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PRIVATE SECURITY GUARD ACT: GENERAL AMENDMENTS

House Bill 5917 (Substitute H-1) Revised First Analysis (10-4-00)

Sponsor: Rep. Alan Sanborn
Committee: Criminal Law and Corrections

THE APPARENT PROBLEM:

The Private Security Guard Act of 1968 provides for the licensing of security alarm system contractors, private security police, private security guards, and private security guard agencies and provides standards for employees of such licensees. In recent years, many new technologies have been developed to make homes and businesses more secure against intruders. However, the act that regulates those who sell and install security alarm systems and security personnel has not been updated to keep up with the changing technology. At the request of the Burglar and Fire Alarm Association of Michigan, an industry association representing alarm system contractors, legislation has been offered to amend the act to include under the act's regulatory framework those who service and maintain security alarm systems.

Further, a few provisions in the act have been problematic for the Department of State Police to administer. For example, under current law, the department may revoke a license if the licensee (or any of his or her employees) has been convicted of a crime involving moral turpitude or habitual drunkenness. Such antiquated language is hard to quantify, and therefore, to enforce. Other licensing criteria, such as a requirement that applicants be both U.S. citizens and reside in the state of Michigan, have been declared unconstitutional by the courts. It has been recommended that the act be updated and that certain provisions be rewritten for clarification and ease of enforcement.

THE CONTENT OF THE BILL:

The Private Security Guard Act of 1968 (MCL 338.1051 et al.) provides for the licensing of alarm system contractors and private security guard agencies and provides standards for employees of such licensees. House Bill 5917 would make general amendments to the act, as follows.

Title and scope of act, terms and definitions. The title of the act would be changed to the "Private Security

Business and Security Alarm Act". Definitions of regulated occupations and devices would also be amended. Current definitions of "alarm system", "alarm system agent", and "alarm system contractor" would be replaced by "security alarm system", "security alarm system agent", and "security alarm system contractor". References to "private police", "special police", "watchmen", and "patrol service agencies" would be deleted. Instead, the bill would use and define the terms "private security guard" and "private security police". The scope of these terms would also be expanded to include those who protected "persons" (i.e., bodyguards), as well as property. A business engaged in providing alarm systems, private security guards, or private security police would be a "security business", subject to licensure and regulation under the act.

The definition of "security alarm system" would be expanded to include any system that can electronically cause an expected response by a law enforcement agency by means of activating an audible signal, visible signal, electronic notification, or video signal, or any combination of these, to a remote location.

Licenses. Under current law, the Department of State Police issues licenses to businesses regulated by the act. The bill would change certain criteria for licensure. With regard to licenses to conduct business as a security alarm system contractor, private security guard, private security police, or as a private security guard business:

– It would eliminate a requirement that a licensee be a U.S. citizen, and that he or she be a resident of the state.

– It would modify the current requirement that a licensee not have been under any sentence for the commission of a felony within the previous five years. The bill would eliminate reference to the five-year period in this provision. Further, it would require that a licensee not have been convicted, within the five

years preceding the date of the application, of a felony or a misdemeanor involving dishonesty or fraud; unauthorized divulging or selling of information or evidence; impersonation of a law enforcement officer; illegally using or possessing a dangerous weapon; two or more alcohol related offenses; controlled substances offenses; or assault.

With regard to requirements for licensure as a private security guard or agency, the bill would increase the required experience, from 3 years to 4 years, gained as an employee of another licensed guard or agency.

With regard to requirements for licensure as a security alarm contractor, the bill would increase the required experience, from 3 years to 4 years, gained as an employee of another security alarm contractor business.

Requirements for information to be submitted for a business license, including financial information, would be modified. The bill would require that each applicant sign and verify the application, and that the application contain the name and principal business address of the person or business entity, location of any branch office, and certificate of incorporation of a business. Further, the bill would specify that the resident manager of a business applicant would have to submit two passport quality photographs of himself or herself (as individual applicants are required to do).

A license certificate would be in a form prescribed by the Department of State Police. The bill would delete language requiring a license to include specified information about the applicant, including name, location, and expiration date.

Currently, the act allows a license fee or application fee to be refunded if the applicant is shown to be ineligible to receive a license by failing to meet the requirements of the act. The bill would delete this provision and allow a fee to be refunded only if it were collected by error.

A requirement that the department issue an identification card to each resident officer or manager of a business licensed under the act would be modified to say that a card would be issued to each officer or manager upon request.

