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SENATE BILL NO. 1412  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee for Courts of Justice  
on \_\_\_\_\_)  
(Patron Prior to Substitute—Senator McDougle)

*A BILL to amend and reenact §§ 8.01-301, 19.2-53, and 19.2-56 of the Code of Virginia, relating to domestic corporation or foreign corporation transacting business in Commonwealth; search warrants; service of process; electronic records.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 8.01-301, 19.2-53, and 19.2-56 of the Code of Virginia are amended and reenacted as follows:**

**§ 8.01-301. How process served on foreign stock or nonstock corporations and foreign limited liability companies generally.**

Subject to § 8.01-286.1, service of process on a foreign stock or nonstock corporation or a foreign limited liability company may be effected in the following manner:

1. By personal service on any officer or director or the registered agent of a foreign stock or nonstock corporation that is authorized to do business in the Commonwealth, by personal service on any agent of any such foreign corporation transacting business in the Commonwealth without such authorization, wherever any such officer, director, or agents be found within the Commonwealth, and by personal service on the registered agent of a foreign limited liability company that is registered to do business in the Commonwealth;

2. By substituted service on (i) a foreign stock or nonstock corporation in accordance with §§ 13.1-766 and 13.1-928, respectively, and on a foreign limited liability company in accordance with § 13.1-1018, if any such corporation or limited liability company is authorized or registered to transact business or affairs within the Commonwealth, and (ii) a foreign stock or nonstock corporation in accordance with subsection F of § 13.1-758 and subsection E of § 13.1-920, respectively, and on a foreign limited liability company in accordance with subsection E of § 13.1-1057, if any such corporation or limited liability company is not authorized or registered to transact business within the Commonwealth;

3. By substituted service on a foreign stock or nonstock corporation or foreign limited liability company in accordance with § 8.01-329, or by service in accordance with § 8.01-320, where jurisdiction is authorized under § 8.01-328.1, regardless of whether any such foreign corporation or foreign limited liability company is authorized or registered to transact business within the Commonwealth; or

31 4. By order of publication in accordance with §§ 8.01-316 and 8.01-317 where jurisdiction in rem or quasi  
32 in rem is authorized, regardless of whether the foreign stock or nonstock corporation or foreign limited  
33 liability company so served is authorized or registered to transact business within the Commonwealth.

34 This section does not prescribe the only means, or necessarily the required means, of serving a foreign  
35 stock or nonstock corporation or foreign limited liability company.

36 *For the purposes of responding to a subpoena served in the manner prescribed by this section, a foreign*  
37 *corporation transacting business in the Commonwealth that has a registered agent in the Commonwealth*  
38 *shall be deemed to have consented to service.*

39 **§ 19.2-53. What may be searched and seized.**

40 A. Search warrants may be issued for the search of or for specified places, things, or persons, and seizure  
41 therefrom of the following things as specified in the warrant:

42 1. Weapons or other objects used in the commission of crime;

43 2. Articles or things the sale or possession of which is unlawful;

44 3. Stolen property or the fruits of any crime;

45 4. Any object, thing, or person, including ~~without limitation,~~ (i) documents, (ii) books, (iii) papers, (iv)  
46 records, ~~or~~ (v) body fluids, or (vi) *electronic records stored within or outside the Commonwealth of a*  
47 *commercial enterprise, whether a domestic corporation or a foreign corporation, that is transacting or has*  
48 *transacted any business in the Commonwealth, constituting evidence of the commission of crime; or*

49 5. Any person to be arrested for whom a warrant or process for arrest has been issued.

50 Notwithstanding any other provision in this chapter to the contrary, no search warrant may be issued as a  
51 substitute for a witness subpoena.

52 B. Any search warrant issued for the search and seizure of a computer, computer network, or other device  
53 containing electronic or digital information shall be deemed to include the search and seizure of the physical  
54 components and the electronic or digital information contained in any such computer, computer network, or  
55 other device, except information for which a search warrant is prohibited by § 19.2-60.2.

56 C. Any search, including the search of the contents of any computer, computer network, or other device  
57 conducted pursuant to subsection B, may be conducted in any location and is not limited to the location  
58 where the evidence was seized.

59 **§ 19.2-56. To whom search warrant directed; what it shall command; warrant to show date and**

60 **time of issuance; copy of affidavit to be part of warrant and served therewith; warrants not executed**  
61 **within 15 days.**

62 A. The judge, magistrate, or other official authorized to issue criminal warrants shall issue a search  
63 warrant only if he finds from the facts or circumstances recited in the affidavit that there is probable cause for  
64 the issuance thereof. *If a search warrant is issued for electronic records of a foreign corporation, as*  
65 *described in § 19.2-53, such affidavit shall state that the complainant believes such records are actually or*  
66 *constructively possessed by such foreign corporation.*

