

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

**Legislative Document**

**No. 332**

H. P. 285

House of Representatives, January 20, 1981

Submitted by the Department of Public Safety pursuant to Joint Rule 24.

Referred to the Committee on Legal Affairs. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Swazey of Bucksport.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

**AN ACT to Revise the Law Relating to the Licensing of Private Security Guards.**

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 32 MRSA c. 54, as enacted by PL 1977, c. 508, § 1, is repealed.

Sec. 2. 32 MRSA c. 93 is enacted to read:

**CHAPTER 93**

**PRIVATE SECURITY GUARDS**

§ 9401. Short title

This chapter shall be known and may be cited as the "Private Security Guards Act."

§ 9402. Purpose

It is the purpose of this chapter to regulate any person engaging in the business of providing a private security guard or private security guards.

§ 9403. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Armored car service.** "Armored car service" means the service provided by any person transporting or offering to transport, under armed security guard, currency, jewels, stocks, bonds, paintings or other things of value in a motor vehicle specially equipped to offer a high degree of security.

2. **Commissioner.** "Commissioner" means the Commissioner of Public Safety.

3. **Contract security company.** "Contract security company" means any person engaged in the business of providing, or who undertakes to provide, a security guard for another person.

4. **Licensee.** "Licensee" means any person to whom a license is granted in accordance with this chapter.

5. **Licensing authority.** "Licensing authority" means the Commissioner of Public Safety.

6. **Person.** "Person" means any natural person, firm, association, organization, partnership, corporation or any employee or agent thereof.

7. **Principal corporate officer.** "Principal corporate officer" means the president, vice-president, treasurer, secretary, clerk and comptroller, as well as any other person who performs functions for the corporation corresponding to those performed by the other officers enumerated in this subsection.

8. **Proprietary security organization.** "Proprietary security organization" means any organization or department of that organization which provides full-time security guards solely for itself.

9. **Security guard.** "Security guard" means any person who, for any consideration whatsoever, performs any of the following functions:

A. Protection of individuals or property from harm or theft of property of any kind;

B. Prevention, observation or detection of any unauthorized activity on private property;

C. Prevention of unlawful intrusion or entry, larceny, vandalism, abuse, arson or trespass on private property;

D. Control, regulation or direction of the flow of movements of the public, whether by vehicle, on foot or otherwise;

E. Street patrol service; or

F. Armored car service.

10. **Security system.** "Security system" means equipment designed to detect or signal an unauthorized intrusion so that security guards are expected to respond.

11. **Street patrol service.** "Street patrol service" means any contract security company or proprietary security organization utilizing foot patrols, motor vehicles or any other means of transportation on public thoroughfares as security guards.

**§ 9404. License requirement; exceptions**

1. No person may act as a security guard without first obtaining from the commissioner a license to be a contract security company.

2. This section does not apply to the following:

- A. Any proprietary security organization or any employee or agent thereof;
- B. Any person employed by a person possessing a valid license to be a contract security company;
- C. Any person possessing a valid contract security company license granted under any prior existing provision of law of this State, provided that upon expiration of that license the person shall be governed by this section.

**§ 9405. License qualifications**

1. **Qualifications.** Subject to this section, a person is qualified to be licensed as a contract security company who:

- A. Is at least 18 years of age;
- B. Is a citizen or resident alien of the United States;
- C. Is of good moral character;
- D. Has not been convicted of a crime involving moral turpitude; and
- E. Has not been dishonorably discharged from military service.

2. **Who must meet qualifications.** The qualifications enumerated in this section must be met:

- A. If the applicant is a partnership, by each partner;
- B. If the applicant is a corporation, by an agent of that corporation; or
- C. If the applicant is other than a partnership or corporation, by the natural person making the application.

**§ 9406. Acquisition of license by persons currently licensed**

A person possessing, under the laws of this State, a valid license to be a contract security company on the effective date of this chapter shall, upon expiration of his license, application and payment of the required fee, be issued a contract security company license.

**§ 9407. Application for original license**

1. **Application; fee.** Applications for original licenses shall be made to the commissioner on forms prescribed by him and shall be accompanied by the required fee which is not refundable.

2. **Who must subscribe and swear to the application.** Each application shall be subscribed and sworn to:

A. If the applicant is a partnership, by each partner;

B. If the applicant is a corporation, by at least one principal corporate officer and, if different, by the agent of the corporation meeting the qualifications of section 9405, subsection 1; or

C. If the applicant is other than a partnership or corporation, by the natural person making the application.

#### § 9408. Renewal of license

Each contract security company license shall be issued for a term of one year and shall, unless revoked or suspended, be renewable annually as prescribed by the commissioner.