License renewal, late renewals. Licenses issued under the act may be renewed upon payment of a renewal fee. The bill would specify that a person who failed to renew a license on or before the expiration date could not engage in regulated activities. However, a person could renew the license within 30 days after its

expiration by paying the license renewal fee and a late renewal fee of \$25. After expiration of the 30-day period, it would be necessary to re-apply for a license.

Temporary licenses. The bill would add provisions allowing the Department of State Police to issue a nonrenewable temporary license to an applicant. A temporary license could be issued only if the applicant had not previously been denied a license or had a licensed suspended or revoked. A temporary license would be valid while other required investigations and approvals were obtained (including the approval of the prosecuting attorney and sheriff of the county in which the applicant's principal office would be located, a criminal history check, bonding requirements, and so forth). Fees for a temporary license would be the same as those for a regular license.

Bonds, insurance. Licensees under the act are required to post bond in the amount of \$5,000 for an individual licensee, and \$10,000 for a business. The bill would increase the required bond amount to \$25,000 for all applicants. In addition, current law allows an applicant to furnish an insurance policy in lieu of a bond. The bill would increase the required amount of insurance for property damage from \$20,000 to \$25,000.

Dual licensing of private detectives. Current law allows a private detective or private investigator licensed under Public Act 285 of 1965 to perform the services of a private security guard or agency, and allows the payment of only one license fee to be licensed under both acts. This provision would be deleted under the bill.

License suspension, reinstatement. The bill would allow the department to suspend a license if the licensee failed to comply with any of the requirements of the act. Except in cases where the act requires license revocation, the bill would require the department to reinstate a suspended license upon the licensee's compliance with the act and the payment of a \$100 reinstatement fee.

License revocation. The bill would modify a provision allowing a license to be revoked because of certain criminal convictions. License revocation would be allowed in cases where a licensee or an employee of a licensee was convicted of a felony or misdemeanor involving dishonesty or fraud; unauthorized divulging or selling of information or evidence; impersonation of a law enforcement officer; illegally using or possessing a dangerous weapon; two or more alcohol related offenses; controlled substances offenses; or assault.

Requirements for employees. The bill would delete a provision that requires employees of licensees to not have been dishonorably discharged from the U.S. military. Further, the bill would require a licensee to keep in the state “adequate and complete personnel information” on its employees.

Current law requires licensees to request criminal background checks on their employees. The bill would require a licensee to obtain a complete and signed employment application for each individual for whom a name check is requested and conducted. The application would have to be retained for at least one year from the date of its submission. Further, the bill would add language specifying that a licensee or employee who uses a name check or results of a name check for purposes other than prospective employment would be guilty of a misdemeanor, punishable by a fine of up to \$1,000.

Uniforms, badges. Currently, the law includes specifications for uniforms and identifying patches worn by security personnel licensed under the act. The bill would amend these provisions to require that shoulder identification patches be at least 3 inches by 5 inches (rather than 2 inches by 3 inches), be half-moon in shape, and red and white in color. However, the department could, upon request, approve different colors for private security police. A patch would have to be worn on the right breast with the words “security guard” or “security technician”, as appropriate. Further, the bill would prohibit a person from wearing or displaying a badge or shield except while on duty as an employee of a licensee or while going to and from work. And, the bill would prohibit a person not employed as a security guard from displaying a badge or shield or wearing the uniform of a security guard. A violation would be a misdemeanor punishable by imprisonment for up to 93 days, a fine of up to \$500, or both.

Weapons. The act does not prevent a licensee from authorizing his or her employees to carry a “night stick constructed solely of wood”. The bill would instead refer to a “tactical baton that is commercially available”.

Alarm systems. The bill would delete certain requirements pertaining to security alarm systems, including that an alarm system installed in a commercial or public building, or in a residence, utilize equipment and methods of installation equivalent to standards set by Underwriter’s Laboratory (UL), American National Standards Institute (ANSI), or other

nationally recognized testing laboratory for that installation or for household alarm systems.

Violations, penalties. The act prohibits a person or company from engaging in the business practices regulated by the act unless licensed under the act. A violation is a misdemeanor, punishable by imprisonment for up to 90 days, a fine of up to \$1,000, or both. The act also prohibits a person from selling or providing a device that automatically calls a public service, utility, or police agency without the written permission of the agency. A violation is a misdemeanor, punishable by imprisonment for up to 90 days, a fine of up to \$100, or both. Under the bill, both of these violations would be felonies, punishable by imprisonment for up to four years, a fine of up to \$1,000, or both.

