

OCCUPATIONAL LICENSING: SECURITY GUARDS AND SECURITY ALARM INSTALLERS

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House Bill 4253 (H-1, as adopted by committee)
Sponsor: Rep. Robert Wittenberg

Analysis available at
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House Bill 4254 (H-1, as adopted)
Sponsor: Rep. Martin Howrylak

Senate Bill 161 & 162 (H-1, as adopted)
Sponsor: Sen. Darwin L. Booher

House Bill 4255 (H-1, as adopted)
Sponsor: Rep. Brett Roberts

Senate Bill 164 (H-1, as adopted)
Sponsor: Sen. Bert Johnson

House Committee: Regulatory Reform
Senate Committee: Regulatory Reform
Complete to 12-18-15

REVISED SUMMARY:

Taken together, the bills would create a new licensure process for security guards by amending several existing acts that presently contain licensing requirements for security guards and other private security-related professions, and establish new fees.

The bills in this package are tie-barred together, meaning that all must be enacted for any to go into effect. Each of the bills would go into effect 90 days after the date it is enacted. (NOTE: Senate Bill 163, which was originally included in a tie-bar with the Senate Bills summarized here, is identical to Senate Bill 4255 as introduced.)

Senate Bill 161

SB 161 contains amendments to the Occupational Code; it would regulate security guards and create requirements for licensure. The bill creates a new Article 14A.

Definitions

The bill would add the following key definitions:

Disqualifying misdemeanor would mean a misdemeanor that involves any of the following:

- Dishonesty or fraud.
- Unauthorized divulging or selling of information or evidence.
- Impersonation of a law enforcement officer or employee of the United States, this state, or a political subdivision of this state.
- Illegally using, carrying, or possessing a dangerous weapon.
- Two or more alcohol-related offenses.
- A controlled substance under the Public Health Code
- An assault.
- Criminal sexual conduct.

Patrol Service would mean roving on foot, or in a vehicle, to provide security for property by observation, direct or indirect intervention, or both.

Security guard would mean an individual who provides protection for property on the premises of another as an agent or employee of a security guard agency. The term includes an individual engaged in patrol service.

Security guard agency would mean a person that is engaged in the business of arranging for or providing security guards or patrol service, other than individuals engaged in practices regulated by the Security Alarm Systems Act, the Private Security Business and Security Alarm Act, or who are licensed as professional investigators.

Applicability of Article 14a

The licensure of security guards and security guard agencies provided for by the bill would not apply to any of the following:

- A security alarm systems provider that has filed a registration statement under the Security Alarm Systems Act.
- A private college security force or private security police force that is subject to the Private Security Business and Security Alarm Act.
- A person that is licensed as a professional investigator under the Professional Investigator Licensure Act.

If a license to conduct business as a security guard or security guard agency is issued to a person, that licensee would not be required to obtain any other license to conduct business as a security guard or security guard agency from a municipality or political subdivision of this state.

Requisites for licensure

An application for a license as a security guard agency under this article must contain at least all of the following:

- The applicant's name and the address of the principal place of business.
- If the applicant is not the security guard agency, the security guard agency's name and the address of the security guard agency's principal place of business.
- The address of each location in this state, including any branch offices, at which the security guard agency conducts or will conduct business.
- If applicable, the name of the individual designated by the applicant or licensee as the principal license holder of the security guard agency.

LARA would be required to issue a security guard agency license if it is satisfied the applicant, regardless of whether the applicant is an individual or principle license holder, meets all of the following:

- Is at least 21 years of age.

- Graduated from high school or passed the General Educational Development (GED) test or another graduate equivalency examination approved by LARA.
- Is of good moral character.
- Has not been convicted of either a felony or a disqualifying misdemeanor within the 5-year period preceding the date of application.
- If the applicant served in the armed forces, was separated from that service, and provides a form DD214 or DD215 or any other form satisfactory to the department that demonstrates that he or she was separated from that service with an honorable character of service or under honorable conditions (general) character of service.
- Meets any of the following:
 - Was lawfully engaged in business as a security guard agency in another state for a period of at least three years.
 - Was lawfully engaged as a security guard for a security guard agency for at least four years and has at least four years of experience supervising security guards.
 - Was lawfully engaged in law enforcement employment as a certified police officer on a full-time basis for a city, county, township, village, or state government or for the United States government for at least four years
 - Is a graduate with a baccalaureate degree or its equivalent in the field of police administration, criminal justice, or industrial security from an accredited college or university; and for a period of two years on a full-time basis was an employee of a security guard agency or was engaged on his or her own account as a security administrator or loss prevention manager in private business.
 - Served in the armed forces; while serving in the armed forces, acted as a military police officer or in an equivalent job classification for at least two years; was separated from that service, and provides proof in a form as described above, and provides an affidavit signed by a commanding officer, supervisor, or military superior with direct knowledge of the applicant's service that he or she has entry-level experience in or basic knowledge of each of the following with the application:
 - Enforcing rules, regulations, and guidelines.
 - Providing security and physical protection.
 - Area and site security operations.
 - Overseeing prisoners and correctional facilities.
 - Reconnaissance and surveillance.
- Has provided the department with required proof of insurance.
- Has not been adjudged insane, unless adjudged restored to sanity by court order.
- Is not subject to any outstanding arrest warrants.

