

# **Private Investigators, Bail Enforcement Agents, Watch, Guard or Patrol Agencies and Security Guards Licensing Law**

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New York State  
DEPARTMENT OF STATE  
**Division of Licensing Services**  
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*Governor*

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*Secretary of State*

# Private Investigators, Bail Enforcement Agents and Watch, Guard or Patrol Agencies License Law

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# Private Investigators, Bail Enforcement Agents and Watch, Guard or Patrol Agencies License Law

## §70. Private Investigator license

1. The Department of State shall have the power to issue licenses to private investigators. Nothing in this article shall prevent a private investigator licensed hereunder from performing the services of a watch, guard or patrol agency or bail enforcement agents as defined herein; however, a watch, guard or patrol agency or bail enforcement agents may not perform the services of a private investigator as defined herein.

2. No person, firm, company, partnership, limited liability company or corporation shall engage in the business of private investigator, or advertise his, their or its business to be that of private investigator, notwithstanding the name or title used in describing such agency or notwithstanding the fact that other functions and services may also be performed for fee, hire or reward, without having first obtained from the Department of State a license so to do, as hereinafter provided, for each bureau, agency, sub-agency, office and branch office to be owned, conducted, managed or maintained by such person, firm, company, partnership, limited liability company or corporation for the conduct of such business.

3. No person, firm, company, partnership, limited liability company or corporation shall engage in the business of furnishing or supplying for fee, hire or any consideration or reward information as to the personal character or activities of any person, firm, company, or corporation, society or association, or any person or group of persons, or as to the character or kind of the business and occupation of any person, firm, company or corporation, or own or conduct or maintain a bureau or agency for the above mentioned purposes, except exclusively as to the financial rating, standing, and credit responsibility of persons, firms, companies or corporations, or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds or commercial credit or of claimants under insurance policies, provided the business so exempted does not embrace other activities as described in §71 of this article, or except where such information is furnished or supplied by persons licensed under the provisions of §24-a or subdivision 3-b of §50 of the Workers' Compensation Law or representing employers or groups of employers insured under the Workers' Compensation Law in the State Insurance Fund, without having first obtained from the Department of State, as hereafter provided, a license so to do as private investigator for each such bureau or agency and for each and every sub-agency, office and branch office to be owned, conducted, managed or maintained by such persons, firm, limited liability company, partnership or corporation for the conduct of such business. Nothing contained in this section shall be deemed to include the business of adjusters for insurance companies, nor public adjusters licensed by the superintendent of insurance under the Insurance Law of this state.

4. Any person, firm, company, partnership or corporation who violates any provision of this section shall be guilty of a class B misdemeanor.

## §70-a. Bail enforcement agents and watch, guard or patrol agencies

1. The Department of State shall have the power to issue separate licenses to bail enforcement agents and to watch, guard or patrol agencies. Nothing in this article shall prevent a private investigator licensed hereunder from performing the services of a watch, guard or patrol agency

or bail enforcement agent as defined in this article; however, a watch, guard or patrol agency or bail enforcement agent may not perform the services of a private investigator as defined in this article.

2. No person, firm, company, partnership, limited liability company or corporation shall engage in the business of bail enforcement agents or the business of watch, guard or patrol agency, or advertise his, their or its business to be that of bail enforcement agent or watch, guard or patrol agency, notwithstanding the name or title used in describing such agency or notwithstanding the fact that other functions and services may also be performed for fee, hire or reward, without having first obtained from the Department of State a license so to do, as hereinafter provided, for each bureau, agency, sub-agency, office and branch office to be owned, conducted, managed or maintained by such person, firm, company, partnership, limited liability company or corporation for the conduct of such business.

3. Any person, firm, company, partnership or corporation who violates any provision of this section shall be guilty of a class B misdemeanor.

## §71. Definitions

1. "Private investigator" shall mean and include the business of private investigator and shall also mean and include, separately or collectively, the making for hire, reward or for any consideration whatsoever, of any investigation, or investigations for the purpose of obtaining information with reference to any of the following matters, notwithstanding the fact that other functions and services may also be performed for fee, hire or reward; crime or wrongs done or threatened against the government of the United States of America or any state or territory of the United States of America; the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person, group of persons, association, organization, society, other groups of persons, firm or corporation; the credibility of witnesses or other persons; the whereabouts of missing persons; the location or recovery of lost or stolen property; the causes and origin of, or responsibility for fires, or libels, or losses, or accidents, or damage or injuries to real or personal property; or the affiliation, connection or relation of any person, firm or corporation with any union, organization, society or association, or with any official, member or representative thereof; or with reference to any person or persons seeking employment in the place of any person or persons who have quit work by reason of any strike; or with reference to the conduct, honesty, efficiency, loyalty or activities of employees, agents, contractors, and sub-contractors; or the securing of evidence to be used before any authorized investigating committee, board of award, board of arbitration, or in the trial of civil or criminal cases. The foregoing shall not be deemed to include the business of persons licensed by the industrial commissioner under the provisions of §24-a or subdivision 3-b of §50 of the Workers' Compensation Law or representing employers or groups of employers insured under the Workers' Compensation Law in the State Insurance Fund, nor persons engaged in the business of adjusters for insurance companies nor public adjusters licensed by the Superintendent of Insurance under the Insurance Law of this State.

1a. "Bail enforcement agent" shall mean and include only the business of bail enforcement and shall also mean and include, separately or collectively, the engaging in the business of enforcing the terms and conditions of a person's release from custody on bail in a criminal proceeding, including locating, apprehending and returning any such person released from custody on bail who has failed to appear at any stage of a criminal proceeding to answer the charge before the court in which he may be prosecuted. The foregoing shall not be deemed to include the business of persons licensed under the provisions of §24-a or subdivision 3-b of section 50 of the Workers' Compensation Law or representing employers or groups of employers insured under the Workers'

Compensation Law in the State Insurance Fund, nor persons engaged in the business of adjusters for insurance companies nor public adjusters licensed by the Superintendent of Insurance under the Insurance Law of this state or the business of private investigator, watch, guard or patrol agency or security guard company.

2. "Watch, guard or patrol agency" shall mean and include the business of watch, guard or patrol agency and shall also mean and include, separately or collectively, the furnishing, for hire or reward, of watchmen or guards or private patrolmen or other persons to protect persons or property or to prevent the theft or the unlawful taking of goods, wares and merchandise, or to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes or other valuable documents, papers, and articles of value, or to procure the return thereof or the performing of the service of such guard or other person for any of said purposes. The foregoing shall not be deemed to include the business of persons licensed by the industrial commissioner under the provisions of §24-a or subdivision 3-b of §50 of the Workers' Compensation Law or representing employers or groups of employers insured under the Workers' Compensation Law in the State Insurance Fund, nor persons engaged in the business of adjusters for insurance companies nor public adjusters licensed by the Superintendent of Insurance under the Insurance Law of this State.

3. The term the "business of private investigator," and the term "private investigator" shall mean and include any person, firm, limited liability company, partnership or corporation engaged in the business of private investigator as defined in subdivision one of this section with or without the assistance of any employee or employees. The term "business of watch, guard or patrol agency" and the term "watch, guard or patrol agency" shall mean and include any person, firm, limited liability company, partnership or corporation engaged in the business of watch, guard or patrol agency as defined in subdivision two of this section or the business of a security guard company as defined in subdivision five of §89-f of this Chapter with or without the assistance of any employee or employees. For the purposes of this article, a public entity as defined in subdivision seven of §89-f of this Chapter or a security guard company which utilizes security guards solely for its own proprietary use shall not be deemed a security guard company.

