

JAN 22 2008

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# A BILL FOR AN ACT

RELATING TO 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 six new sections to be appropriately  
3 designated and to read as follows:  
4           "§463-A Investigation of applicants. (a) Applications  
5 for licenses as a guard, agent, operative, or assistant in a  
6 guard capacity required under this chapter shall be filed with  
7 the board on a form provided by the board. The board may  
8 require any information and documentation that reasonably  
9 relates to the need to determine whether the applicant meets the  
10 criteria.  
11           (b) After receipt of an application for a license, the  
12 board shall conduct an investigation to determine whether the  
13 facts set forth in the application are true and shall request  
14 that the attorney general conduct a background check on the  
15 applicant.



1        (c) The board shall solicit comments from the chiefs of  
2 police of the counties in which the applicant's employer is  
3 located on issuance of a guard license.

4        **§463-B Drug testing requirements for prospective guards;**  
5 **suitability for employment.** All applicants for a license as a  
6 guard, agent, operative, or assistant in a guard capacity shall  
7 demonstrate their suitability for employment by:

8        (1) Passing a pre-employment controlled substance drug  
9 test sponsored by the board; and

10       (2) Attesting that during the three-year period  
11 immediately preceding the date of application for  
12 employment, the person was not convicted of any  
13 controlled substance-related offense.

14 If an applicant fails to meet these suitability requirements,  
15 the applicant shall be disqualified from further consideration  
16 for licensure under this chapter.

17       **§463-C Training requirements for guards.** (a) All guards,  
18 agents, operatives, and assistants in a guard capacity shall  
19 complete at least eight hours of preassignment training,  
20 comprised of at least four hours of classroom instruction and an  
21 additional four hours of classroom instruction or individual  
22 instruction, or both. The preassignment training may be waived



1 for any individual who was most recently employed full time as a  
2 sworn police officer not more than five years prior to applying  
3 to become licensed as a guard, agent, operative, or assistant in  
4 a guard capacity, and who passes the examination typically  
5 administered to applicants at the conclusion of the  
6 preassignment training.

7 (b) All guards, agents, operatives, and assistants in a  
8 guard capacity shall complete at least eight hours of initial  
9 postassignment training. The initial postassignment training  
10 shall be in the topic areas established by the board and may be  
11 classroom instruction or individual instruction, or both.

12 (c) Following completion of the preassignment and  
13 postassignment training, at least four total hours of annual  
14 refresher training shall be administered to guards, agents,  
15 operatives, and assistants in a guard capacity each subsequent  
16 year. No more than one hour per year of annual refresher  
17 training may focus directly on customer service-related skills  
18 or topics and the remaining three hours per year of annual  
19 refresher training must focus on emergency response concepts,  
20 skills, or topics including but not limited to knowledge of site  
21 post orders or life safety.



1        (d) Firms shall maintain records regarding the training  
2 hours completed by each employee. All such records shall be  
3 subject to inspection by the department. The training  
4 requirements and test results shall be recorded and attested to  
5 by a department-certified trainer. Training records shall  
6 contain a description of the topics covered, the name and  
7 signature of the trainer, and the name and signature of the  
8 guard, agent, operative, or assistant in a guard capacity.

9        **§463-D Unprofessional conduct.** The following conduct,  
10 acts, or conditions shall constitute unprofessional conduct for  
11 all guards, agents, operatives, and assistants in a guard  
12 capacity:

- 13        (1) Knowingly violating any of the provisions of this  
14 chapter or the rules adopted under this chapter;  
15        (2) Practicing fraud, deceit, or misrepresentation in any  
16 of the security activities covered by this chapter;  
17        (3) Knowingly making a material misstatement or omission  
18 in the application for a firearms certificate;  
19        (4) Not meeting the qualifications set forth in this  
20 chapter;  
21        (5) Failing to return immediately on demand a firearm  
22 issued by an employer;



1       (6) Carrying a firearm in the performance of duties if not  
2       the holder of a valid license, or carrying a firearm  
3       not meeting the provisions of this chapter while in  
4       the performance of duties;

5       (7) Failing to return immediately on demand any uniform,  
6       badge, or other item of equipment issued by an  
7       employer;

8       (8) Making any statement that would reasonably cause  
9       another person to believe that the person is a sworn  
10       police officer;

11       (9) Testing positive for any controlled substance other  
12       than one prescribed for use by the license holder or  
13       applicant by a physician licensed to practice under  
14       chapter 453 or 460;

15       (10) Divulging confidential information that may compromise  
16       the security of any premises, or valuables shipment,  
17       or any activity of a client to which the person was  
18       assigned; or

19       (11) Assigning or transferring any license issued pursuant  
20       to this chapter.

