

ACT 94

H.B. NO. 2421

A Bill for an Act Relating to the Licensing Requirements for Private Detectives and Guards.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 463-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read as follows:

“‘Firm’ means a sole proprietor, corporation, joint venture, limited liability partnership, limited liability corporation, partnership, association, or any other legal business entity.’”

2. By amending the definitions of “detective agency” or “private detective agency”, “guard agency”, “principal detective”, and “principal guard” to read as follows:

“‘Detective agency’ or ‘private detective agency’ means a licensed firm[~~-, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association~~] engaged in the private detective business.

“‘Guard agency’ means a licensed firm[~~-, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association~~] engaged in the guard business.

“‘Principal detective’ means a licensed detective designated as the detective agency’s primary licensee who is fully responsible for the direct management and control of the agency[~~-~~] and the agency’s employees.

“‘Principal guard’ means a licensed guard designated as the guard agency’s primary licensee who is fully responsible for the direct management and control of the agency[~~-~~] and the agency’s employees.’”

SECTION 2. Section 463-3, Hawaii Revised Statutes, is amended to read as follows:

“§463-3 Policy; powers and duties. It is the policy of this State to protect the general public from unlawful and unethical conduct and operation of the business of private [~~detective~~] detectives and guards. In addition to any other powers and duties authorized by law, the board [~~of detective and guards~~] may adopt, amend, or repeal rules, which shall have the force and effect of law, relating to qualifications for licensing of private detectives and guards, to the conduct and operation of the businesses of such license, and to the denial, renewal, reactivation, revocation, or suspension for cause of such licenses. The board shall consult with appropriate state and federal agencies and any appropriate industry or trade organization in establishing those rules. The rules so established shall be on the basis of what the board deems best suited to the public interest. The board also shall examine applicants for

private detective or guard licenses, grant licenses, and revoke or suspend licenses of licensees who violate this chapter.”

SECTION 3. Section 463-4, Hawaii Revised Statutes, is amended to read as follows:

“**§463-4 Procedure in appeal of denial of licensure, revocation, or suspension of licenses.** [(a)] Actions to revoke [or], suspend, or otherwise discipline licenses granted under this chapter or appeals of denials of licensure shall be subject to chapter 91 and shall be commenced by a notice of hearing.

[(b) The notice of hearing shall be served by certified mail to the licensee’s last known business address.

(e) The licensee shall be given sixty days from the date of mailing the notice in which to answer.]”

SECTION 4. Section 463-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) ~~No firm[, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association]~~ shall engage in the business of private detective, represent itself to be, hold itself out as, list itself[-] as, or advertise as a private detective agency [~~or bureau~~] or as furnishing detective or investigating services without first obtaining a license as a private detective agency from the board and paying the application and license fees. A detective agency shall have in its employ a principal detective who shall be a resident of the State.”

SECTION 5. Section 463-6, Hawaii Revised Statutes, is amended to read as follows:

“**§463-6 Private detectives and detective agencies; qualifications for license.** (a) The board may grant a private detective license to any suitable individual, or a detective agency license to any suitable firm~~[, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association]~~ making written application therefor. The applicant, if an individual, or the principal detective of a firm~~[, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association,]~~ shall:

- (1) Be not less than eighteen years of age;
- (2) Have had a high school education or its equivalent;
- (3) Have had experience reasonably equivalent to at least four years of full-time investigational work;
- (4) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person’s performance in the profession; ~~and]~~
- (5) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the applicant to engage in the profession, unless the conviction has been annulled or expunged by court order~~[-]; and~~
- (6) Possess a history of honesty, truthfulness, financial integrity, and fair dealing.

A firm applying for a detective agency license shall have in its employ an individual who is licensed as a private detective and who shall be designated as the principal detective for the firm, and shall provide a bond as required under section 463-12.

(b) A detective agency may employ as many agents, operatives, and assistants in an investigative capacity and as necessary for the conduct of business; provided that the principal detective shall be held responsible for ~~[the acts of these],~~

and have direct management and control of, the agency and the agency's employees while they are acting within the scope and purpose of the detective agency's business. [The principal detective shall be responsible for the direct management and control of those employees.] These employees shall not be required to have private detective licenses, and shall:

- (1) Have had an eighth grade education or its equivalent;
- (2) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person's performance in the profession;
- (3) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the employee to engage in the profession, unless the conviction has been annulled or expunged by court order; and
- (4) Be registered with the board upon employment with the agency.