4. The term "business of bail enforcement agent" and the term "bail enforcement agent" shall mean and include any person, firm, company, partnership or corporation engaged in the business of bail enforcement as defined in subdivision 1-a of this section with or without the assistance of any employee or employees.

## §72. Application for licenses

Any person, firm, partnership, limited liability company or corporation intending to conduct the business of private investigator, business of bail enforcement agent or the business of watch, guard or patrol agency, and any person, firm, partnership, limited liability company or corporation intending to conduct the business of furnishing or supplying information as to the personal character of any person or firm, or as to the character or kind of the business and occupation of any person, firm or corporation, society or association or any person or group of persons, or intending to own, conduct, manage or maintain a bureau or agency for the above mentioned purposes, or while engaged in other lawful business activities also intending to engage in any one or more of the activities set forth in §71 of this article except exclusively as to the financial rating, standing, and credit responsibility of persons, firms, companies or corporations or as to personal habits and financial responsibility of applicants for insurance indemnity bonds or commercial credit or of claimants under insurance policies shall, for each such bureau or agency and for each and every sub-agency, office and branch office to be owned, conducted, managed or maintained by such person, firm, partnership, limited liability company or

*NYS Department of State Division of Licensing Services*

corporation for the conduct of such business, file in the office of the Department of State a written application, on forms provided by the department containing such information and documentation, including fingerprints, as the Secretary of State may require by rule and regulation.

1. If the applicant is a person, the application shall be subscribed by such person, and if the applicant is a firm or partnership the application shall be subscribed by each individual composing or intending to compose such firm or partnership. The application shall state the full name, age, residences within the past three years, present and previous occupations of each person or individual so signing the same, and shall also specify the name of the city, town or village, stating the street and number, if the premises have a street and number, and otherwise such apt description as will reasonably indicate the location thereof, where is to be located the principal place of business and the bureau, agency, sub-agency, office or branch office for which the license is desired, and such further facts as may be required by the Department of State to show the good character, competency and integrity of each person or individual so signing such application. Each person or individual signing such application shall, together with such application, submit to the Department of State, his photograph, taken within six months prior thereto in duplicate, in passport size and also two sets of fingerprints of his two hands recorded in such manner as may be specified by the Secretary of State or the Secretary of State's authorized representative. Before approving such application it shall be the duty of the Secretary of State or the Secretary of State's authorized representative to forward one copy of such fingerprints to the Division of Criminal Justice Services. Upon receipt of such fingerprints, such division shall forward to the Secretary of State a report with respect to the applicant's previous criminal history, if any, or a statement that the applicant has no previous criminal history according to its files. If additional copies of fingerprints are required the applicant shall furnish them upon request. The Secretary shall reveal the name of the applicant to the chief of police and the district attorney of the applicant's residence and of the proposed place of business and shall request of them a report concerning the applicant's character in the event they shall have information concerning it. The Secretary shall take such other steps as may be necessary to investigate the honesty, good character and integrity of each applicant. Every such applicant for a license as private investigator shall establish to the satisfaction of the Secretary of State (a) if the applicant be a person, or, (b) in the case of a firm, limited liability company, partnership or corporation, at least one member of such firm, partnership, limited liability company or corporation, has been regularly employed, for a period of not less than three years, undertaking such investigations as those described as performed by a private investigator in subdivision one of §71 of this article, as a sheriff, police officer in a city or county police department, or the Division of State Police, investigator in an agency of the state, county, or United States government, or employee of a licensed private investigator, or has had an equivalent position and experience or that such person or member was an employee of a police department who rendered service therein as a police officer for not less than twenty years or was an employee of a fire department who rendered service therein as a fire marshal for not less than 20 years. However, employment as a watchman, guard or private patrolman shall not be considered employment as a "private investigator" for purposes of this section. Every such applicant for a license as watch, guard or patrol agency shall establish to the satisfaction of the Secretary of State (a) if the applicant be a person, or, (b) in the case of a firm, limited liability company, partnership or corporation, at least one member of such firm, partnership, limited liability company or corporation, has been regularly employed, for a period of not less than two years, performing such duties or providing such services as described as those performed or furnished by a watch, guard or patrol agency in subdivision two of §71 of this article, as a sheriff, police officer in a city or county police department, or employee of an agency of the state, county or United States government, or licensed

private investigator or watch, guard or patrol agency, or has had an equivalent position and experience; qualifying experience shall have been completed within such period of time and at such time prior to the filing of the application as shall be satisfactory to the Secretary of State. The person or member meeting the experience requirement under subdivision one of this section and the person responsible for the operation and management of each bureau, agency, sub-agency, office or branch office of the applicant shall provide sufficient proof of having taken and passed a written examination prescribed by the Secretary of State to test their understanding of their rights, duties and powers as a private investigator and/or watchman, guard or private patrolman, depending upon the work to be performed under the license. In the case of an application subscribed by a resident of the State of New York such application shall be approved, as to each resident person or individual so signing the same, but not less than five reputable citizens of the community in which such applicant resides or transacts business, or in which it is proposed to own, conduct, manage or maintain the bureau, agency, sub-agency, office or branch office for which the license is desired, each of whom shall subscribe and affirm as true, under the penalties of perjury, that he has personally known the said person or individual for a period of at least five years prior to the filing of such application, that he has read such application and believes each of the statements made therein to be true, that such person is honest, of good character and competent, and not related or connected to the person so certifying by blood or marriage. In the case of an application subscribed by a non-resident of the State of New York such application shall be approved, as to each non-resident person or individual so signing the same by not less than five reputable citizens of the community in which such applicant resides. The certificate of approval shall be signed by such reputable citizens and duly verified and acknowledged by them before an officer authorized to take oaths and acknowledgment of deeds. All provisions of this section, applying to corporations, shall also apply to joint-stock associations, except that each such joint-stock association shall file a duly certified copy of its certificate of organization in the place of the certified copy of its certificate of incorporation herein required.

1a. Every such applicant for a license as bail enforcement agent shall establish to the satisfaction of the secretary of state (a) if the applicant be a person, or (b) in the case of a firm, company, partnership, or corporation, at least one member of such firm, partnership, company or corporation, has been regularly employed, for a period of not less than three years, performing such duties or providing such services as described as those furnished by a bail enforcement agent in § 71 of this article, as a sheriff, police officer in a city or county police department, or the Division of State Police, investigator in an agency of the state, county, or United States government, or employee of a licensed private investigator, or has had an equivalent position and experience or that such person or member was an employee of a police department who rendered service therein as a police officer for not less than 20 years or was an employee of a fire department who rendered service therein as a fire marshal for not less than 20 years.

1-b. The person or member meeting the experience requirement under subdivisions 1 and 1-a of this section and any person or member of such firm, company, partnership or corporation who engages in the apprehension and return of suspects who fail to appear before the court must either satisfactorily complete a basic certification course in training for bail enforcement agents offered by a provider that is approved by the Secretary of State; or such person or member must have served as a police officer, as that term is defined in subdivision 34 of section 1.20 of the Criminal Procedure Law, for a period of not less than three years. The basic course of training shall include at least 25 hours of training approved by the Secretary of State and must include instruction on issues involved with the rights and limitations involving the bailee/fugitive who signs a contract with the bail enforcement agent. Completion of the course shall

be for educational purposes only and not intended to confer the power of arrest of a peace officer or public officer, or agent of any federal, state, or local government, unless the person is so employed by a governmental agency.

