

CHAPTER 463
PRIVATE DETECTIVES AND GUARDS

SECTION

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§463-1 Definitions. As used in this chapter:

"Board" means the board of private detectives and guards described in section 463-2.

"Detective", "private detective", or "investigator" means a licensed person qualified to obtain information and evidence not readily or publicly accessible.

"Detective agency" or "private detective agency" means a licensed firm engaged in the private detective business.

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

"Guard"*[Repeal and reenactment on July 1, 2016. L 2010, c 208, §8.]* means a 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.

"Guard agency" means a licensed firm 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.

§463-2 Board of private detectives and guards; appointment; qualifications; term. Appointment and removal. There shall be a board of detectives and guards consisting of seven members, six of whom shall be nominated, and by and with the advice and consent of the senate, appointed by the governor. The terms of the members shall be for four years. Each term shall commence on July 1 and expire on June 30. No person shall be appointed consecutively to more than two terms, provided that membership shall not exceed eight consecutive years. The director of commerce and consumer affairs shall be an ex officio nonvoting seventh member of the board and may designate a representative to sit in the director's stead.

Of the six appointed members, two shall be chiefs of police of any of the four counties, two shall be private citizens not engaged in any of the licensed practices, and two shall be persons actively engaged in any of the licensed practices; provided that one person shall be a licensed private detective and one person shall be a licensed guard.

§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 detectives and guards. In addition to any other powers and duties authorized by law, the board 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.

§463-4 Procedure in appeal of denial of licensure, revocation, or suspension of licenses. Actions to revoke, 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.

§463-5 Private detectives and detective agencies; license required. (a) No individual shall engage in the business of private detective, represent oneself to be, hold oneself out as, list oneself, or advertise as a private detective or as furnishing detective or investigating services without first obtaining a license as a private detective from the board and paying the application and license fees.

(b) No firm 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 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 at least one principal detective who shall be fully responsible for the direct management and control of the detective agency and the agency's employees when detective services are being provided.

§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 making written application therefor. The applicant, if an individual, or the principal detective 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 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;
- (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, 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. 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, 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.

§463-7 Guard and guard agencies; license required. (a) No individual 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 oneself to be, or hold oneself out as such without first obtaining a license as guard from the board and paying the application and license fees.

(b) No firm 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 at least one principal guard who shall be fully responsible for the direct management and control of the guard agency and the agency's employees when guard services are being provided.

§463-8 Principal guards and guard agencies; qualifications for license. *[Repeal and reenactment on July 1, 2016. L 2010, c 208, §8.]* (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:

- (1) 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.

§463-8.5 Guards; concurrent employment. No person shall engage in the business of guard when the guard work is concurrent with other duties performed under the agreement of employment or when the guard work is not the principal fact of the employment without first obtaining a license as a guard.

§463-9 Form of application for license or registration. *[Repeal and reenactment on July 1, 2016. L 2010, c 208, §8]* 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.

§463-10 Licenses; fees; biennial renewal of licenses; 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.

(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.

§463-10.5 Guards; registration, instruction, training, testing, and continuing education required; renewal of registration. *[Section repealed on July 1, 2016. L 2010, c 208, §8]* (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.

§463-11 Association with government not to be implied. No licensee shall use any designation or trade name which implies any association with any municipal, county, state, or territorial government or the federal government, or any agency thereof; nor shall a licensee or employee of any licensee wear any badge or uniform capable of being associated with the badge or uniform of any government law enforcement organization.

§463-12 Bond. Each licensee shall give to the board a bond in the sum of not less than \$5,000 executed by the applicant as principal and by a surety company authorized to do business in the State as surety. The bond shall be in such form as the board may prescribe, conditioned upon the honest conduct of the business of the licensee, and the right of any person injured by the wilful, malicious, or wrongful act of the licensee to bring in the person's own name an action on the bond.

§463-13 Exemptions. *[Repeal and reenactment on July 1, 2016. L 2010, c 208, §8.]* 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 an attorney at law in performing the attorney's duties as such attorney at law.

§463-14 Contingent fee. Compensation for services of detectives or guards shall not be based upon promissory notes or property other than that allegedly stolen which have been obtained from suspects or others in their behalf as restitution.

§463-15 Penalties. Any employee or former employee of a licensee who divulges any information gained by the employee or former employee in the course of such employment except as the employee's or former employee's employer directs or as required by law, or who wilfully makes a false report to the employee's or former employee's employer, shall be fined not more than \$100 or imprisoned not more than six months, or both. Any person who violates any other provision of this chapter or any rule or regulation adopted by the board of detectives and guards under this chapter shall be fined not more than \$500 or imprisoned not more than one year, or both.

§463-16 REPEALED.

§463-17 Provisions severable. If any provision of this chapter or the application thereof to any person or circumstance should be held invalid by any court, the invalidity shall not affect the other provisions or applications of the section which can be given effect without the invalid provisions or applications, and to this end the provisions of this section are severable.