

## STATE OF NEW YORK DEPARTMENT OF STATE

#### **DETERMINATION**

In the matter of the designation of "security guard" as an eligible profession for the purchase, sale, and use of body armor.

Date of designation: July 6, 2022

### Legal framework

To purchase or take possession of body armor in New York State, an individual or entity must be engaged or employed in an eligible profession. Pursuant to Executive Law section 144-a, the Department of State (Department) has established criteria for eligible professions requiring the use of body armor, as such term is defined in subdivision 2 of section 270.20 of the Penal Law. Designation of an eligible profession must be supported by a finding that the duties of the profession may expose an individual engaged in such profession to serious physical injury that may be prevented or mitigated by the wearing of body armor. The Department may add a profession to the list of eligible professions requiring the use of body armor.

# Findings of fact and analysis

The law implementing restrictions on the use of body armor in New York State<sup>4</sup> was enacted a few weeks after a deadly shooting incident at Tops Friendly Markets in Buffalo, New York, in which Aaron Salter, Jr., an on-duty security guard, was among the victims killed by an active shooter. Mr. Salter, Jr. was reported to have confronted the gunman inside the supermarket, whereupon the gunman returned fire, killing Mr. Salter, Jr.<sup>5</sup>

According to Section 89-f(6) of the General Business Law, "security guard" shall mean "a person, other than a police officer, employed by a security guard company to principally perform one or more of the following functions within the state:

- a. protection of individuals and/or property from harm, theft or other unlawful activity;
- b. deterrence, observation, detection and/or reporting of incidents in order to prevent any unlawful or unauthorized activity including but not limited to unlawful or unauthorized intrusion or entry, larceny, vandalism, abuse, arson or trespass on property;

<sup>&</sup>lt;sup>1</sup> New York Penal Law § 270.21.

<sup>&</sup>lt;sup>2</sup> New York Executive Law § 144-a; 19 NYCRR §§ 905.3, 905.1(c), (f).

<sup>&</sup>lt;sup>3</sup> 19 NYCRR §§ 905.2(a), 905.5(a).

<sup>&</sup>lt;sup>4</sup> L.2022, ch.210, as amended by L.2022, ch.371, §§ 11-13.

<sup>&</sup>lt;sup>5</sup> https://www.cbsnews.com/news/aaron-salter-jr-security-guard-buffalo-shooting-victim/

## c. street patrol service;

d. response to but not installation or service of a security system alarm installed and/or used to prevent or detect unauthorized intrusion, robbery, burglary, theft, pilferage and other losses and/or to maintain security of a protected premises.

Provided, however, that a security guard who is otherwise subject to regulation with respect to registration and training by the federal government in the performance of their duties, or a security guard providing such services on a voluntary basis, shall not be subject to the provisions of this article."

Security guards are required to obtain a registration card from the Department in order to perform security guard functions.<sup>6</sup> Further, no security guard company shall knowingly employ a person as a security guard unless the security guard company has verified with the Department that such person possesses a valid registration card.<sup>7</sup>

In order to carry out their duties as a security guard, individuals may be required to respond to security system alarms which are triggered without knowing if they will be surprising a burglar who is armed with a weapon. An individual employed as a security guard may also be charged with protecting people and property from harm or theft which may also require defense against an intruder armed with a firearm.

The profession of security guard sometimes requires individuals to put themselves in dangerous situations which may expose an individual engaged in the profession to serious physical injury may be prevented or mitigated by the wearing of body armor. According to the 2020 Census of Fatal Occupational Injuries (CFOI) 36 security guards suffered fatal injuries by violence and other injuries by persons or animals. This puts security guards in the top 5% of occupations to suffer from such fatal injuries. This does not include non-fatal injuries.

#### Determination

The information set forth above supports a determination by the Department that the profession of a security guard sometimes requires individuals engaged or employed in that profession to put themselves in dangerous situations that may expose them to serious physical injury, and that such serious physical injury may be prevented or mitigated by the wearing of body armor.

Based on the foregoing facts and the requirements of Executive Law §144-a and 19 NYCRR Part 905, the Department has designated the profession of "security guard" as an eligible profession and has added such profession to the Department's list of eligible professions.

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<sup>&</sup>lt;sup>6</sup> General Business Law §89-h.

<sup>&</sup>lt;sup>7</sup> General Business Law §89-g.

<sup>8 2020</sup> Census of Fatal Occupational Injuries (CFOI),