2. If the applicant is a corporation, the application shall be subscribed by the president, secretary, treasurer, and all other officers and directors working for such corporation within the State of New York, and shall specify the name of the corporation, the date and place of its incorporation, the location of its principal place of business, and the name of the city, town or village, stating the street and number, if the premises have a street and number, and otherwise such apt description as will reasonably indicate the location thereof, where is to be located the bureau, agency, sub-agency, office or branch office for which the license is desired, the amount of the corporation's outstanding paid up capital stock and whether paid in cash or property, and, if in property, the nature of the same, and shall be accompanied by a duly certified copy of its certificate of incorporation. Each and every requirement as to character of subdivision one of this section as to a person or individual member of a firm or partnership shall apply to the president, secretary, treasurer and all other officers and directors working for such corporation within the State of New York and each such officer and director, his successor and successors shall prior to entering upon the discharge of his duties subscribe a like statement, approved in like manner, as is by said subdivision one prescribed in the case of a person or individual member of a firm or partnership.

3. Each person subscribing an application pursuant to this section shall affirm that the statements therein are true under the penalties of perjury.

4. The Secretary of State may deny, suspend or revoke the license of a corporation if, at any time, 10 per centum or more of the corporate stock is held by a person who cannot meet the character standard set for an individual licensee.

### **§73. Enforcement of article; investigations**

1. The Secretary of State shall have the power to enforce the provisions of this article and article 7-A of this chapter and upon complaint of any person, or on his own initiative, to investigate any violation thereof or to investigate the business, business practices and business methods of any person, firm, limited liability company, partnership or corporation applying for or holding a license as a private investigator, bail enforcement agent or watch, guard or patrol agency, if in the opinion of the Secretary of State such investigation is warranted. Each such applicant or licensee shall be obliged, on request of the Secretary of State, to supply such information, books, papers or records as may be required concerning his, their or its business, business practices or business methods, or proposed business practices or methods. Failure to comply with a lawful request of secretary shall be a ground for denying an application for a license, or for revoking, suspending, or failing to renew a license issued under this article.

2. For the purpose of enforcing the provisions of this article and article 7-A of this chapter, and in making investigations relating to any violation thereof, and for the purpose of investigating the character, competency and integrity of the applicants or licensees hereunder, and for the purpose of investigating the business, business practices and business methods of any applicant or licensee, or of the officers or agents thereof, the Department of State, acting by such officer or person in the department as the Secretary of State may designate, shall have the power to subpoena and bring before the officer or person so designated any person in this state and require the production of any books, records or papers which he deems relevant to the inquiry and administer an oath to and take testimony of any person or cause his deposition to be taken, except that any applicant or licensee or officer or agent thereof shall not be entitled to fees and/or

mileage. A subpoena issued under this section shall be regulated by the Civil Practice Law and Rules. Any person, duly subpoenaed, who fails to obey such subpoena without reasonable cause or without such cause refuses to be examined or to answer any legal or pertinent question as to the character or qualification of such applicant or licensee or such applicant's or licensee's business, business practices and methods or such violations, shall be guilty of a misdemeanor. The testimony of witnesses in any investigative proceeding shall be under oath, which the Secretary of State or one of his deputies, or a subordinate of the Department of State designated by the Secretary of State, may administer, and wilful false swearing in any such proceeding shall be perjury.

3. Licensees hereunder must maintain such records as the Secretary of State by rule determines and in addition, the secretary may prescribe by rule that further records be kept by certain classes of licensees.

## §74. Issuance of licenses; fee; bonds

1. (a) The application shall be accompanied by a non-refundable fee, payable to the Department of State for the use of the state, for each certificate of license, as hereinbelow enumerated, issued to the applicant, if the applicant be an individual, of \$400 for a license as private investigator or bail enforcement agent or a fee of \$300 for a license as watch, guard or patrol agency, or if the applicant be a firm, partnership, limited liability company or corporation, a fee of \$500 for a license as private investigator or bail enforcement agent or a fee of \$400 for a license as watch, guard or patrol agency.
- (b) When the application shall have been examined and such further inquiry and investigation made as the Secretary of State shall deem proper, and when the Secretary of State shall be satisfied therefrom of the good character, competency and integrity of such applicant, or, if the applicant be a firm or partnership, the individual members thereof, or if the applicant be a limited liability company, the individual members thereof, or if the applicant be a corporation, the president, secretary, treasurer and all other officers and all directors thereof, and each stockholder owning 10 per centum or more of the stock and a period to 10 days from the date of the filing of the application shall have passed, the Department of State shall issue and deliver to such applicant a certificate of license to conduct such business and to own, conduct or maintain a bureau, agency, sub-agency, office or branch office for the conduct of such business on the premises stated in such application upon the applicant's executing, delivering and filing in the office of such department a surety company bond in the sum of \$10,000; provided however, that an applicant for a license as bail enforcement agent shall execute, deliver and file with the office of such department a surety company bond in the sum of \$500,000, conditioned for the faithful and honest conduct of such business by such applicant, which surety bond must be written by a company recognized and approved by the Superintendent of Insurance of the state, and approved by the Department of State with respect to its form, manner of execution and sufficiency provided, further, however, before a license is issued to a non-resident the applicant must file with the Secretary of State a written consent to the jurisdiction of the courts of New York (i) in any case or cases arising from any contract for the performance of private investigative services as private investigator, bail enforcement agent or watch, guard or patrol agency, made within the state or to be performed, wholly or in part, within the state or in any way connected with the conduct of business within the state, and (ii) in any case or cases arising from any tort occurring within the state or occurring in

connection with the business of the licensee within the state. The license as private investigator, bail enforcement agent or watch, guard or patrol agency granted pursuant to this article shall last for a period of two years, but shall be revocable at all times by the Department of State for cause shown. Such bond shall be taken in the name of the people of the State of New York, and any person injured by the violation of any of the provisions of this article or by the wilful, malicious and wrongful act of the principal or employee may bring an action against such principal, employee or both on said bond in his own name to recover damages suffered by reason of such wilful, malicious and wrongful act. In each and every suit, or prosecution arising out of this article, the agency of any employee as to the employment and as to acting in the course of his employment, shall be presumed. The license certificate shall be in a form to be prescribed by the Secretary of State and shall specify the full name of the applicant, the location of the principal office or place of business and the location of the bureau, agency, sub-agency, office or branch office for which the license is issued, the date on which it is issued, the date on which it will expire and the names and residences of the applicant or applicants filing the statement required by §72 of this article upon which the license is issued and in the event of a change of any such address or residence the Department of State shall be duly notified in writing of such change within 24 hours thereafter, and failure to give such notification shall be sufficient cause for revocation of such license. No such license as private investigator, bail enforcement agent or watch, guard or patrol agency shall be issued to a person under the age of 25 years.

- (c) The Secretary of State shall receive a non-refundable examination fee of \$15 from each person who takes an examination to qualify for application for licensure pursuant to this article. Fees paid to the Department of State pursuant to this article shall be deposited in the business and licensing services account established pursuant to §97-y of the State Finance Law.

2. Except as hereinafter in this subdivision provided, no such license shall be issued to any person who has been convicted in this state or any other state or territory of a felony, or any of the following offenses, to wit:

- (a) illegally using, carrying or possessing a pistol or other dangerous weapon;
- (b) making or possessing burglar's instruments;
- (c) buying or receiving or criminally possessing stolen property;
- (d) unlawful entry of a building;
- (e) aiding escape from prison;
- (f) unlawfully possessing or distributing habit forming narcotic drugs;
- (g) violating subdivisions 6 of §722 of the former Penal Law as in force and effect immediately prior to September 1, 1967, or violating § 165.25 or 165.30 of the Penal Law;
- (h) violating §742, §743, or §745 of the said former Penal Law, or violating any section contained in article 250 of the Penal Law. Except as hereinafter in this subdivision provided, no license shall be issued to any person whose license has been previously revoked by the Department of State or the authorities of any other state or territory because of conviction of any of the offenses specified in this section. The provisions of this subdivision shall not prevent the issuance of a license to any person who, subsequent to his conviction, shall have received executive pardon therefor removing this disability or who has

received a certificate of relief from disabilities, or a certificate of good conduct pursuant to article 23 of the Correction Law to remove the disability under this section because of such conviction or previous license revocation occasioned thereby.