Two-Year license period; posting

This license would be valid for two years, and the licensee would be required to post its license in a conspicuous place in the licensee's office. If a licensee opens a branch office, the licensee must first obtain a license for that branch office and post that license in a conspicuous place in the branch office. If a licensee changes its name or moves, the licensee would be required to notify LARA in writing of the change within 30 days.

Proof of insurance

LARA would be prohibited from issuing a license if the applicant does not provide the department with proof, in the form of a certificate of insurance, that the applicant has and maintains a policy of liability insurance issued by an authorized insurer, names this state as an additional insured, provides coverage in the amount of at least \$400,000 per occurrence, and requires the insurer to provide LARA with notice of cancellation of the policy at least 30 days before the effective date of the cancellation. A certificate of insurance required under this subsection must state that the policy meets all of these requirements. A person could bring an action on an insurance policy in that person's own name to recover damages suffered by reason of a wrongful act of the licensee or an agent or employee of the licensee.

Principal license holder

If a licensee is not an individual or is an applicant applying for a license on behalf of a person that is not an individual, the licensee or applicant must designate an individual as the principal license holder of that licensee. A licensee would be required to continuously maintain a designated principal license holder.

An individual designated as a licensee's principal license holder would be authorized to act on behalf of the licensee for purposes of this article.

If its principal license holder is no longer authorized to act in that capacity on the licensee's behalf, or is no longer available to act in that capacity for any reason, the licensee would have to designate a different qualifying individual as its principal license holder and do all of the following within 10 days after it makes that designation:

- Provide written notice to LARA that it has designated a different individual as its principal license holder.
- Provide the name of that individual and any other information about that individual reasonably required by the department.

If a licensee designating a different individual as its principal license holder does not comply with the requirements that relate to a principal license holder, or if the department does not approve of the designation of that individual as the licensee's principal license holder, LARA must notify the licensee of its disapproval. Within 30 days after receiving that notification, the licensee would then designate another individual that meets the necessary requirements for a principal license holder.

If a security guard agency is required to have a principal license holder, the security guard agency's license would be automatically suspended during any period of time the licensee has not designated a principal license holder and notified LARA of that designation. However, LARA may, upon request of the licensee, permit that licensee's license to stay in force for 60 days in order to allow that licensee to designate a principal license holder.

Qualifications to be employed by a licensee

To be employed by a licensee, an individual must be at least 21 year years old, or if younger than 21 but at least 18 years old, have either graduated from high school or passed the GED test or another graduate equivalency examination approved by LARA.

A licensee could not employ an individual unless they:

- Have not been convicted of a felony or, in the five years preceding application, a disqualifying misdemeanor.
- Have no outstanding arrest warrants.
- Have not been adjudged insane, unless the individual has been adjudged restored to sanity by court order.

Additionally, a licensee would be prohibited from allowing an individual who is convicted of a felony or disqualifying misdemeanor while in that licensee's employ to remain an employee.

Prior to a licensee making an offer of employment, or engaging an individual as a contractor to provide services as a security guard directly to the licensee's customers, that licensee must perform a criminal history check on that individual using ICHAT, or obtain an equivalent check on that individual from the state or province of residence. If the results of that search or check reveal that a felony conviction or a disqualifying misdemeanor, the licensee would be prohibited from making an offer of employment to or otherwise engaging that individual to provide services as a security guard directly to the licensee's customers.

Within 180 days of the bill going into effect, a licensee must perform such a search or check on each individual employed or engaged by that licensee to provide services as a security guard directly to the licensee's customers. If the results of the ICHAT search or the results of the equivalent check reveal that the individual has been convicted of a felony or a disqualifying misdemeanor, the licensee could not continue to employ or engage that individual.

