

## ACT 208

S.B. NO. 2165

A Bill for an Act Relating to Private Guards.

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

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

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

- (1) Be not less than eighteen years of age;
- (2) Possess a high school education or its equivalent;
- (3) 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
- (4) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the individual to act as a guard, unless the conviction has been annulled or expunged by court order; provided that the individual shall submit to a national criminal history record check as authorized by federal law, including but not limited to the Private Security Officer Employment Authorization Act of 2004, and specified in the rules of the board.

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

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

(c) Guards and individuals acting in a guard capacity shall successfully complete the classroom instruction specified by this section, pass a written test, and undergo four hours of on-the-job training supervised by an individual who has successfully completed all of the requirements of this section or who has otherwise been approved by the board for on-the-job training. Guards and individuals acting in a guard capacity shall successfully complete:

- (1) Eight hours of classroom instruction before the first day of service; and
- (2) Four hours of classroom instruction annually thereafter.

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

- (1) State and federal law regarding the legal limitations on the actions of guards, including instruction in the law concerning arrest, search and seizure, and the use of force as these issues relate to guard work;
- (2) Access control, safety, fire detection and reporting, and emergency response;
- (3) Homeland security issues and procedures;
- (4) When and how to notify public authorities;
- (5) Techniques of observation and reporting of incidents, including how to prepare an incident report;
- (6) The fundamentals of patrolling;
- (7) Professional ethics; and
- (8) Professional image and aloha training.

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

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

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

The board may conduct a random audit, pursuant to rules adopted pursuant to chapter 91, of registrants applying for renewal of a registration to determine whether the continuing education requirements of this subsection have been met.

The failure, neglect, or refusal of any registered guard to pay the renewal fee or meet the continuing education requirements shall constitute a forfeiture of the guard's registration. A forfeited registration may be restored upon written application within one year from the date of forfeiture, payment of the required

renewal fee plus penalty fees, and meeting the continuing education requirements in effect at the time of restoration.”

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

““Guard” means a [~~licensed~~] registered uniformed or nonuniformed person responsible for the safekeeping of a client’s properties and persons within contractually prescribed boundaries, and for observation and reporting relative to such safekeeping. “Guard” shall not include any active duty federal, state, or county law enforcement officers or personnel.”

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

**“§463-8 [Guards] Principal guards and guard agencies; qualifications for license.** (a) The board may grant a principal guard license to any suitable individual, or a guard agency license to any suitable firm making written application therefor. The applicant, if an individual, or the principal guard of a firm 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;
- (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 and registered as a guard pursuant to section 463- 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, 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. These employees shall ~~[not be required to have guard licenses, and shall]:~~

- (1) ~~[Have had an eighth grade education or its equivalent;]~~ Have had a high school 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, shall conduct a criminal history records check, in accordance with section 463- and the rules of the board adopted pursuant thereto, 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.”

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

“**§463-9 Form of application for license~~]~~ or registration.** Application for a license or registration shall be made on a form prescribed by the board which may require a statement of the applicant’s full name, age, date and place of birth, residence and business address, the business or occupation the applicant has engaged in for ten years immediately preceding the date of the filing of the application with names and addresses of employers, the date and place of any arrest or conviction of a crime where there has not been any order annulling or expunging the sentence or of any offense involving moral turpitude, whether the applicant has received treatment for any psychiatric or psychological disorder, or whether the treatment has ever been recommended, and such information, including fingerprints of the applicant and such other information as the board may require to investigate the character, competency, and integrity of the applicant. The board shall conduct such investigation of the applicant’s background, character, competency, and integrity as it deems appropriate, and shall request, in accordance with section 846-2.7, criminal history records of the applicant from each jurisdiction in which the application form indicates the applicant lived for any substantial period of time. The Hawaii criminal justice data center shall provide such information on request to the director of commerce and consumer affairs.”

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

“**§463-13 Exemptions.** This chapter does not apply to any person, firm, company, partnership, or corporation or any bureau or agency whose business is exclusively the furnishing of information as to the business and financial standing and credit responsibility of persons, firms, or corporations, or as to personal habits and financial responsibility, of applicants for insurance, indemnity bonds, or commercial credit, ~~[or a person employed exclusively and regularly by one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship,]~~ or an attorney at law in performing the attorney’s duties as such attorney at law.”

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

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

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

(Became law on July 6, 2010, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Edited pursuant to HRS §23G-16.5.