3. There shall be kept in the office of the Department of State a bulletin board, in a place accessible to the general public, on which shall be posted at noon on Friday of each week the following: a statement of all pending applications for licenses under this article, giving the name of the applicant, and whether individual, firm, limited liability company or corporation, and the proposed business address; a similar statement of all such licenses issued during the preceding week; a similar statement of all such licenses revoked during the preceding week. No holder of an employment agency license shall be licensed under this article. While holding a license under this article a licensee shall not simultaneously hold an employment agency license or have financial interest in or participate in the control and management of any employment agency or any other person, firm, limited liability company or corporation engaged in private detective business except that a licensee hereunder may own or possess stock in any corporation whose only business is to undertake for hire the preparation of payrolls and the transportation of payrolls, moneys, securities and other valuables or whose only business is to provide or furnish protective, guard or private investigator service to:

- (a) the government of the United States or any subdivision, department or agency of the government of the United States, the government of the State of New York or any of its subdivisions, departments, commissions or agencies; or
- (b) a corporation created under or subject to the provisions of chapter 440 of the Laws of 1926 or chapter 254 of the Laws of 1940. In the event of the filing in the office of the Department of State a verified statement of objections to the issuance of a license under the provisions of this article, no license shall be issued to such applicant until all objections shall have been heard in a public hearing and a determination made in a manner provided by §79 of this article.

4. For changing the name on a license or for changing the status of a license, the Secretary of State shall receive a non-refundable fee of \$150.

5. For changing the address on a license, the Secretary of State shall receive a non-refundable fee of \$10.

### **§74-a. Notification**

Prior to taking or attempting to take into custody a person, a bail enforcement agent shall notify a local law enforcement agency having jurisdiction over the area in which the person is believed to be located of such bail enforcement agent's intentions. The notification shall be provided on a form prescribed by the local law enforcement agency. Notwithstanding, the form shall include information including but not limited to name, address, local address and motor vehicle registration of said agent. The local law enforcement agency in prescribing such form may consult with the division of criminal justice services. A representative of a local law enforcement agency may accompany a bail enforcement agent when the bail enforcement agent enters what is believed to be an occupied structure to search for or to apprehend a person.

### **§75. Posting and surrender of license certificate**

Immediately upon the receipt of the license certificate issued by the Department of State pursuant to this article, the licensee named therein shall cause such license certificate to be posted up and at all times displayed in a conspicuous place in the bureau, agency, sub-agency, office or branch office for which it is issued, so that all persons visiting such place may readily see the same. Such license certificate shall at all

reasonable times be subject to inspection by the Secretary of State or an authorized representative or representatives of the Department of State. It shall be unlawful for any person, firm, partnership, limited liability company or corporation holding such license certificate to post such certificate or to permit such certificate to be posted upon premises other than those described therein or to which it has been transferred pursuant to the provisions of this article, or knowingly to alter, deface or destroy any such license certificate. Every license certificate shall be surrendered to the Department of State within 72 hours after its terms shall have expired or after notice in writing to the holder that such license has been revoked. Failure to comply with any of the provisions of this section is a misdemeanor and sufficient cause for the revocation of a license.

### **§76. Certificate or pocket card lost or destroyed**

If it shall be established to the satisfaction of the Secretary of State, in accordance with rules and regulations of such department, that an unexpired license certificate or pocket card, issued in accordance with the provisions of this article, has been lost or destroyed without fault on the part of the holder, such department shall issue a duplicate license certificate or pocket card for the unexpired portion of the term of the original license certificate. The Secretary of State shall receive a non-refundable fee of \$10 for issuing a duplicate certificate of license or identification card.

### **§77. Removal of bureau, agency or office**

If the holder of an unexpired license certificate issued pursuant to this article shall remove the bureau, agency, sub-agency, office or branch office to a place other than that described in the license certificate, he shall, within the 24 hours immediately following such removal, give written notice of such removal to the Department of State, which notice shall describe the premises to which such removal is made and the date on which it was made, and send such license certificate to such department, at its office in the City of Albany, and such department shall cause to be written or stamped across the face of such license certificate a statement, signed by the Secretary of State or an authorized subordinate of the Department of State, to the effect that the holder of such license has removed, on the date stated in such written notice, such bureau, agency, sub-agency, office or branch office from the place originally described in such license certificate to the place described in such written notice, and such license certificate with the indorsement thereon shall then be returned to the licensee named therein.

### **§78. Renewal of licenses**

A license granted under the provisions of this article may be renewed by the Department of State upon application therefor by the holder thereof, in such form as such department may prescribe, accompanied by the non-refundable fee and surety bond each in amounts equivalent to those specified in §74 of this article as pertaining to original licenses. The application shall be filed six weeks before the expiration date of the license unless the application is accompanied by a non-refundable late filing fee of \$100. In no event will renewal be granted more than six months after the date of expiration of a license. No person, firm, limited liability company, partnership or corporation shall carry on any business subject to this article during any period which may exist between the date of expiration of a license and the renewal thereof.

### **§78-a. Surrender of licenses**

A license issued pursuant to this article may not be surrendered nor may any licensee resign as such licensee without the written approval of the Secretary of State or any deputy authorized to act for him.



## **§79. Hearings, notice, determinations, review**

1. The Department of State shall have the power to revoke or suspend any license, or in lieu thereof to impose a fine not exceeding \$1,000 payable to the Department of State, or reprimand any licensee or deny an application for a license or renewal thereof upon proof:

- (a) that the applicant or licensee has violated any of the provisions of this article or the rules and regulations promulgated hereunder;
- (b) that the applicant or licensee has practiced fraud, deceit or misrepresentation;
- (c) that the applicant or licensee has made a material misstatement in the application for or renewal of his license;
- (d) that the applicant or licensee has demonstrated incompetence or untrustworthiness in his actions;
- (e) that the applicant or licensee has violated any of the provisions of article 7-A of this chapter or the rules and regulations promulgated thereunder.

2. The Department of State shall, before denying an application for a license or before revoking or suspending any license, excepting a temporary suspension as provided in subdivision 5 hereof, or imposing any fine or reprimand, and at least 15 days prior to the date set for the hearing, and upon due notice to the complainant or objector, notify in writing the applicant for, or the holder of such license of any charge made and shall afford said applicant, or licensee, an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally to the applicant or licensee, or by mailing same by registered mail to the last known business address of such applicant or licensee.

3. The hearing on such charges shall be at such time and place as the Department of State shall prescribe and shall be conducted by such officer or person in the department as the Secretary of State may designate, who shall have the power to subpoena and bring before the officer or person so designated any person in this state, and administer an oath to and take testimony of any person or cause his deposition to be taken. A subpoena issued under this section shall be regulated by the Civil Practice Law and Rules. Such officer or person in the Department of State designated to take such testimony shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure.

4. In the event that the department shall deny the application for, or revoke or suspend any such license, or impose any fine or reprimand, its determination shall be in writing and officially signed. The original of such determination, when so signed, shall be filed in the office of the department and copies thereof shall be mailed to the applicant or licensee and to the complainant within two days after the filing thereof as herein prescribed.