The employer, with the written authorization of the employee, ~~[may]~~ shall conduct a criminal history records check of all new employees employed in an investigative capacity directly through the Hawaii criminal justice data center upon certification to the board that the signature on the authorization is authentic ~~[and that the employee is employed in an investigative capacity].~~

SECTION 6. Section 463-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No firm~~[-, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association]~~ shall engage in the business of guard for the purpose of protecting persons or property or to prevent theft or unlawful taking of goods, wares, merchandise, money, bonds, documents, or other articles of value for hire or reward or represent itself to be, hold itself out as, list itself~~[-,]~~ as, or advertise as a guard agency without first obtaining a license as a guard agency from the board and paying the application and license fees. A guard agency shall have in its employ a principal guard who shall be a resident of the State.”

SECTION 7. Section 463-8, Hawaii Revised Statutes, is amended to read as follows:

“**§463-8 Guards and guard agencies; qualifications for license.** (a) The board may grant a guard license to any suitable individual, or a guard agency license to any suitable firm~~[-, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association]~~ making written application therefor. The applicant, if an individual, or the principal guard of a firm~~[-, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association,]~~ shall:

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

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

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

- (1) Have had an eighth grade education or its equivalent;
- (2) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person's performance in the profession;
- (3) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the employee to engage in the profession, unless the conviction has been annulled or expunged by court order; and
- (4) Be registered with the board upon employment with the agency.

The employer, with the written authorization of the employee, ~~[may]~~ shall conduct a criminal history records check of all new employees employed in a guard capacity directly through the Hawaii criminal justice data center upon certification to the board that the signature on the authorization is authentic ~~[and that the employee is employed in a guard capacity]."~~

SECTION 8. Section 463-10, Hawaii Revised Statutes, is amended to read as follows:

"§463-10 Licenses [and]; fees; biennial renewal of licenses; [establishment of fees by rule.] inactive license. (a) The license shall state the name and address of the principal office or place of business of the licensee, the name under which the licensed business is to be conducted, and the name of the principal detective or principal guard, if the licensee is a detective agency or guard agency.

~~[The holder of a license issued by the board who continues in active practice shall biennially renew the license and pay the renewal fee not later than June 30 of each even-numbered year.~~

~~The holder of an expired license may have the license restored within one year of the date of expiration upon due application therefor and payment of the delinquent fees and a penalty fee.]~~

(b) The biennial renewal fee and compliance resolution fund fees, or the inactive license fee, shall be paid to the board on or before June 30 of each even-numbered year. These fees shall be as provided in rules adopted by the director pursuant to chapter 91. The failure, neglect, or refusal of any licensee to pay these fees and to submit all documents required by the board on or before June 30 of each even-numbered year shall result in the automatic forfeiture of the licensee's license.

(c) A forfeited license may be restored upon written application within one year of the date of expiration and upon submittal of all required documents, fees, delinquent fees, and a penalty fee.

(d) Upon written request by a licensee, the board may place that licensee's active license on an inactive status. The licensee, upon payment of the inactive license fee, may continue on inactive status for the biennial period. A licensee may renew an inactive license upon notification to the board. The failure, neglect, or refusal of any licensee on inactive status to pay the inactive license fee shall result in

the automatic forfeiture of the licensee's license. While on inactive status, a licensee shall not be engaged in the practice of a private detective, guard, or agency. Any person who violates this prohibition shall be subject to discipline under this chapter and the board's rules. The license may be reactivated at any time by filing an application for reactivation with the board and:

- (1) Fulfilling all requirements established by the board, including the payment of the appropriate fees the licensee would have paid had the licensee continued to maintain the license on an active status; and
- (2) Providing any information regarding any arrest or conviction of any crime that reflects unfavorably on the fitness of the licensee to engage in the profession, and information that the licensee, while on inactive status, has suffered a psychiatric or psychological disorder that is directly related and detrimental to the licensee's performance in the profession.

The board may deny an application for reactivation as provided in its rules.

(e) For the purposes of this chapter, the dishonoring of any check upon first deposit shall constitute a failure to meet the fee requirements.”

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved May 28, 2004.)