



COMMONWEALTH *of* VIRGINIA

Office of the Attorney General

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MEMORANDUM

TO: Leonard G. Cooke, Director
Department of Criminal Justice Services

FROM: James Towey
Assistant Attorney General

DATE: September 12, 2005

SUBJECT: Authority to adopt regulations pursuant to Code of Virginia § 9.1-102 and § 9.1-186.2 *et seq.* as emergency regulations under § 2.2-4011(A)(ii).

In response to a request from the Department of Criminal Justice Services (“Department”) regarding the adoption of regulations pursuant to Virginia Code § 9.1-102 and § 9.1-186.2, I am of the opinion that these regulations qualify as “emergency regulations” pursuant to Virginia Code § 2.2-4011(A)(ii), insofar as such regulations must be effective within 280 days of the enactment of the provisions that the regulations are required to implement.

Virginia Code § 9.1-102 has been amended to entrust the Department with the power and duty to license and regulate bail enforcement agents in accordance with a newly created Article 11 (§ 9.1-185 *et seq.*) within Chapter 1 of Title 9.1.¹ The new Article 11 grants the Department full regulatory authority and oversight of bail enforcement agents. Specifically, § 9.1-186.2 requires that the Department adopt regulations that are necessary to ensure respectable, responsible, safe and effective bail enforcement within the Commonwealth. Such regulations shall include, but not be limited to, regulations that (i) establish the qualifications of applicants for licensure and renewal, (ii) examine, or cause to be examined, the qualifications of each applicant, (iii) levy and collect fees for licensure and renewal, (iv) ensure competency and prevent deceptive or misleading practices, (v) administer the regulatory system, (vi) provide for receipt of complaints concerning the conduct of any person whose activities are regulated, (vii) provide for investigations and appropriate disciplinary action, (viii) establish standards for conduct, firearms training, uniforms and identification, reporting, and recovery and capture of bailees; (ix) allow for the suspension, revocation, or refusal to issue, reissue, or renew a license for just cause, and (x) establish an introductory training curriculum which includes search, seizure and arrest procedure, pursuit, arrest, detainment and transportation of a bailee, specific duties and

¹ 2004 Va. Acts c. 397.

responsibilities regarding entering an occupied structure, the laws and rules relating to the bail bond business, the rights of the accused, ethics and Virginia law and regulation. Pursuant to the express language of the Act, the Department “shall promulgate regulations to implement the provisions of this Act to be effective within 280 days of its enactment.”

Thus, upon review of the above-referenced provisions of the Virginia Code, in light of the Act’s above-referenced requirement that the regulations be effective within 280 days of its enactment, and in accordance with Executive Order 21 (2002), it appears that the Department has the authority to implement the proposed regulations as “emergency regulations” pursuant to § 2.2-4011(A)(ii).

Please note that this memorandum is intended to provide legal interpretations and legal advice, not policy advice. To the extent that this communication may advise you that certain action is lawful, the decision whether to take such action remains a policy decision within the discretion of your agency and this communication should not be construed as a comment for or against the merits of such action.