#### § 9409. Bonding requirement

1. **Requirement.** The requirements for bonding are as follows:

A. A person licensed under this chapter shall give to the commissioner a bond in the sum of \$10,000 if he is a resident, and in the sum of \$50,000 if he is not a resident, of the State.

B. For the purposes of this section, corporation is a resident if it is incorporated under the laws of this State. Any other person is a resident if the natural person who qualifies for the license resides in this State.

2. **Form of bond.** Each bond shall be:

A. In a form prescribed by the commissioner;

B. Executed by the licensee as principal and by a surety company authorized to do business as such in this State as surety; and

C. Conditioned upon the honest conduct of the licensee and the right of any person, including the officer of any aggrieved labor union or association, whether or not incorporated, injured by the intentional, knowing, reckless or negligent act of the licensee to bring, in his own name, an action on the bond.

#### § 9410. License transferability

1. **Transfer.** No license issued pursuant to this chapter may be assigned or transferred either by operation of law or otherwise.

2. **Death of licensee.** If the license is held by an owner other than a corporation and the owner dies, becomes disabled or otherwise ceases to engage

in the business, the successor, heir, devisee or personal representative of the owner may, within 60 days of the death, disablement or other termination of operation by the original licensee, apply for a license on a form prescribed by the commissioner. The transferee shall be subject to this chapter.

3. **Filing.** For good cause, the commissioner may extend the period of filing the application required by subsection 2.

**§ 9411. Refusal; suspension; revocation; grounds**

The commissioner may, after a hearing in accordance with the Administrative Procedures Act, Title 5, chapter 375, subchapter IV, refuse to issue or renew a license. The Administrative Court may suspend or revoke the license of any person licensed under this chapter. The commissioner may refuse to issue or renew a license and the Administrative Court may suspend or revoke a license on any one or more of the following grounds.

1. **Conviction of crime involving moral turpitude.** The applicant or licensee, or any qualifying agent, owner, partner or principal corporate officer thereof, has been adjudged guilty of any crime involving moral turpitude, or of any crime enumerated in this chapter.

2. **Employment of person convicted of crime.** The licensee has knowingly employed as a security guard any person who has been convicted of a crime punishable by a maximum term of imprisonment equal to or exceeding one year.

3. **Failure to comply with rules.** Any of the persons enumerated in subsection 1 has failed to comply with any of the rules promulgated by the commissioner under this chapter.

**§ 9412. Unlawful acts**

1. **Acting without license; false representations.** It is a Class D crime for any person knowingly to commit any of the following acts:

- A. Subject to section 9404, to act as a security guard without a valid license;
- B. To publish any advertisement, letterhead, circular, statement or phrase of any kind which suggests that a licensee is an official police agency or any other agency, instrumentality or division of this State, any political subdivision thereof, or of the Federal Government;
- C. To falsely represent that a person is or was in his employ as a licensee; or
- D. To make any false statement or material omission in any application filed with the commissioner.

2. **Failure to return equipment; representation as peace officer.** It is a Class D crime for any security guard knowingly to commit any of the following acts:

- A. To fail to return immediately on demand, or within 7 days of termination of employment, any uniform, badge, or other item of equipment issued to him by an employer;

**B. To make any representation which suggests, or which would reasonably cause another person to believe, that he is a sworn peace officer of this State, any political subdivision thereof, or of any other state or of the Federal Government;**

**C. To wear or display any badge, insignia, device, shield, patch or pattern which indicates or suggests that he is a sworn peace officer, or which contains or includes the word "police" or the equivalent thereof, or is similar in wording to any law enforcement agency; or**

**D. To possess or utilize any vehicle or equipment displaying the words "police," "law enforcement officer," or the equivalent thereof, or have any sign, shield, marking, accessory or insignia that may indicate that the vehicle is a vehicle of a public law enforcement agency.**

**Paragraph A does not apply to any proprietary security organization or any employee or agent thereof. Paragraphs A and B do not apply to a law enforcement officer as described in section 9404, subsection 2, paragraph C.**

**3. Representatives as to employees; failure to surrender license; posting of license. It is a Class D crime for any person licensed under this chapter knowingly to commit any of the following acts:**

**A. To falsely represent that a person was or is in his employ as a security guard;**

**B. To fail or refuse to surrender his license to the commissioner within 72 hours following revocation or suspension of the license; or after the licensee ceases to do business subject to section 9410;**

**C. To post the license or permit the license to be posted upon premises other than those described in the license; or**