5. The department, acting by the officer or person designated to conduct the hearing pursuant to subdivision 3 above or by such other officer or person in the department as the Secretary of State may designate, shall have the power to suspend the license of any licensee who has been convicted in this state or any other state or territory of a felony or of any misdemeanor or offense enumerated under subdivision 2 of §74 or under §84 of this chapter for a period not exceeding 30 days pending a hearing and a determination of charges made against him. If such hearing is adjourned at the request of the licensee, or by reason of any act or omission by him or on his behalf, such suspension may be continued for the additional period of such adjournment.

6. The action of the Department of State in granting or refusing to grant or to renew a license under this article or in revoking or suspending or refusing to revoke or suspend such a license or imposing any fine or reprimand shall be subject to review by a proceeding instituted under

article 78 of the Civil Practice Law and Rules at the instance of the applicant for such license, the holder of a license so revoked, suspended, fined or reprimanded or the person aggrieved.

## **§80. License certificates, pocket cards or badges**

Upon the issuing of a license as hereinbefore provided the Department of State shall issue to each person, partner, member of a limited liability company or officer of a corporation making and filing a statement required by §72 of this article a pocket card of such size and design as the Department of State may prescribe, which card shall contain a photograph of the licensee, the name and business address of the licensee and the imprint or impress of the seal of the Department of State which pocket card shall be evidence of due authorization pursuant to the terms of this article. All persons to whom such license certificates or pocket cards shall have been issued shall be responsible for the safe keeping of the same, and shall not lend, enable, let or allow any other person to have, hold, use or display such certificate or pocket card; and any person so parting with such a license certificate or pocket card or displaying the same without authority, or who shall display any license certificate or pocket card purporting to authorize the holder thereof to act as a private investigator, bail enforcement agent or watch, guard or patrol agency, unless the same shall have been duly issued pursuant to the provisions of this article, shall be guilty of a misdemeanor. Failure to comply with the provisions of this section shall be sufficient cause for revocation of such license, and all such certificates or pocket cards shall be returned to the Department of State within 72 hours after the holder thereof has received notice in writing of the expiration or revocation of such license. It shall be unlawful for a holder of a license or anyone else to distribute, possess, use or display any license certificate, pocket card, badge, shield or any other indicia of a license status pursuant to this article except as set forth in this article. Any person who is a licensee hereunder or an officer or authorized employee of any other person, firm, limited liability company or corporation, whether or not licensed hereunder, while performing the services of a watchman, guard or private patrolman, may wear on his outer clothing a rectangular metal or woven insignia approved by the Department of State, which insignia shall not be larger than three inches high nor four inches wide with an inscription thereon containing the word "watchman", "guard," "patrol" or "special service" and the name of such licensee or employer. It shall be unlawful for any employer, whether or not licensed hereunder, to wear or distribute to his, their or its employees any employment identification except as authorized in this article and approved by the Secretary of State. Any person violating any provision of this section shall be guilty of a misdemeanor.

## **§81. Employees**

1. The holder of any license certificate issued pursuant to this article may employ to assist him in his work of private detective or investigator or bail enforcement agent as described in §71 and in the conduct of such business as many persons as he may deem necessary, and shall at all times during such employment be legally responsible for the good conduct in the business of each and every person so employed. No holder of any unexpired license certificate issued pursuant to this article shall knowingly employ in connection with his or its business in any capacity whatsoever, any person who has been convicted of a felony or any of the offenses specified in subdivision 2 of §74 of this article, and who has not subsequent to such conviction received executive pardon therefor removing this disability, or received a certificate of relief from disabilities or a certificate of good conduct pursuant to article 23 of the Correction Law to remove the disability under this section because of such a conviction, or any person whose private detective or investigator's license or bail enforcement agent's license was revoked or application for such license was denied by the Department of State or by the authorities of any

other state or territory because of conviction of any of such offenses. Should the holder of an unexpired license certificate falsely state or represent that a person is or has been in his employ, such false statement or misrepresentation shall be sufficient cause for the revocation of such license. Any person falsely stating or representing that he is or has been a detective or employed by a detective agency or that he is or has been a bail enforcement agent or employed by a bail enforcement agency shall be guilty of a misdemeanor.

2. No person shall hereafter be employed by any holder of a license certificate until he shall have executed and furnished to such license certificate holder a verified statement, to be known as "employee's statement," setting forth:

- (a) His full name, age and residence address.
- (b) The business or occupation engaged in for the three years immediately preceding the date of the filing of the statement, setting forth the place or places where such business or occupation was engaged in, and the name or names of employers, if any.
- (c) That he has not been convicted of a felony or of any offense involving moral turpitude or of any of the misdemeanors or offenses described in subdivision one of this section.
- (d) Such further information as the Department of State may by rule require to show the good character, competency, and integrity of the person executing the statement.

3. Immediately upon the verification of an employee's statement, the holder of a license certificate by whom such person has been or is to be employed shall cause two sets of fingerprints of the two hands of such person to be recorded in such manner as the Department of State may by rule prescribe. The holder of a license certificate shall immediately stamp in indelible ink the employee's statement and each set of fingerprints with the name, year and license certificate number of such holder and a number, which number shall be determined by the number of such statements furnished to such holder and shall be in numerical sequence.

4. The holder of a license certificate shall affix one set of such fingerprints to the employee's statement in such manner that the prints can be examined without disclosing the contents of the employee's statement and shall retain such statement and prints so long as he shall be licensed under this article by the Department of State.

5. The holder of a license certificate shall file the other set of fingerprints with the Department of State by forwarding the same by registered mail to the office of the Secretary of State, Albany, New York, within 24 hours of such employment.

6. Within five days after the filing of such fingerprints the Secretary of State shall cause such fingerprints to be compared with fingerprints filed with the Division of Criminal Justice Services and, if he finds any record of any conviction as defined in the Criminal Procedure Law of a felony or any other offense specified in subdivision one of this section, he shall immediately notify the holder of such license certificate and shall also refer the matter to the attorney-general. The Secretary of State may also from time to time cause such fingerprints to be checked against the fingerprints filed with the Division of Criminal Justice Services or of other official fingerprint files within or without this state, and if he finds that such person has been convicted of a felony or any other offense specified in subdivision one of this section he shall immediately notify the holder of such license certificate and shall also refer the matter to the attorney-general. The Secretary of State shall at all times be given access to and may from time to time examine the fingerprints retained by the holder of a license certificate as provided in subdivision four of this section.

7. If any holder of a certificate shall file with the Department of State the fingerprints of a person other than the person so employed, he shall be

subject to a fine not exceeding \$5,000 or to imprisonment not exceeding one year, or both.

8. The provisions of this section shall not be applicable to security guards or the employment of security guards by licensees.

## **§82. Employees not to divulge information or make false reports**

Any person who is or has been an employee of a holder of a license shall not divulge to any one other than his employer, or as his employer shall direct, except as he may be required by law, any information acquired by him during such employment in respect of any work to which he shall have been assigned by such employer. Any such employee violating the provisions of this section and any such employee who shall wilfully make a false report to his employer in respect of any of such work, shall be guilty of a misdemeanor. The employer of any employee believed to have violated this section shall without any liability whatsoever upon said employer supply the Secretary of State or such officer or person in the Department of State as the Secretary of State may designate, all the known facts and circumstances in connection with the said employee's transaction or performance or action believed to be in violation of this article and the Secretary of State or his authorized representative shall, should the facts and circumstances be deemed to warrant, conduct further investigation and submit the evidence thus acquired to the attorney-general of the state for appropriate action in accordance with the provisions of §85 of this chapter.

