



GOV. MSG. NO. 700

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 7, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: Senate Bill No. 2165 SD1 HD2 CD1

On July 6, 2010, Senate Bill No. 2165, entitled "A Bill for an Act Relating to Private Guards" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to impose new registration, training, classroom instruction, education, and criminal history requirements for all guards and employees of guard agencies who act in a guard capacity. In so doing, this measure repeals the current regulatory exemption for guards who are employed solely by an employer in connection with the affairs of the employer. The new registration requirements take effect July 1, 2013, and are repealed on July 1, 2016.

Raising the professional standards for security guards in Hawaii is an admirable goal. However, I have concerns about some of the impacts of these new registration requirements on business and industry in Hawaii, as well as the amount of state resources it will take to implement these new requirements.

First, the costs associated with guard services for certain private employers will likely increase since this bill mandates that the guard employees of any private business entity that provides its own in-house guard services are now subject to regulation. Some members of the retail industry have indicated that these new requirements are manageable, and believe that rule-making by the Board of Private Detectives and Guards will afford them the opportunity to craft appropriate procedures to implement these new registration requirements. I support them in this effort.

The Honorable Colleen Hanabusa, President
and Members of the Senate

Page 2

Second, there are cost and staffing implications for the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs, an estimated 10,700 individual guards will require registration. Prior to implementation of the new registration requirements, the Division will need the staff and resources to meet these demands. Given current fiscal realities, this may not be the best use of limited resources. Moreover, this bill would require the establishment of procedures to register all guards, promulgation of rules to effectuate this measure, and the expenditure of moneys for implementation, only to have the law sunset on July 1, 2016.

Third, it may not be appropriate to apply these new registration and training requirements to armored car guards. Guards in the armored car industry have their own training standards, as the function of armored car guards is substantially different from the duties of other security guards. Consequently, the public and the industry would likely be better served with separate training requirements for armored car guards. I encourage stakeholders in the armored car industry to become involved in the rule-making process, so that their concerns might be addressed. Additionally, there is still time to address these and other concerns via statutory amendment prior to implementation of the new registration requirements in 2013.

For the foregoing reasons, I allowed Senate Bill No. 2165 to become law as Act 208, effective July 6, 2010, without my signature.

Sincerely,



LINDA LINGLE

A BILL FOR AN ACT

RELATING TO PRIVATE GUARDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 463, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§463- Guards; registration, instruction, training,
5 testing, and continuing education required; renewal of
6 registration. (a) Effective July 1, 2013, all guards, and all
7 agents, operatives, and assistants employed by a guard agency,
8 private business entity, or government agency who act in a guard
9 capacity shall apply to register with the board, and meet the
10 following registration, instruction, and training requirements
11 prior to acting as a guard:

- 12 (1) Be not less than eighteen years of age;
13 (2) Possess a high school education or its equivalent;
14 (3) Not be presently suffering from any psychiatric or
15 psychological disorder which is directly related and
16 detrimental to a person's performance in the
17 profession; and



1 (4) Not have been convicted in any jurisdiction of a crime
2 which reflects unfavorably on the fitness of the
3 individual to act as a guard, unless the conviction
4 has been annulled or expunged by court order; provided
5 that the individual shall submit to a national
6 criminal history record check as authorized by federal
7 law, including but not limited to the Private Security
8 Officer Employment Authorization Act of 2004, and
9 specified in the rules of the board.

10 The board shall determine whether an individual qualifies for
11 registration pursuant to this subsection.

12 (b) All classroom instruction required under this section
13 shall be provided by an instructor who is approved by the board
14 and who may be an employee, manager, or owner of a guard agency
15 in this State if the course of study meets board-approved
16 curricula. Course curricula shall meet the specific standards
17 of this section and all other applicable requirements of this
18 chapter, and shall be established by the board.