(NOTE: "ICHAT" refers to the "Internet Criminal History Access Tool" maintained by the Department of State Police.)

A licensee would be required to maintain and keep in this state adequate and complete personnel information on all of its employees, and would be prohibited from falsely representing an individual that is, or has been, in that licensee's employ. A licensee that violates this provision is subject to the penalties under Article 6 of the act, which include, in part:

- Placement of a limitation on a license
- Suspension of a license
- Denial of a license or renewal
- Revocation of a license

- In the case of a person licensed under the act and except as otherwise provided in the act, an administrative fine to be paid to the department of not more than \$10,000.
- Censure.
- Probation.
- A requirement that restitution be made, based on proofs submitted to and findings made by the hearing examiner after a contested case.

Security guard agency employee attire

A licensee would be prohibited from wearing, or allowing an employee to wear, a particular type of uniform and insignia that deceives or confuses the public, or that is identical with that of a law enforcement officer of the federal government, this state, or a political subdivision of this state. Each uniform jacket, coat, or shirt worn by a licensee or its employees must have an identification patch on each shoulder that includes the name of the licensee.

A shoulder identification patch may be any color or colors, but must be at least 12 square inches in size and may not be in the shape of a shield or any shape that is used by any public law enforcement agency in this state. A breast patch of any color shall be at least 4-1/2 inches long and 1 inch high, with clearly legible lettering containing "security," "security guard," or "loss prevention." Shirt epaulets may be any color.

A licensee or employee of a licensee may wear a badge or shield as part of a security guard uniform. A badge or shield cannot not be similar in shape to that of any law enforcement officer of the federal government, this state, or a political subdivision of this state. A badge or shield may contain the flag of the United States of America or the scale of justice. A uniform also may include designations of rank, emblems, or other garnishments that may be any color, though it cannot be the seal of the state of Michigan.

If a licensee considers alternative apparel to be more appropriate for a location or event, the licensee is allowed to authorize either of the following in place of a uniform described above:

- Dress slacks and shirt with a blazer that has an emblem or a crest on the left breast that includes the full name of the licensee. The emblem or crest may be any color.
- Dress slacks with a button-down polo shirt that has an emblem or a crest on the left breast that includes the full name of the licensee. The polo shirt may include lettering on the back with the words "security" or "loss prevention."

In inclement weather, a licensee or employee may wear a vinyl raincoat over a uniform described in this section. A licensee or employee may wear a uniform hat or cap with the uniform. The hat or cap may bear an emblem that does not include the state of Michigan seal.

A licensee would be prohibited from wearing, or allowing an employee to wear, a uniform, badge, or insignia, except in the performance of duties as a security guard or while commuting directly to or from the place or places of employment. A licensee also would

be prohibited from using any designation or trade name that implies any association with any municipal, county, or state government, with the federal government, or with an agency of the federal government.

The bill states that Article 14a would not impair or affect any act done, offense committed, or right accruing, accrued, or acquired or any penalty, forfeiture, or punishment incurred before its effective date.

A license issued under the Private Security Business and Security Alarm Act that is currently in effect when the new Article 14a takes effect would remain in effect for the time period for which that license would have remained in effect if this article had not been enacted; and that licensee is not required to obtain a license under this article to conduct business as a security guard agency during that time period.

SB 161 also would rescind R 28.4001 to R 28.4007 of the Michigan Administrative Code. These are the rules promulgated under PA 330 of 1968, which currently regulates private security guards. These rules include prohibited words in agency names and regulations on uniforms, among other topics. Upon the enactment of the SB 161, Section 517 of the Occupational Code would be repealed. This section states that, "In considering a petition submitted under Section 515 for an occupation regulated under articles 8 to 25, the department and the appropriate board may administer an alternative form of testing to the petitioner, or conduct a personal interview with the petitioner, or both."

Senate Bill 162

SB 162 would amend the Private Security Business and Security Alarm Act by revising and removing provisions relating to security guards, and clarifying which actions could be performed without being licensed as a security guard, along with other changes as detailed below.

Definitions

The bill would add or revise the following terms:

Revise "department" by clarifying that LARA is the department as it pertains to security alarm system contractors, agents, sales, installation, service, maintenance and operations, while the Department of State Police applies in references relating to private security police and private college security forces.

Revise the term "security alarm system contractor" by adding the following language regarding individuals who would not be considered security alarm system contractors:

A security guard agency licensed under Article 14A of the Occupational Code and whose employees or agents use client-installed equipment or equipment installed by a security alarm system contractor that is licensed under this act for the purpose of protecting the personnel and property of a client of the security guard agency.