## **§83. Application of article**

Nothing in this article shall apply to any detective or officer belonging to the police force of the state, or any county, city, town or village thereof, appointed or elected by due authority of law, or to any person in the employ of any police force or police department of the state, or of any county, city, town or village thereof while engaged in the performance of their official duties; nor to any person, firm, limited liability company, partnership, 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 the personal habits and financial responsibility of applicants for insurance, indemnity bonds or commercial credit or of claimants under insurance policies, nor to any person licensed as a certified public accountant while engaged in the practice of public accountancy as defined in article one hundred forty-nine of the education law or any firm, limited liability company, partnership or corporation registered as a certified public accounting firm by the commissioner of education while performing services regulated under article one hundred forty-nine of the education law or Part 70 of the regulations of the commissioner of education; and whose business does not embrace other activities described in §71 of this article; or whose business is licensed by the commissioner of labor under the provisions of §24-a or subdivision 3-b of §50 of the Workers' Compensation Law or whose business is representing employers or groups of employers insured under the Workers' Compensation Law in the State Insurance Fund; nor to any corporation duly authorized by the state to operate a central burglar or fire alarm protection business; nor to any person while engaged in the business of adjuster for an insurance company nor to any public adjuster licensed by the superintendent of insurance under the Insurance Law nor to any person regularly employed as special agent, detective or investigator exclusively by one employer in connection with the affairs of that employer only nor to any charitable or philanthropic society or association duly incorporated under the laws of the state and which is organized and maintained for the public good and not for private profit, nor shall anything in this article contained be construed to affect in any way attorneys or counselors at law in the regular

practice of their profession, but such exemption shall not enure to the benefit of any employee or representative of such attorney or counselor at law who is not employed solely, exclusively and regularly by such attorney or counselor at law. No person, firm, limited liability company, partnership, corporation or any bureau or agency exempted hereunder from the application of this article shall perform any manner of private investigator, bail enforcement agent or watch, guard or patrol agency service as described in §71 of this article, for any other person, firm, limited liability company, partnership, corporation, bureau or agency whether for fee, hire, reward, other compensation, remuneration, or consideration or as an accommodation without fee, reward or remuneration or by a reciprocal arrangement whereby such services are exchanged on request of parties thereto. The commission of a single act prohibited by this article shall constitute a violation thereof.

Nothing in this article shall be construed to affect or prohibit the right of any person to form or become affiliated with or to continue as a member of any union, association, society or organization of his own choosing.

## **§84. Unlawful acts**

1. It is unlawful for the holder of a license, issued under this article, or for any employee of such licensee, knowingly to commit any of the following acts within or without the state of New York: to incite, encourage, or aid in the incitement or encouragement of any person or persons who have become a party to any strike, to do unlawful acts against the person or property of any one, or to incite, stir up, create or aid in the inciting of discontent or dissatisfaction among the employees of any person, firm, limited liability company or corporation with the intention of having them strike; to interfere or prevent lawful and peaceful picketing during strikes; 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; to interfere or hinder the lawful or peaceful collective bargaining between employees and employers; to pay, offer, or give any money, gratuity, favor, 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 of self-organization, to form, join, or assist labor organizations and to bargain collectively through representatives of their own choosing; to advertise for, recruit, furnish or replace or offer to furnish or replace for hire or reward, within or without the state of New York, any help or labor, skilled or unskilled, or to furnish or offer to furnish armed guards, other than armed guards theretofore regularly employed for the protection of payrolls, property or premises, for service upon property which is being operated in anticipation of or during the course or existence of a strike, or furnish armed guards upon the highways, for persons involved in labor disputes or to furnish or offer to furnish to employers or their agents, any arms, munitions, tear gas implements, or any other weapons; or to send letters or literature to employers offering to eliminate labor unions or distribute or circulate any list of members of a labor organization, or to advise any person of the membership of an individual in a labor organization for the express purpose of preventing those so listed or named from obtaining or retaining employment. The violation of any of the provisions of this section shall constitute a misdemeanor and shall be punishable by a fine of not less than \$500, or one year's imprisonment or both. It is unlawful for the holder of a license to collect or offer or attempt to collect or directly or indirectly engage in the business of collecting of debts or claims of any kind, excepting that the taking possession, on behalf of a secured party having the right to do so under §9-503 of the Uniform Commercial Code, of property in the possession of a debtor who has defaulted in the performance of a security agreement secured by such property, shall not be considered a violation of this section and excepting further that the Secretary of State may grant exemption from this prohibition in the

collection of debts to licensees who are principally engaged in the business of credit investigation and credit reporting. It is unlawful for the holder of a license to furnish or perform any services described in subdivisions 1 and 2 of §71 of this article on a contingent or percentage basis or to make or enter into any agreement for furnishing services of any kind or character, by the terms or conditions of which agreement the compensation to be paid for such services to the holder of a license is partially or wholly contingent or based upon a percentage of the amount of money or property recovered or dependent in any way upon the result achieved. It shall be unlawful for a holder of a license to use, display, cause to be printed or distributed, cards, letter-heads, circulars, brochures or any other advertising material or advertisement in which any name or indicia of the license status of the licensee is set forth in any manner other than the name under which the licensee is duly licensed. It is unlawful for a licensed private investigator or bail enforcement agent to own, have or possess or in any manner to wear, exhibit or display, a shield or badge of any material, kind, nature or description, in the performance of any of the activities as private investigator or bail enforcement agent, as distinguished from watch, guard or patrol agency, under this article. It is unlawful for a licensed private investigator or bail enforcement agent to issue to any person employed by such licensee, a badge or shield of any material, kind, nature or description, and it is unlawful for any person employed by such licensee to possess, carry or display a badge or shield of any description provided that any licensed private investigator or bail enforcement agent who also engages in the business of watch, guard or patrol agency may possess, use or display or issue to employees in the conduct of such business, a rectangular metal or woven insignia to be worn on the outer clothing and approved by the Department of State, which insignia shall not be larger than three inches high or four inches wide with an inscription thereon containing the word "watchman", "guard," "patrol" or "special service" and the name of the licensee. It shall be unlawful for any licensee to publish or cause to be published any advertisement, letter-head, circular, statement or phrase of any sort which suggests that the licensee is an official police or investigative agency or any other agency instrumentality of the state of New York or any of its political subdivisions. It shall be unlawful for any licensee to make any statement which would reasonably cause another person to believe that the licensee is a police officer or official investigator of the state of New York or any of its political subdivisions. It shall be unlawful for a licensee to offer, by radio, television, newspaper advertisement or any other means of communication, to perform services at any location which is merely the location of a telephone answer service unless full disclosure of that fact is made in the advertisement.

2. Notwithstanding any inconsistent provision of subdivision one of this section, a private investigator may contract with a local social services district to furnish or perform services for the location of absent parents and fathers of children born out of wedlock on a contingent basis.

## **§85. Prosecution**

Criminal action for violation of this article shall be prosecuted by the attorney general, his or her deputy, or a district attorney in the name of the people of the state. In any such prosecution the attorney general, or his or her deputy, shall exercise all the powers and perform all duties which the district attorney would otherwise be authorized to exercise or to perform therein. The attorney general or a district attorney shall, upon a conviction for a violation of any provision of this article and within ten days thereafter, make and file with the Department of State a detailed report showing the date of such conviction, the name of the person convicted and the nature of the charge.