19 (c) Guards and individuals acting in a guard capacity
20 shall successfully complete the classroom instruction specified
21 by this section, pass a written test, and undergo four hours of
22 on-the-job training supervised by an individual who has



1 successfully completed all of the requirements of this section
2 or who has otherwise been approved by the board for on-the-job
3 training. Guards and individuals acting in a guard capacity
4 shall successfully complete:

5 (1) Eight hours of classroom instruction before the first
6 day of service; and

7 (2) Four hours of classroom instruction annually
8 thereafter.

9 (d) The content of classroom instruction required under
10 this section shall include, but not be limited to:

11 (1) State and federal law regarding the legal limitations
12 on the actions of guards, including instruction in the
13 law concerning arrest, search and seizure, and the use
14 of force as these issues relate to guard work;

15 (2) Access control, safety, fire detection and reporting,
16 and emergency response;

17 (3) Homeland security issues and procedures;

18 (4) When and how to notify public authorities;

19 (5) Techniques of observation and reporting of incidents,
20 including how to prepare an incident report;

21 (6) The fundamentals of patrolling;

22 (7) Professional ethics; and



1 (8) Professional image and aloha training.

2 (e) Before beginning employment as a guard or in a guard
3 capacity, in addition to the classroom instruction required by
4 this section, guards and individuals acting in a guard capacity
5 who carry a firearm or other weapon, including but not limited
6 to an electric gun as defined in section 134-1, while on-duty in
7 a guard capacity shall possess a valid permit to acquire the
8 ownership of a firearm issued by county police pursuant to
9 section 134-2 and shall satisfy the requirements of section
10 134-2(g).

11 (f) The board may adopt rules pursuant to chapter 91 that
12 mandate additional training, instruction, testing, and
13 continuing education for guards and agents, operatives, and
14 assistants employed in a guard capacity.

15 (g) Prior to the June 30, 2014 renewal of the guard
16 registration and every registration renewal thereafter, the
17 applicant shall pay all required fees, and have had at least
18 four hours of continuing education as specified in the rules of
19 the board.

20 The board may conduct a random audit, pursuant to rules
21 adopted pursuant to chapter 91, of registrants applying for



1 renewal of a registration to determine whether the continuing
2 education requirements of this subsection have been met.

3 The failure, neglect, or refusal of any registered guard to
4 pay the renewal fee or meet the continuing education
5 requirements shall constitute a forfeiture of the guard's
6 registration. A forfeited registration may be restored upon
7 written application within one year from the date of forfeiture,
8 payment of the required renewal fee plus penalty fees, and
9 meeting the continuing education requirements in effect at the
10 time of restoration."

11 SECTION 2. Section 463-1, Hawaii Revised Statutes, is
12 amended by amending the definition of "guard" to read as
13 follows:

14 "Guard" means a [licensed] registered uniformed or
15 nonuniformed person responsible for the safekeeping of a
16 client's properties and persons within contractually prescribed
17 boundaries, and for observation and reporting relative to such
18 safekeeping. "Guard" shall not include any active duty federal,
19 state, or county law enforcement officers or personnel."

20 SECTION 3. Section 463-8, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§463-8 [Guards] Principal guards and guard agencies;
2 qualifications for license. (a) The board may grant a
3 principal guard license to any suitable individual, or a guard
4 agency license to any suitable firm making written application
5 therefor. The applicant, if an individual, or the principal
6 guard of a firm shall:

- 7 (1) Be not less than eighteen years of age;
- 8 (2) Have had a high school education or its equivalent;
- 9 (3) Have had experience reasonably equivalent to at least
10 four years of full-time guard work;
- 11 (4) Not be presently suffering from any psychiatric or
12 psychological disorder which is directly related and
13 detrimental to a person's performance in the
14 profession;
- 15 (5) Not have been convicted in any jurisdiction of a crime
16 which reflects unfavorably on the fitness of the
17 applicant to engage in the profession, unless the
18 conviction has been annulled or expunged by court
19 order; and
- 20 (6) Possess a history of honesty, truthfulness, financial
21 integrity, and fair dealing.



