant to § 28.2-900, the arresting officer shall take the name and address of
114 each person detained and issue a summons or otherwise notify him in writing to appear at a time and
115 court to be specified in the summons or notice. When the person gives his written promise to appear at
116 the designated time and place, the officer shall ~~immediately forthwith~~ release him from custody. *If any*
117 *person refuses to give such written promise to appear under the provisions of this section, the arresting*
118 *officer shall give such person notice of the time and place of the hearing, note such person's refusal to*
119 *give his written promise to appear on the summons, and forthwith release him from custody.*

120 B. If the arresting officer (i) believes a detained person is likely to disregard a summons issued under
121 the provisions of this section or (ii) reasonably believes a detained person is likely to harm himself or

another; or if the person refuses to give his written promise to appear, the officer may take the offender, vessel, and property into custody. The person shall be brought before the nearest or most accessible judicial officer or other person qualified to admit bail having jurisdiction.

C. The failure of any person to appear as required by a summons or notice issued under the provisions of this section shall suspend all licenses issued to the person pursuant to this subtitle until such time as he appears to answer the charges against him. Failure to appear shall bar the issuance of any further license to the person until he appears.

§ 29.1-210. Person arrested may be committed to jail, bailed, recognized or summoned.

Any person arrested for a violation of the game, inland fish and boating laws may be committed to jail pending trial or admitted to bail or released on recognizance as provided by general law; or the arresting officer may issue a summons requiring the person to appear for trial at a time and place specified therein before a court having jurisdiction to try such offenses if the person gives his written promise to appear at the specified time. Such time shall not, however, be less than five days from the date of arrest unless the person requests an earlier hearing.

Any person refusing to give the written promise to appear shall be taken immediately by the arresting or other police officer before the nearest or most accessible judicial officer. If any person refuses to give such written promise to appear under the provisions of this section, the arresting officer shall give such person notice of the time and place of the hearing, note such person's refusal to give his written promise to appear on the summons, and forthwith release him from custody.

Any person who willfully violates his written promise to appear; ~~given~~ or fails to appear at the time and place specified in such summons or notice issued in accordance with this section; ~~shall be~~ is guilty of a Class 2 misdemeanor.

§ 54.1-306. Enforcement of laws by Director or investigators; authority of investigators appointed by Director.

A. The Director or investigators appointed by him shall be sworn to enforce the statutes and regulations pertaining to the Department, the regulatory boards within Subtitle II (§ 54.1-200 et seq.) of this title, and any of the programs which may be in another title of this Code for which any regulatory board within Subtitle II has enforcement responsibility. The Director or investigators appointed by him shall have the authority to investigate violations of the statutes and regulations that the Director is required to enforce. The Director or investigators appointed by him shall also have the authority to issue summonses for violations of the statutes and regulations governing the unlicensed practice of professions regulated by the Department. In the event that a person issued such a summons fails or refuses to discontinue the unlawful acts or refuses to give a written promise to appear at the time and place specified in the summons, the investigator may appear before a magistrate or other issuing authority having jurisdiction to obtain a criminal warrant pursuant to § 19.2-72. In addition, sworn criminal investigators of the Department's Criminal Investigations section shall be statewide conservators of the peace while engaged in the performance of their official duties. If any person refuses to give a written promise to appear for a summons issued under the provisions of this section, the investigator shall give such person notice of the time and place of the hearing, note such person's refusal to give his written promise to appear on the summons, and forthwith release him from custody.

The failure of any person to appear as required by a summons or notice issued under the provisions of this section shall suspend all licenses issued to the person pursuant to this subtitle until such time as he appears to answer the charges against him. Failure to appear shall bar the issuance of any further license to the person until he appears.

B. All investigators appointed by the Director are vested with the authority to administer oaths or affirmations for the purpose of receiving complaints and conducting investigations of violations of this subtitle, or any regulation promulgated pursuant to authority given by this subtitle or in connection with any investigation conducted on behalf of any regulatory board within this subtitle or a program which may be located in another title in this Code. Such investigators are vested with the authority to obtain, serve and execute any warrant, paper or process issued by any court or magistrate or any regulatory board under the authority of the Director and request and receive criminal history information under the provisions of § 19.2-389.

C. Any regulatory board within the Department of Professional and Occupational Regulation may adopt a resolution delegating to the sworn investigators appointed by the Director pursuant to § 54.1-306, the authority to conduct inspections. After conducting an inspection pursuant to the delegation of inspection authority, an investigator may initiate an investigation based on any act, omission, or condition witnessed by the investigator and offer a consent agreement to the regulant to resolve any violation discovered during the inspection, subject to the provisions of subsection B of § 54.1-202. If a consent agreement is offered pursuant to the delegation of authority authorized by this subsection, it shall not become effective until approved by the Director.