## §86. Reward may be presumed

In any prosecution under this article any person, firm, limited liability company, partnership or corporation who performs or commits any of the acts set forth in §§70 and 71 of this article shall be presumed to do so for a fee, compensation, valuable consideration or reward.

## §87. Department of State to employ agents; expenses for enforcement of law

The Department of State is hereby authorized to employ such agent or agents as the Secretary of State may deem necessary to enable the Department of State to carry out the provisions of this article and to enforce compliance therewith.

## §88. Roster of licensees

The Department of State shall publish at least once in each year, a roster of the names and addresses of all persons, firms, limited liability companies and corporations licensed under the provisions of this article. A copy of each roster issued by the Department of State shall be mailed by it to any licensee upon request and without charge.

## §89. Inspection by Commissioner of Labor

All applications, papers and records on file in the Department of State in connection therewith shall at all times be open for the inspection of the Commissioner of Labor of the Department of Labor and the persons in charge thereof shall afford every reasonable facility for their examination and permit copies to be made when required by the Commissioner of Labor.

### §89-a. Disposition of fees and other revenue

All fees and other moneys derived from the operation of this article shall on the fifth day of each month be paid by the Department of State into the state treasury.

# SECURITY GUARD ACT

### §89-f. Definitions

As used in this article, the following words and phrases shall have the following meanings:

1. "Commissioner" shall mean the commissioner of the Division of Criminal Justice Services.
2. "Division" shall mean the Division of Criminal Justice Services.
3. "Secretary" shall mean the Secretary of State.
4. "Department" shall mean the Department of State.
5. "Security guard company" shall mean any person, firm, limited liability company, corporation, public entity or subsidiary or department of such firm, limited liability company, corporation or public entity employing one or more security guards or being self-employed as a security guard on either a proprietary basis for its own use or on a contractual basis for use by another person, firm, limited liability company, corporation, public entity or subsidiary thereof within the state.
6. "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;
- 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.

7. "Public entity" shall mean:
  - a. the state of New York;
  - b. a county, city, town, village or any other political subdivision or civil department or division of the state;
  - c. any other public corporation, public authority, commission, agency, municipal or other public housing authority, or project organized pursuant to article two of the Private Housing Finance Law;
  - d. any other governmental instrumentality or governmental unit in the state of New York.

8. "Security system" shall mean an assembly of equipment and devices or a single device designated to detect and/or signal an unauthorized intrusion into premises or to signal an attempted robbery, burglary, theft, pilferage or other loss at a protected premises, and with respect to which signal, police and/or security guards are expected to respond. Smoke and/or fire alarm systems are excluded from the provisions of this article.

9. "Applicant" shall mean an individual who has filed an application with the department for a security guard registration card.

10. "Holder" shall mean an individual who has been issued a registration card by the department.

11. "Registration card" shall mean a photographic identification card issued by the department, including a special armed guard registration card signifying that the individual identified thereon has been authorized by the department to perform security guard functions.

12. "Special armed guard registration card" shall mean a registration card issued by the department signifying that the individual thereon has been certified by the department to perform security guard functions and to carry firearms in connection with such functions. Nothing herein contained shall relieve such guard from any provision of law which requires that he or she be licensed to carry such firearm.

13. "Serious offense" shall mean any felony involving the offenses enumerated in the closing paragraph of this subdivision; a criminal solicitation of or a conspiracy to commit or an attempt to commit or a criminal facilitation of a felony involving the offenses enumerated in the closing paragraph of this subdivision, which criminal solicitation, conspiracy, attempt or criminal facilitation itself constitutes a felony or any offense in any other jurisdiction which if committed in this state would constitute a felony; any offense in any other jurisdiction which if committed in this state would constitute a felony provided that for the purposes of this article, none of the following shall be considered criminal convictions or reported as such:

- (i) a conviction for which an executive pardon has been issued pursuant to the Executive Law;

(ii) a conviction which has been vacated and replaced by a youthful offender finding pursuant to article 720 of the Criminal Procedure Law, or the applicable provisions of law of any other jurisdiction; or

(iii) a conviction the records of which have been sealed pursuant to the applicable provisions of the laws of this state or of any other jurisdiction; and

(iv) a conviction for which other evidence of successful rehabilitation to remove the disability has been issued.

Felonies involving: assault, aggravated assault and reckless endangerment pursuant to article 120; vehicular manslaughter, manslaughter and murder pursuant to article 125; sex offenses pursuant to article 130; unlawful imprisonment, kidnaping or coercion pursuant to article 135; criminal trespass and burglary pursuant to article 140; criminal mischief, criminal tampering and tampering with a consumer product pursuant to article 145; arson pursuant to article 150; larceny and offenses involving theft pursuant to article 155; offenses involving computers pursuant to article 156; robbery pursuant to article 160; criminal possession of stolen property pursuant to article 165; forgery and related offenses pursuant to article 170; involving false written statements pursuant to article 175; commercial bribing and commercial bribe receiving pursuant to article 180; criminal impersonation and scheme to defraud pursuant to article 190; bribery involving public servants and related offenses pursuant to article 200; perjury and related offenses pursuant to article 210; tampering with a witness, intimidating a victim or witness and tampering with physical evidence pursuant to article 215; criminal possession of a controlled substance pursuant to §§220.06, 220.09, 220.16, 220.18 and 220.21; criminal sale of a controlled substance pursuant to §§220.31, 220.34, 220.39, 220.41, 220.43 and 220.44; criminal sale of marijuana pursuant to §§221.45, 221.50 and 221.55; riot in the first degree, aggravated harassment in the first degree, criminal nuisance in the first degree and falsely reporting an incident in the second or first degree pursuant to article 240; and crimes against public safety pursuant to article 265 of the Penal Law.

14. "Peace officer" shall mean a peace officer as defined by subdivision 33 of §1.20 of the Criminal Procedure Law, who is employed full-time as a peace officer and who has successfully completed the training requirements as set forth in subdivision 1 of §2.30 of such law.

15. "Police officer" shall mean a police officer as defined by subdivision 34 of §1.20 of the Criminal Procedure Law.

### **§89-g. Employment of security guards**

1. Except as provided in this section and §89-w of this article, no security guard company shall knowingly employ a person as a security guard and no person shall be employed as a security guard or act as a security guard unless:

- a. The security guard company has verified with the department that such person possesses a valid registration card which has not expired or been revoked or suspended; or
- b. Such security guard company has filed with the department in a manner prescribed by rules and regulations promulgated by the department, by certified mail:
  - (i) An application for a registration card completed and sworn to by such person pursuant to subdivision 1 of §89-h of this article;
  - (ii) A certification by the security guard company that it has exercised due diligence to verify as true the information contained in such person's application;
  - (iii) A certification that such person has completed the preassignment training required by subdivision 2 of §89-h of this article;

(iv) Two photographs of such person taken within 30 days prior to the filing of the application of a size prescribed by the secretary and two sets of fingerprints of such person. The fingerprints shall be taken on a standard fingerprint card approved by the division; and

(v) The fees prescribed by subdivision 10 of §89-h of this article.

2. It shall be incumbent upon each security guard company to exercise due diligence in verifying that the information contained in every application for a registration card it files with the department is true provided, however, the secretary shall, upon consultation with the security guard advisory council, promulgate rules and regulations to specify the minimum due diligence required to be exercised by such companies in order to verify the information required pursuant to subdivisions 5 and 7 of §89-h of this article.