1 A firm applying for a guard agency license shall have in its
2 employ an individual who is licensed and registered as a guard
3 pursuant to section 463- and who shall be designated as the
4 principal guard for the firm, and shall provide a bond as
5 required under section 463-12.

6 (b) A guard agency may employ as many agents, operatives,
7 and assistants in a guard capacity and as necessary for the
8 conduct of business; provided that the principal guard shall be
9 held responsible for, and have direct management and control of,
10 the agency and the agency's employees while they are acting
11 within the scope and purpose of the guard agency's business.
12 These employees shall [~~not be required to have guard licenses,~~
13 ~~and shall~~]:

14 (1) [~~Have had an eighth grade education or its~~
15 ~~equivalent;~~] Have had a high school education or its
16 equivalent;

17 (2) Not be presently suffering from any psychiatric or
18 psychological disorder which is directly related and
19 detrimental to a person's performance in the
20 profession;

21 (3) Not have been convicted in any jurisdiction of a crime
22 which reflects unfavorably on the fitness of the



1 employee to engage in the profession, unless the
2 conviction has been annulled or expunged by court
3 order; and

4 (4) Be registered with the board upon employment with the
5 agency.

6 The employer, with the written authorization of the employee,
7 shall conduct a criminal history records check, in accordance
8 with section 463- and the rules of the board adopted pursuant
9 thereto, of all new employees employed in a guard capacity
10 directly through the Hawaii criminal justice data center upon
11 certification to the board that the signature on the
12 authorization is authentic."

13 SECTION 4. Section 463-9, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§463-9 Form of application for license[-] or
16 registration. Application for a license or registration shall
17 be made on a form prescribed by the board which may require a
18 statement of the applicant's full name, age, date and place of
19 birth, residence and business address, the business or
20 occupation the applicant has engaged in for ten years
21 immediately preceding the date of the filing of the application
22 with names and addresses of employers, the date and place of any



1 arrest or conviction of a crime where there has not been any
2 order annulling or expunging the sentence or of any offense
3 involving moral turpitude, whether the applicant has received
4 treatment for any psychiatric or psychological disorder, or
5 whether the treatment has ever been recommended, and such
6 information, including fingerprints of the applicant and such
7 other information as the board may require to investigate the
8 character, competency, and integrity of the applicant. The
9 board shall conduct such investigation of the applicant's
10 background, character, competency, and integrity as it deems
11 appropriate, and shall request, in accordance with section
12 846-2.7, criminal history records of the applicant from each
13 jurisdiction in which the application form indicates the
14 applicant lived for any substantial period of time. The Hawaii
15 criminal justice data center shall provide such information on
16 request to the director of commerce and consumer affairs."

17 SECTION 5. Section 463-13, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§463-13 Exemptions. This chapter does not apply to any
20 person, firm, company, partnership, or corporation or any bureau
21 or agency whose business is exclusively the furnishing of
22 information as to the business and financial standing and credit



1 responsibility of persons, firms, or corporations, or as to
2 personal habits and financial responsibility, of applicants for
3 insurance, indemnity bonds, or commercial credit, [~~er a person~~
4 ~~employed exclusively and regularly by one employer in connection~~
5 ~~with the affairs of such employer only and where there exists an~~
6 ~~employer-employee relationship,~~] or an attorney at law in
7 performing the attorney's duties as such attorney at law."

8 SECTION 6. The board of private detectives and guards,
9 pursuant to the authority granted to it by section 463-3, Hawaii
10 Revised Statutes, and in accordance with chapter 91, Hawaii
11 Revised Statutes, shall adopt rules to effectuate the provisions
12 of this Act.

13 SECTION 7. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 8. This Act shall take effect upon its approval;
16 provided that this Act shall be repealed on July 1, 2016; and
17 provided further that sections 463-1, 463-8, 463-9, and 463-13,
18 Hawaii Revised Statutes, shall be reenacted in the form in which
19 they existed on the day before the effective date of this Act.

APPROVED this day of , 2010

GOVERNOR OF THE STATE OF HAWAII