§ 54.1-2506. Enforcement of laws by Director and investigative personnel; authority of

183 investigative personnel and Director.

184 A. The Director and investigative personnel appointed by him shall be sworn to enforce the statutes
185 and regulations pertaining to the Department, the Board, and the health regulatory boards and shall have
186 the authority to investigate any violations of those statutes and regulations and to the extent otherwise
187 authorized by law inspect any office or facility operated, owned or employing individuals regulated by
188 any health regulatory board. The Director or his designee shall have the power to subpoena witnesses
189 and to request and obtain patient records, business records, papers, and physical or other evidence in the
190 course of any investigation or to issue subpoenas requiring the production of such evidence. A subpoena
191 issued pursuant to this section may be served by (i) any person authorized to serve process under
192 § 8.01-293, (ii) investigative personnel appointed by the Director, (iii) registered or certified mail or by
193 equivalent commercial parcel delivery service, or (iv) email or facsimile if requested to do so by the
194 recipient. Upon failure of any person to comply with a subpoena duly served, the Director may,
195 pursuant to § 54.1-111, request that the Attorney General or the attorney for the Commonwealth for the
196 jurisdiction in which the recipient of the subpoena resides, is found, or transacts business seek
197 enforcement of the subpoena in such jurisdiction.

198 B. All investigative personnel shall be vested with the authority to (i) administer oaths or
199 affirmations for the purpose of receiving complaints of violations of this subtitle, (ii) serve and execute
200 any warrant, paper or process issued by any court or magistrate, the Board, the Director or in his
201 absence a designated subordinate, or by any regulatory board under the authority of the Director, (iii)
202 request and receive criminal history information under the provisions of § 19.2-389, and (iv) request and
203 receive social security numbers from practitioners or federal employee identification numbers from
204 facilities.

205 C. The Director shall have the authority to issue summonses for violations of statutes and regulations
206 governing the unlicensed practice of professions regulated by the Department. The Director may delegate
207 such authority to investigators appointed by him. In the event *that* a person issued such a summons fails
208 or refuses to discontinue the unlawful acts ~~or refuses to give a written promise to appear at the time and~~
209 ~~place specified in the summons~~, the investigator may appear before a magistrate or other issuing
210 authority having jurisdiction to obtain a criminal warrant pursuant to § 19.2-72. *If any person refuses to*
211 *give a written promise to appear for a summons issued under the provisions of this section, the*
212 *investigator shall give such person notice of the time and place of the hearing, note such person's*
213 *refusal to give his written promise to appear on the summons, and forthwith release him from custody.*

214 *The failure of any person to appear as required by a summons or notice issued under the provisions*
215 *of this section shall suspend all licenses issued to the person pursuant to this subtitle until such time as*
216 *he appears to answer the charges against him. Failure to appear shall bar the issuance of any further*
217 *license to the person until he appears.*

218 **§ 54.1-4407. Enforcement of laws by the Executive Director or investigators; authority of**
219 **investigators appointed by the Executive Director.**

220 A. The Executive Director or investigators appointed by him shall:

221 1. Be sworn to enforce the statutes and regulations pertaining to the Board;
222 2. Have the authority to investigate violations of the statutes and regulations that the Executive
223 Director is required to enforce;

224 3. Have the authority to issue summonses for violations of the provisions of this chapter or
225 regulations promulgated by the Board.

226 B. In the event *that* a person or entity that is issued a summons by the Executive Director or
227 investigators appointed by him fails or refuses to discontinue the unlawful acts ~~or refuses to give a~~
228 ~~written promise to appear at the time and place specified in the summons~~, the Executive Director or the
229 investigators may appear before a magistrate or other issuing authority having jurisdiction to obtain a
230 criminal warrant under § 19.2-72. *If any person refuses to give a written promise to appear for a*
231 *summons issued under the provisions of this section, the Executive Director or an investigator appointed*
232 *by him shall give such person notice of the time and place of the hearing, note such person's refusal to*
233 *give his written promise to appear on the summons, and forthwith release him from custody.*

234 *The failure of any person to appear as required by a summons or notice issued under the provisions*
235 *of this section shall suspend all licenses issued to the person pursuant to this subtitle until such time as*
236 *he appears to answer the charges against him. Failure to appear shall bar the issuance of any further*
237 *license to the person until he appears.*

238 C. The Executive Director and all investigators appointed by the Executive Director are vested with
239 the authority to administer oaths or affirmations (i) for the purpose of receiving complaints and
240 conducting investigations of violations of the provisions of this chapter or any regulations promulgated
241 by the Board or (ii) in connection with any investigation conducted on behalf of the Board. The
242 Executive Director and the investigators are vested with the authority to (a) obtain, serve, and execute
243 any warrant, paper, or process issued by any court or magistrate or by the Board under the authority of
244 the Executive Director and (b) request and receive criminal history information under the provisions of

245 § 19.2-389.