The following definitions only apply to the above passage:

"Equipment" would include, but would not be limited to, access control equipment; video surveillance and recording equipment; audio communication equipment; intrusion detection and prevention equipment; and automated barriers.

"Normal end user functions" would include, but would not be limited to, video and alarm monitoring; retrieving video history for use by a client, security, or law enforcement; allowing or denying entry to individuals or vehicles by controlled access equipment; maintaining databases; or audio communication. Normal end user functions could be performed on-site or from a remote facility of a client.

"Use" would mean only normal end user functions and capability that is installed or provided by a security alarm system contractor to a client.

The term "security alarm system contractor" would not include a security guard agency licensed under Article 14A of the Occupational Code and whose employees or agents respond to burglar, fire, or supervisory alarms for the purpose of securing the property and ensuring the safety of individuals in or on that property. As used here, "respond" could also include reviewing alarm history, resetting the alarm, and, if authorized, performing other normal end user tasks including bypassing a protected zone if necessary to reset the alarm system.

Revise the term "security business" by removing "private security guard" from the definition.

Application for a license

Presently, an applicant for a license under the Private Security Business and Security Alarm Act must include the applicant's name and principal address where that individual or business is located, as well as the address and location of any branch office. The bill would strike those requirements, along with another current requirement that the applicant submit two passport quality photos, and replace them with the following:

- The applicant's name and the address of the applicant's principal place of business.
- If the applicant is not the licensee, the licensee's name and the address of the licensee's principal place of business.
- The address of each location in this state, including any branch offices in this state, at which the licensee conducts or will conduct business.
- If applicable, the name of the individual designated by the applicant or licensee as the principal license holder of the licensee.

The current requirement that the certificate of incorporation of the business be included in the application if applicable would remain as part of the act.

Also changed by SB162 are requirements relating to bonds and insurance for licensees. Current provisions would be repealed by the bill and replaced with a requirement the licensee hold a liability insurance policy and provide the department with proof, in the form of a certificate of insurance, that the applicant has and maintains a policy of liability

insurance issued by an authorized insurer, names this state as an additional insured, provides coverage in the amount of at least \$400,000 per occurrence, and requires the insurer to provide LARA with notice of cancellation of the policy at least 30 days before the effective date of the cancellation. A certificate of insurance required under this subsection must state that the policy meets all of these requirements.

Other changes

Among other changes proposed in the bill:

- Repeals language regarding issuance of an identification card to a licensee.
- Adds language regarding principal license holders identical to that found in SB 161 as detailed above.
- Updates requirements relating to those employed by a licensee, based upon that employee's date of hire.
- Changes language relating to fingerprinting and completing background checks of prospective employees to match that as detailed above for security guard agency licensees.
- Automatically suspends a license if the licensee dies; though upon request, the department may permit the surviving spouse of the licensee, or the executor or administrator of the estate if there is no surviving spouse, to carry on the licensed activity for 90 days following the date of the decedent's death. Presently, the license is not automatically suspended and activity may be carried on by certain individuals.
- Enacting Section 1, Section 19, of the Private Security Business and Security Alarm Act would be repealed. This section relates to uniforms and insignia; shoulder identification patches or emblems; badge or shield; deadly weapons; and tactical batons.

Senate Bill 164

SB 164 would amend the State License Fee Act to set licensing fees. Application processing fees would be set at \$250 for a security guard agency and \$150 for a branch office. Annual licensure fees would be set at \$500 for an agency and \$150 for a branch office.

House Bill 4253

House Bill 4253 would amend the Occupational Code by adding a new Section 1439. This section would establish requirements that a security guard would have to meet prior to being allowed to provide services directly to the licensee's customers. The term "licensee" would refer to either a security guard or a security guard agency.

- Before acting as a security guard without direct supervision, the individual must complete at least 16 hours of on-the-job, site-specific training under the immediate supervision of an experienced supervisor.
- In the first 90 days of employment, the individual must complete at least 16 hours of classroom training, selected by the licensee, and the hours must meet the classroom training requirements set in HB 4254.