67 Every search warrant shall be directed (i) to the sheriff, sergeant, or any policeman of the county, city, or  
68 town in which the place to be searched is located; (ii) to any law-enforcement officer or agent employed by  
69 the Commonwealth and vested with the powers of sheriffs and police; or (iii) jointly to any such sheriff,  
70 sergeant, policeman, or law-enforcement officer or agent and an agent, special agent, or officer of the Federal  
71 Bureau of Investigation, the Bureau of Alcohol, Tobacco, Firearms and Explosives of the U.S. Department of  
72 Justice, the United States Naval Criminal Investigative Service, the United States Army Criminal  
73 Investigation Division, the United States Air Force Office of Special Investigations, or the U.S. Department  
74 of Homeland Security or any inspector, law-enforcement official, or police personnel of the United States  
75 Postal Service or the U.S. Drug Enforcement Administration. The warrant shall (a) name the affiant, (b)  
76 recite the offense or the identity of the person to be arrested for whom a warrant or process for arrest has been  
77 issued in relation to which the search is to be made, (c) name or describe the place to be searched, (d)  
78 describe the property or person to be searched for, and (e) recite that the magistrate has found probable cause  
79 to believe that the property or person constitutes evidence of a crime (identified in the warrant) or tends to  
80 show that a person (named or described therein) has committed or is committing a crime or that the person to  
81 be arrested for whom a warrant or process for arrest has been issued is located at the place to be searched.

82 The warrant shall command that the place be forthwith searched and that the objects or persons described  
83 in the warrant, if found there, be seized. An inventory shall be produced before a court having jurisdiction of  
84 the offense or over the person to be arrested for whom a warrant or process for arrest has been issued in  
85 relation to which the warrant was issued as provided in § 19.2-57.

86 Any such warrant as provided in this section shall be executed by the policeman or other law-enforcement  
87 officer or agent into whose hands it shall come or be delivered. If the warrant is directed jointly to a sheriff,  
88 sergeant, policeman, or law-enforcement officer or agent of the Commonwealth and a federal agent or officer

89 as otherwise provided in this section, the warrant may be executed jointly or by the policeman, law-  
90 enforcement officer, or agent into whose hands it is delivered. No other person may be permitted to be  
91 present during or participate in the execution of a warrant to search a place except (1) the owners and  
92 occupants of the place to be searched when permitted to be present by the officer in charge of the conduct of  
93 the search and (2) persons designated by the officer in charge of the conduct of the search to assist or provide  
94 expertise in the conduct of the search.

95 Any search warrant for records or other information pertaining to a subscriber to, or customer of, an  
96 electronic communication service or remote computing service, whether a domestic corporation or foreign  
97 corporation, that is transacting or has transacted any business in the Commonwealth, to be executed upon  
98 such service provider may be executed within or outside the Commonwealth by hand, United States mail,  
99 commercial delivery service, facsimile, or other electronic means upon the service provider. Notwithstanding  
100 the provisions of § 19.2-57, the officer executing a warrant pursuant to this paragraph shall endorse the date  
101 of execution thereon and shall file the warrant, with the inventory attached (or a notation that no property was  
102 seized) and the accompanying affidavit, unless such affidavit was made by voice or videotape recording,  
103 within three days after the materials ordered to be produced are received by the officer from the service  
104 provider. The return shall be made in the circuit court clerk's office for the jurisdiction wherein the warrant  
105 was (A) executed, if executed within the Commonwealth, and a copy of the return shall also be delivered to  
106 the clerk of the circuit court of the county or city where the warrant was issued or (B) issued, if executed  
107 outside the Commonwealth. Saturdays, Sundays, or any federal or state legal holiday shall not be used in  
108 computing the three-day filing period.

109 Electronic communication service or remote computing service providers, whether a foreign or domestic  
110 corporation, shall also provide the contents of electronic communications pursuant to a search warrant issued  
111 under this section and § 19.2-70.3 using the same process described in the preceding paragraph.

112 *Any search warrant for electronic records or other information stored outside of the Commonwealth by a*  
113 *commercial enterprise, whether a domestic corporation or a foreign corporation, that is transacting or has*  
114 *transacted any business in the Commonwealth, to be executed upon such commercial enterprise may be*  
115 *executed within or outside the Commonwealth by hand, United States mail, commercial delivery service,*  
116 *facsimile, or other electronic means upon the commercial enterprise. Notwithstanding the provisions of §*  
117 *19.2-57, the officer executing a warrant pursuant to this paragraph shall endorse the date of execution*

118 *thereon and shall file the warrant, with the inventory attached (or a notation that no property was seized) and*  
119 *the accompanying affidavit, unless such affidavit was made by voice or videotape recording, within three*  
120 *days after the materials ordered to be produced are received by the officer from the commercial enterprise.*  
121 *The return shall be made in the circuit court clerk's office for the jurisdiction wherein the warrant was (I)*  
122 *executed, if executed within the Commonwealth, and a copy of the return shall also be delivered to the clerk*  
123 *of the circuit court of the county or city where the warrant was issued or (II) issued, if executed outside the*  
124 *Commonwealth. Saturdays, Sundays, or any federal or state legal holiday shall not be used in computing the*  
125 *three-day filing period.*

