

H.B. NO. 2332

A BILL FOR AN ACT

RELATING TO PRINCIPAL PRIVATE DETECTIVES AND GUARDS.

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

1 SECTION 1. Section 463-5, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) No firm shall engage in the business of private
4 detective, represent itself to be, hold itself out as, list
5 itself as, or advertise as a private detective agency or as
6 furnishing detective or investigating services without first
7 obtaining a license as a private detective agency from the board
8 and paying the application and license fees. A detective agency
9 shall have in its employ [a] at least one principal detective
10 who shall be [~~a resident of the State.~~] fully responsible for
11 the direct management and control of the detective agency and
12 the agency's employees when detective services are being
13 provided."

14 SECTION 2. Section 463-7, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) No firm shall engage in the business of guard for the
17 purpose of protecting persons or property or to prevent theft or
18 unlawful taking of goods, wares, merchandise, money, bonds,

H .B. NO. 2332

1 documents, or other articles of value for hire or reward or
2 represent itself to be, hold itself out as, list itself as, or
3 advertise as a guard agency without first obtaining a license as
4 a guard agency from the board and paying the application and
5 license fees. A guard agency shall have in its employ [a] at
6 least one principal guard who shall be [a resident of the
7 State.] fully responsible for the direct management and control
8 of the guard agency and the agency's employees when guard
9 services are being provided."

10 SECTION 3. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

Calvin K. Ay

BY REQUEST

JAN 23 2006

HB2392

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO PRINCIPAL PRIVATE DETECTIVES AND GUARDS.

PURPOSE: The purposes of this bill are to: (1) repeal the requirement that principal detectives and principal guards must be residents of the State to qualify for licensure because the Department of the Attorney General has determined that it is unconstitutional to require residency as a condition of licensure; (2) codify the Board of Private Detectives and Guard's (Board) policy of allowing out-of-state principal detectives and principal guards to be licensed, provided they are fully responsible for the direct management and control of the agency and the agency's employees when detective services are being provided in the State; and (3) codify the Board's policy of allowing an agency to employ more than one principal detective or principal guard, as the case may be.

MEANS: Amend sections 463-5 and 463-7, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Several out-of-state applicants questioned the residency requirement in sections 463-5 and 463-7, HRS, which precluded them from obtaining a license since they were not Hawaii residents. The Board reviewed the language of these sections and asked the Department of the Attorney General whether the residency requirement was constitutional.

The Board was informed that the Department of the Attorney General orally advised that it is unconstitutional to require residency as a condition of licensure. This bill deletes the unconstitutional residency requirement. Thereafter, the Board

interpreted the language of sections 463-5 and 463-7, HRS, to mean that the principal detective or principal guard shall be fully responsible for the direct management and control of the agency and the agency's employees when detective or guard services are being provided in the State to ensure consumer safety. This bill codifies the Board's practice to allow a principal who is a resident of another state or jurisdiction to qualify for licensure, provided the principal is fully responsible for the direct management and control of the agency and the agency's employees when detective or guard services are being provided in the State.

This bill also codifies the Board's practice to allow an agency to employ more than one principal to aid in the direct management and control of the agency's employees. As an agency's business increases, so does its staffing requirements and perhaps business localities. The ability to employ more than one principal provides a business friendly option.

The Board also believes that allowing an out-of-state applicant who is not a resident of Hawaii to qualify for licensure, or allowing an agency to hire more than one principal, in no way jeopardizes consumer safety and does not decrease the licensing requirements or the Board's ability to investigate the out-of-state applicant's or any additional principal applicant's background, character, competency, and integrity.

Impact on the public: Consumer protection will not be adversely affected and no impact on the public is anticipated.

Impact on the department and other agencies: None.

HB2332

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-105 - Professional and Vocational Personal Services.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.