- Before being authorized by the licensee to use a weapon or restraint device while on duty, the individual must complete the following required training:
 - For an aerosol spray or conducted energy device, any manufacturer-authorized certification in the use of the device for security or law enforcement personnel. The licensee must ensure that the individual maintains that certification at all times while employed or engaged by the licensee to provide services as a security guard.
 - For a tactical baton, four class hours of training selected by the licensee.
 - For a restraint device, two class hours of training selected by the licensee.
 - For a firearm, four hours of specialized training in the use of a firearm for security or law enforcement personnel selected by the licensee. In addition, the licensee must ensure that the individual completes an additional four hours of that specialized training annually.

Every two years, the individual would have to complete at least four hours of continuing classroom training in the subjects described in HB 4254, in the use of a tactical baton if the licensee has been authorized to use one, and in the use of a restraint device if the licensee has been authorized to use a restraint device while on duty.

House Bill 4254

House Bill 4254 would amend the Occupational Code by adding a new Section 1440. This section would specify the types of classroom training mentioned above in HB 4253.

Specifically, the bill would require the follow amounts and types of coursework:

- At least six hours of company and position orientation that includes:
 - Minimum uniform requirements and appearance
 - Limits of authority and employment
 - Legal aspects of the use of force and the power to arrest
 - Persons or authorities to be contacted in emergencies or unusual occurrences
 - Licensee or parent company structure that affects guards' duties
 - Guard courtesy and public demeanor
 - Report writing.
- At least eight hours involving defensive tactics that include self-defense; correct use of a restraint device if the licensee has authorized or intends to authorize the individual to use a restraint device while on duty; pressure point training; detection of substance abuse and mental illness; and verbal and sensitivity training.
- At least two hours regarding emergency preparedness that includes the general responsibilities pertaining to medical emergencies and response; first aid and cardiopulmonary resuscitation, and foreign body obstruction of the airway; crowd control; exposure to bodily fluid; fire prevention and safety; bomb threats; searches; weather emergencies; chemical spills, leaks, and related waste; and evacuation procedures.

A licensee would be required to prepare and retain a record of an individual's completion of the training and make that record available to the department of licensing and regulatory affairs (LARA) on request.

House Bill 4255

House Bill 4255 would amend Section 2 of the Security Alarm Systems Act by adding and amending terms.

It would amend the term "system provider" by adding exclusions to the term for a licensed Security Guard Agency whose employees or agents use client-installed equipment, or equipment installed by a system provider registered under the act for the purpose of protecting the personnel and property of a client of the security guard agency.

A security guard agency licensed under Article 14A of the Occupational Code and whose employees or agents respond to burglar, fire, or supervisory alarms for the purpose of securing the property and ensuring the safety of individuals in or on that property would also be exempt.

The terms "equipment," "normal end user functions," and "use" would have the same meanings as they do in SB 162, which contains the same exclusions.

FISCAL IMPACT:

The bills would have a significant fiscal impact on the Bureau of Professional Licensing (BPL) within the Department of Licensing and Regulatory Affairs (LARA) to the extent that they modify the structure and substantially increase the amount of fees levied on private security guards while ostensibly not significantly expanding the BPL's responsibilities to implement, administer, and enforce the licensure and regulation of private security guards.

Under current law, revenue generated from fees levied on private security guards, along with revenue from fees levied on security alarm system contractors, is deposited into the Security Business Fund, that balance of which is carried forward into subsequent fiscal years. According to data queried from the Michigan Administrative Information Network (MAIN) and information published by LARA pursuant to boilerplate, revenue generated from fees levied on private security guards exceeded expenditures related to the licensure and regulation of private security guards, resulting in net revenue of approximately \$18,853 in FY 12-13 and \$17,767 in FY 13-14, which contributed to the fund balance of \$190,359 carried forward into FY 14-15.

Nonetheless, the bills substantially increase the fee amounts collected from private security guards as exhibited in the table below. Because the bills would shift the establishment of the fees from the Private Security Business and Security Alarm Act to the State License Fee Act, revenue would begin being deposited, along with other revenues generated from numerous fees levied on various regulated occupations, into the Licensing and Regulation Fund, which is expended to support the administration and enforcement of the

Occupational Code and does not consistently accumulate unexpended revenue carried forward into subsequent fiscal years.



According to statistics provided by LARA, there are currently 313 active private security guard agency licensees, 280 of which were entities and 33 were individuals, with 60 active branch offices and there were 48 applications for initial licensure during FY 14-15, 38 of which entities and 10 were individuals, with 25 branch offices. Assuming that half of the active licensees renewed during FY 14-15, the total annual revenue generated under current law is estimated is at approximately \$38,800; whereas, if the fees established by SB 164 (H-1) were enacted, estimated annual revenue would be approximately \$236,750, an increase of over 500%.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.