**D. To fail to cause the license to be posted and displayed at all times, within 72 hours of receipt of the license, in a conspicuous place in the principal office of the licensee within the State.**

**4. Other unlawful acts. It is a Class D crime for any person licensed under this chapter, or for any employee thereof, knowingly to commit any of the following acts:**

**A. To incite, encourage or aid any person who has become a party to any strike to commit any unlawful act against any person or property;**

**B. To incite, stir up, create or aid in the inciting of discontent or dissatisfaction among the employees of any person with the intention of having them strike;**

**C. To interfere with or prevent lawful and peaceful picketing during strikes;**

**D. To interfere with, restrain or coerce employees in the exercise of their right to form, join or assist any labor organization of their own choosing;**

**E. To interfere with or hinder lawful or peaceful collective bargaining between employers and employees;**

**F. To pay, offer to give any money, gratuity, consideration or other thing of value, directly or indirectly, to any person for any verbal or written report of the lawful activities of employees in the exercise of their right to organize, form or assist any labor organization and to bargain collectively through representatives of their own choosing;**

**G. To advertise for, recruit, furnish or replace or offer to furnish or replace for hire or reward, within or outside the State, any skilled or unskilled help or labor, armed guards, other than armed guards employed for the protection of payrolls, property or premises, for service upon property which is being operated in anticipation of or during the course of existence of a strike;**

**H. To furnish armed guards upon the highways for persons involved in labor disputes;**

**I. To furnish or offer to furnish to employers or their agents any arms, munitions, tear gas implements or any other weapons;**

**J. To send letters or literature to employers offering to eliminate labor unions; or**

**K. To advise any person of the membership of an individual in a labor organization for the purpose of preventing the individual from obtaining or retaining employment.**

**§ 9413. Change in the status of license**

The licensee shall notify the commissioner within 30 days of any change in his qualifying agent, officers or directors or material change in the information previously furnished or required to be furnished to the commissioner or any occurrence which could reasonably be expected to affect the licensee's right to a license under this chapter.

**§ 9414. Powers of the commissioner**

**1. Subpoenas.** In any investigation conducted by the commissioner under this chapter, the commissioner may issue subpoenas to compel the attendance of witnesses and the production of evidence relevant to any fact in issue.

**2. Contempt.** If a witness refuses to obey a subpoena or to give any evidence relevant to proper inquiry by the commissioner, the Attorney General may petition the Superior Court in the county where the refusal occurred to find the witness in contempt. The Attorney General shall cause to be served on the witness an order requiring him to appear before the Superior Court to show cause why he should not be adjudged in contempt. The court shall, in a summary manner, hear the evidence and, if it is such as to warrant him to do so, punish the witness in the same manner and to the same extent as for contempt committed before the Superior Court or with reference to the process of the Superior Court.



**3. Rules.** The commissioner shall adopt all rules necessary to administer this chapter, including, but not limited to, fixing application and license fees.

**§ 9415. Application of Maine Administrative Procedures Act**

The Maine Administrative Procedures Act, Title 5, chapter 375, subchapter I, shall govern all administrative actions taken under this chapter.

**§ 9416. Firearms**

A person who acts as a security guard may, while he is in the performance of his duties in that capacity, carry a loaded weapon in a motor vehicle which is being used to provide armored car service or which is otherwise transporting things of value, provided that any weapon carried is not concealed.

**§ 9427. Application**

This chapter does not apply to the following:

- 1. Law enforcement officers.** Any person currently employed as a federal, state, county or local law enforcement officer, either full or part-time, who acts as a security guard only while off duty and less than full-time; provided that the officer issues a bond in the amount of \$10,000 to his appointing authority; and
- 2. Public officials.** Any person employed by the United States, the State, or any political subdivision thereof, or any public instrumentality, while in the performance of his official duties.

**STATEMENT OF FACT**

This bill rewrites the law governing private security guards. In addition to harmonizing it with the Maine Administrative Procedures Act, it makes several substantive changes. It prohibits the hiring of convicted felons as security guards and permits a security guard involved in the transportation of valuable items to carry a loaded weapon in a motor vehicle. Under current law, a security guard must technically unload and reload every time he steps into or out of a vehicle, including such times as when a valuable item might be vulnerable.

This bill extends the coverage of certain acts denoted as criminal to the proprietary security guard who, no less than the contract security guard, is in a position of authority and consequently should not be permitted to hold himself out as a sworn peace officer.

This bill does not offer any substantive change in the ability of a deputy sheriff or local police officer to work for private companies, and be paid by them, while wearing the uniform of their appointing authority.