Currently, a violation of the act is a misdemeanor, punishable by imprisonment for up to 90 days, a fine of up to \$100, or both. The bill would amend this provision to increase the maximum fine to \$1,000, and to specify that this general penalty provision would apply except where another specific penalty is listed in the act.

In several instances, the bill would add a specific penalty for existing misdemeanors. (Without a specific penalty, the general penalty provision, described above, applies.) For the existing misdemeanor of failure to surrender a revoked license, the bill would specify that the offense would be punishable by imprisonment for up to 93 days, a fine of up to \$500, or both. For the existing misdemeanor of advertising an unlicensed business to be that of a security business licensed under the act, the bill would add a specific penalty of a fine of up to \$1,000. And, for the existing misdemeanor of falsely representing oneself as an agent of a licensed security business, the bill would specify that the offense would be punishable by imprisonment for up to 93 days, a fine of up to \$500, or both.

Repeals. The bill would repeal two sections of the act. One section deals with a “grandfather clause” for licensing of businesses in existence on the date the act took effect. The second repealed provision requires the owner of an alarm system experiencing more than four false alarms in a calendar year to have the system inspected, and allows the department, after notice and a hearing, to order the owner to correct the system.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, several provisions in the bill could result in indeterminate

increases in both state costs and state revenues. The bill would expand the scope of regulation under the act to include employees or employers who provide “protection of persons” (i.e., bodyguards), rather than just property. In addition, out-of-state individuals and agencies would also be subject to licensure under the bill. Depending on the number of new persons licensed under these provisions, costs to the Department of State Police for administration and enforcement of the act could increase, as well as revenues from the collection of additional license fees. Also, the bill would establish or increase the penalties for a number of felonies and misdemeanors. To the extent the applicable sections of statute were violated, this would result in an indeterminate increase in state and local correctional costs and also result in an indeterminate increase in penal fine revenue earmarked for local libraries (assuming that the fines levied under the bill constitute penal fine revenue).

The fiscal note goes on to report that, based on recent experience, the new \$100 reinstatement fee for suspended licenses would increase fee revenue collected by the department by \$3,200 annually. Further, based on recent experience, the bill’s fee of \$25 for late renewals of security guard and security alarm system licenses would increase fee revenue collected by the department by \$250 annually. Finally, the bill would eliminate a provision of the act that allows for the refund of a license fee in those cases in which an applicant is ineligible for licensure. To the extent that such fees would have otherwise been refunded, this change would result in departmental savings of an indeterminate amount. (9-27-00)

ARGUMENTS:

For:

The bill contains many provisions to clarify and strengthen the regulation of businesses that provide security services. Penalties for violations would be increased in many cases, and so would provide an incentive for those in the industry to adhere to the strict regulation provided by the Private Security Business and Security Alarm Act, as the act would be known under the bill. Regulation would be expanded to include security guards and agencies providing protection services to individuals (e.g., bodyguards) and to alarm service contractors providing service and maintenance. It would also rewrite provisions to clarify standards for licensing and circumstances under which a license could be revoked. Under the bill, some licensing criteria would be strengthened. For example, currently, an applicant may be licensed five or more years after a conviction of a felony. Under the bill,

however, a person could never receive a license as a security alarm contractor or for private security guard or security police services if he or she had a felony conviction, nor could a licensee hire an employee who had a past felony conviction. Certain misdemeanor offenses would carry a ban on licensure or employment for a period of five years from the date of the conviction. These are important protections in light of the important and serious nature of the job performed by licensees and their employees.

In addition, a person who is licensed as a private investigator under Public Act 285 of 1965 is allowed to perform the services of a private security guard or agency, and current law allows the payment of only one license fee to be licensed under both acts. The bill would eliminate this provision. According to state police staff, the licensing criteria under P.A. 285 is less stringent than those criteria for licensure under the Private Security Guard Act. Therefore, a person who could not meet licensing requirements as a private security guard or agency could become licensed through the back door, so to speak, by first being licensed as a private investigator. The bill would close this loophole.

Further, in this age of a global economy, the bill would now allow out-of-state security alarm contractors and security businesses to operate in the state with proper licensure. This will ensure that all those in the security business will be operating at a high level of service and that licensees and employees meet the strict character standards contained in the law. Currently, applicants for licensure must have five references from Michigan residents. The bill would retain this provision. Departmental staff report that it is difficult to verify the validity of out-of-state references, as they are required to do. Keeping the requirement for references from Michigan residents will better enable the department to screen out applicants who would not make desirable security business providers.

POSITIONS:

The Department of State Police supports the bill. (9-27-00)

The Burglar and Fire Alarm Association of Michigan supports the bill. (9-26-00)

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