21       **§463-E Unprofessional conduct or inability to practice;**

22       **penalties.** Upon a finding that a license holder or applicant



1 has committed unprofessional conduct or is unable to practice  
2 with reasonable skill and safety due to a physical or mental  
3 condition, the board may issue an order providing for one or any  
4 combination of the following:

- 5 (1) Revocation of the license;
- 6 (2) Suspension of the license for a fixed or indefinite  
7 term;
- 8 (3) Restriction or limitation of the practice;
- 9 (4) Requiring the satisfactory completion of a specific  
10 program of remedial education or treatment;
- 11 (5) Monitoring of the practice by a supervisor approved by  
12 the director;
- 13 (6) Censure or reprimand;
- 14 (7) Compliance with conditions of probation for a  
15 designated period of time;
- 16 (8) Withholding a license request;
- 17 (9) Other corrective action;
- 18 (10) Refund of fees billed to and collected from the  
19 consumer; or
- 20 (11) The assessment of administrative penalties.

21 Any of the actions under this section may be totally or  
22 partly stayed by the board. All costs associated with



1 compliance with orders issued under this section are the  
2 obligation of the license holder or applicant.

3 §463-F Random drug testing. All guards, agents,  
4 operatives, and assistants in a guard capacity shall be subject  
5 to drug testing whether for probable cause, on a random basis,  
6 or both."

7 SECTION 2. Section 463-8, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 **"§463-8 Guards and guard agencies; qualifications for**  
10 **license.** (a) The board may grant a guard license to any  
11 suitable individual, or a guard agency license to any suitable  
12 firm making written application therefor. The applicant, if an  
13 individual, or the principal guard of a firm shall:

- 14 (1) Be not less than eighteen years of age;
- 15 (2) Have had a high school education or its equivalent;
- 16 (3) Have had experience reasonably equivalent to at least  
17 four years of full-time guard work;
- 18 (4) Not be presently suffering from any psychiatric or  
19 psychological disorder which is directly related and  
20 detrimental to a person's performance in the  
21 profession[+], including the use of a controlled



1           substance not prescribed by a physician licensed under  
2           chapter 453 or 460;

3           (5) Not have been convicted in any jurisdiction of a crime  
4           which reflects unfavorably on the fitness of the  
5           applicant to engage in the profession, unless the  
6           conviction has been annulled or expunged by court  
7           order; and

8           (6) Possess a history of honesty, truthfulness, financial  
9           integrity, and fair dealing.

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

14               (b) A guard agency may employ as many agents, operatives,  
15          and assistants in a guard capacity and as necessary for the  
16          conduct of business; provided that the principal guard shall be  
17          held responsible for, and have direct management and control of,  
18          the agency and the agency's employees while they are acting  
19          within the scope and purpose of the guard agency's business.

20          These employees shall [~~not~~] be required to have guard licenses,  
21          and shall:

22               (1) Have had an eighth grade education or its equivalent;





1 (2) Not be presently suffering from any psychiatric or  
2 psychological disorder which is directly related and  
3 detrimental to a person's performance in the  
4 profession[+], including the use of a controlled  
5 substance not prescribed by a physician licensed under  
6 chapter 453 or 460;

7 (3) Not have been convicted in any jurisdiction of a crime  
8 which reflects unfavorably on the fitness of the  
9 employee to engage in the profession, unless the  
10 conviction has been annulled or expunged by court  
11 order; and

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

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

19 SECTION 3. There is appropriated out of the general  
20 revenues of the State of Hawaii the sum of \$ or so  
21 much thereof as may be necessary for fiscal year 2008-2009 for  
22 the purposes of this Act.



# S.B. NO. 2899

1           The sum appropriated shall be expended by the department of  
2 commerce and consume affairs for the purposes of this Act.

3           SECTION 4. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5           SECTION 5. This Act shall take effect on January 1, 2009.

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INTRODUCED BY:           Roy Acorn (BR)          



**Report Title:**

Guards; Licensing

**Description:**

Establishes training requirements for guards. Disqualifies persons with criminal records or persons who use controlled substances. Bans unprofessional conduct. Requires criminal history background checks of applicants for licensure. Requires drug testing of applicants for licensure and license holders.