126 Notwithstanding the provisions of § 19.2-57, any search warrant for records or other information  
127 pertaining to a customer of a financial institution as defined in § 6.2-604, money transmitter as defined in §  
128 6.2-1900, commercial business providing credit history or credit reports, or issuer as defined in § 6.2-424  
129 may be executed within the Commonwealth by hand, United States mail, commercial delivery service,  
130 facsimile, or other electronic means upon the financial institution, money transmitter, commercial business  
131 providing credit history or credit reports, or issuer. The officer executing such warrant shall endorse the date  
132 of execution thereon and shall file the warrant, with the inventory attached (or a notation that no property was  
133 seized) and the accompanying affidavit, unless such affidavit was made by voice or videotape recording,  
134 within three days after the materials ordered to be produced are received by the officer from the financial  
135 institution, money transmitter, commercial business providing credit history or credit reports, or issuer. The  
136 return shall be made in the circuit court clerk's office for the jurisdiction wherein the warrant was executed.  
137 Saturdays, Sundays, or any federal or state legal holiday shall not be used in computing the three-day filing  
138 period. For the purposes of this section, the warrant will be considered executed in the jurisdiction where the  
139 entity on which the warrant is served is located.

140 Every search warrant shall contain the date and time it was issued. However, the failure of any such  
141 search warrant to contain the date and time it was issued shall not render the warrant void, provided that the  
142 date and time of issuing of said warrant is established by competent evidence.

143 The judge, magistrate, or other official authorized to issue criminal warrants shall attach a copy of the  
144 affidavit required by § 19.2-54, which shall become a part of the search warrant and served therewith.  
145 However, this provision shall not be applicable in any case in which the affidavit is made by means of a voice  
146 or videotape recording or where the affidavit has been sealed pursuant to § 19.2-54.

147 Any search warrant not executed within 15 days after issuance thereof shall be returned to, and voided by,  
148 the officer who issued such search warrant.

149 B. No law-enforcement officer shall seek, execute, or participate in the execution of a no-knock search  
150 warrant. A search warrant for any place of abode authorized under this section shall require that a law-  
151 enforcement officer be recognizable and identifiable as a uniformed law-enforcement officer and provide  
152 audible notice of his authority and purpose reasonably designed to be heard by the occupants of such place to  
153 be searched prior to the execution of such search warrant.

154 After entering and securing the place to be searched and prior to undertaking any search or seizure  
155 pursuant to the search warrant, the executing law-enforcement officer shall give a copy of the search warrant  
156 and affidavit to the person to be searched or the owner of the place to be searched or, if the owner is not  
157 present, to at least one adult occupant of the place to be searched. If the place to be searched is unoccupied by  
158 an adult, the executing law-enforcement officer shall leave a copy of the search warrant and affidavit in a  
159 conspicuous place within or affixed to the place to be searched.

160 Search warrants authorized under this section for the search of any place of abode shall be executed by  
161 initial entry of the abode only in the daytime hours between 8:00 a.m. and 5:00 p.m. unless (i) a judge or a  
162 magistrate, if a judge is not available, authorizes the execution of such search warrant at another time for  
163 good cause shown by particularized facts in an affidavit or (ii) prior to the issuance of the search warrant,  
164 law-enforcement officers lawfully entered and secured the place to be searched and remained at such place  
165 continuously.

166 A law-enforcement officer shall make reasonable efforts to locate a judge before seeking authorization to  
167 execute the warrant at another time, unless circumstances require the issuance of the warrant after 5:00 p.m.,  
168 pursuant to the provisions of this subsection, in which case the law-enforcement officer may seek such  
169 authorization from a magistrate without first making reasonable efforts to locate a judge. Such reasonable  
170 efforts shall be documented in an affidavit and submitted to a magistrate when seeking such authorization.

171 Any evidence obtained from a search warrant executed in violation of this subsection shall not be  
172 admitted into evidence for the Commonwealth in any prosecution.

173 C. For the purposes of this section:

174 "Foreign corporation" means any corporation or other entity, whose primary place of business is located  
175 outside of the boundaries of the Commonwealth, that makes a contract or engages in a terms of service

176 agreement with a resident of the Commonwealth to be performed in whole or in part by either party in the  
177 Commonwealth, or a corporation that has been issued a certificate of authority pursuant to § 13.1-759 to  
178 transact business in the Commonwealth. The making of the contract or terms of service agreement or the  
179 issuance of a certificate of authority shall be considered to be the agreement of the foreign corporation or  
180 entity that a search warrant or subpoena, which has been properly served on it, has the same legal force and  
181 effect as if served personally within the Commonwealth.

182 "Properly served" means delivery of a search warrant or subpoena by hand, by United States mail, by  
183 commercial delivery service, by facsimile or by any other manner to any officer of a corporation or its  
184 general manager in the Commonwealth, to any natural person designated by it as agent for the service of  
185 process, or if such corporation has designated a corporate agent, to any person named in the latest annual  
186 report filed pursuant to § 13.1-775.

187 **2. That the provisions of this act are intended to reverse the holding in *Yelp, Inc. v. Hadeed Carpet***  
188 ***Cleaning, Inc.*, 289 Va. 426 (2015).**