3. Except as provided in §752 of the Correction Law, no security guard company shall knowingly employ to perform security guard functions, any individual:

- a. who has been convicted of a serious offense, or of a misdemeanor in the state or of any offense in any other jurisdiction which, if committed in this state, would constitute a misdemeanor, and which, in the discretion of the secretary, bears such a relationship to the performance of the duties of a security guard, as to constitute a bar to employment; or
- b. who in any jurisdiction has been denied authorization to perform security guard functions or whose authorization to perform security guard functions has been suspended or revoked on grounds which would constitute a basis for denying, suspending or revoking a registration card in this state.

4. For each security guard employed by a security guard company as of the effective date of this section such security guard company shall at a time assigned by the secretary, pursuant to a staggered schedule, comply with the provisions of paragraphs a and b of subdivision 1 of this section and the provisions of §89-n of this article. Until the assigned filing date, such security guard company may continue to employ such person to perform security guard functions. No security guard company may employ such person after the assigned filing date which has not complied with the provisions of paragraphs a and b of subdivision 1 of this section with respect to such person.

5. Within 15 calendar days following the employment, retirement, resignation or termination of a security guard by a security guard company, such company shall give the department written notice thereof on a form prescribed by the department.

6. Insurance requirements. All security guard companies which are self-insured shall file with the department a certificate of insurance evidencing comprehensive general liability coverage from an insurance company licensed to do business in this state or procured by a duly licensed excess line broker pursuant to §2118 of the Insurance Law for death and personal injury, which coverage shall include false arrest or false imprisonment, malicious prosecution, libel, slander, and violation of right of privacy, in the minimum amount of \$100,000 per occurrence and \$300,000 in the aggregate which amount shall be available for the payment of claims. The certificate shall provide that the insurance shall not be modified or cancelled unless 30 days prior notice shall be given to the department. After the effective date of this article, no security guard company shall knowingly have in its employ a security guard unless such coverage is in force and such certificate is filed with the department.

7. Every security guard company shall maintain for each security guard it employs, and for a period of one year following the retirement, resignation or termination of such security guard's employment a copy of the application for a registration card, proof of due diligence to verify the

information therein contained, one photograph and training records, after which year the security guard company shall cause all such records and documents to be destroyed.

8. All security guard companies, except those security guard companies which employ such guards solely for their own proprietary use, shall be subject to the enforcement provisions contained in article seven of this chapter; provided, however, that whenever the Secretary of State shall have reason to believe that any security guard company has hired or intends to hire an unlicensed security guard in violation of this article, the secretary may bring an action in supreme court to enjoin the employment of unlicensed security guards in violation of this article or for an order directing the security guard company to remedy the violation.

9. No registered security guard shall accept or continue in employment with a security guard company upon notice of determination from the department that such employer has (a) violated the provisions of this article or the rules and regulations promulgated pursuant thereto, or (b) has engaged in fraud, deceit or misrepresentation.

10. All security guard companies shall maintain books and records of employees who are security guards and shall, upon request, make such books and records available to the Secretary of State.

### **§89-h. Requirements for a registration card**

To qualify for a registration card to perform security guard functions, an applicant shall fulfill the following requirements:

1. Application: file an application with the department sworn to or affirmed by the applicant in such form and including such information and attachments as may be prescribed or requested by the department upon consultation with the security guard advisory council including but not limited to the character and fitness, competence and employment history of the applicant;

2. Training: file a certificate with the department certifying either that the applicant has satisfactorily completed a minimum of eight hours of pre-assignment training as prescribed by the division or that such requirement has been waived in accordance with §841-c of the Executive Law;

3. Age: be at least 18 years of age;

4. Criminal record: not have been convicted of a serious offense, or of a misdemeanor in the state or of any offense in any other jurisdiction which, if committed in this state, would constitute a misdemeanor, and which, in the discretion of the secretary, bears such a relationship to the performance of the duties of a security guard, as to constitute a bar to employment;

5. Character and fitness: be of good moral character and fitness;

6. Competence: not have been declared by any court of competent jurisdiction to be incompetent by reason of mental disease or defect which has not been removed;

7. Employment history: not have been discharged from a correctional or law enforcement agency for incompetence or misconduct as determined by a court of competent jurisdiction, administrative hearing officer, administrative law judge, arbitrator, arbitration panel or other duly constituted tribunal, or resigned from such agency while charged with misconduct or incompetence; provided however, that an applicant who has been discharged or has resigned from such agency while charged with misconduct or incompetency may submit an explanation to the department and request a waiver of this requirement;

8. Disability: a physical or mental disability or disability by reason of intoxication or the use of, addiction to or dependence on alcohol or drugs which, as determined by the department, renders the applicant unable to perform the essential functions of the security guard position, with or

without reasonable accommodation, or who, as determined by the department, poses a direct threat to health or safety;

9. Fees: pay (a) a fee of \$36 for processing of the application, investigation of the applicant and for the initial biennial registration period. Such fees shall be deposited to the credit of the business and licensing services account established pursuant to the provisions of §97-y of the State Finance Law; and (b) a fee pursuant to subdivision 8-a of §837 of the Executive Law, and amendments thereto, for the cost of the division's full search and retain procedures, and a fee as determined by the Federal Bureau of Investigation for the cost of its fingerprint search procedures, which fees shall be remitted by the department to the division and Federal Bureau of Investigation; and

10. Changes: give the department written notice, within 14 calendar days of occurrence, of any change of circumstances which varies from the information previously given to the department hereunder.

### **§89-i. Investigation**

Within five business days after receipt of an application, the department shall transmit to the division two sets of fingerprints and the fees required pursuant to paragraph (b) of subdivision 10 of §89-h of this article. One set of fingerprints and the required fee shall be submitted to the Federal Bureau of Investigation for a national criminal history record check. The results will be used to ascertain whether or not the applicant has been charged with or convicted of a serious offense and may cause to be conducted an investigation to verify the information contained in the application; provided, however, that the department shall cause such investigation to be conducted for applicants whose application has not been submitted and verified pursuant to §89-g of this article. The department, in consultation with the division, may waive such background checks, investigations and fees if in its opinion, the security guard applicant has been subject to previous background checks and investigation requirements which meet or exceed the requirements of this section. The department, in consultation with the division, may not be required to conduct background checks or investigations for applicants who are also employed as peace officers.

### **§89-j. Security guard registry**

The department shall pursuant to §99 of the Executive Law maintain a computerized registry.

### **§89-k. Issuance and denial of registration cards**

1. Requirements of registration cards. Unless the department determines that the applicant does not meet the requirements of §89-h of this article or is unable to perform security guard functions, it shall issue a registration card in a form prescribed by the department, which shall include, among other information, the expiration date of such card and any renewal thereof, authorizing the applicant to perform security guard functions. If the department determines that an applicant does not meet the requirements of §89-h of this article, it shall deny the application for a registration card. Upon issuance of the registration card or denial of the application therefor, the department shall forthwith give notice of such issuance or denial to such applicant and to the security guard company which employs such applicant, by regular mail.

2. Administrative review. Denial of a registration card hereunder shall be reviewable by an administrative hearing as set forth in subdivisions 2, 3, 4 and 5 of §79 of this chapter.

## **§89-l. Suspension, revocation and reissuance of registration cards**

1. Revocations and suspensions. The secretary or any person deputized by the secretary may suspend for a period not to exceed 18 months or revoke any registration card issued pursuant to this article after a hearing pursuant to this section, except that, where revocation is sought based solely upon the holder having been convicted of a serious offense, the secretary shall provide notice to the holder, at the holder's registration address as maintained by the department, that the holder's registration card will be revoked on a date certain, but not less than 35 days after the date of the notice, unless the holder requests an administrative hearing pursuant to this section within said 35 day period.

2. Causes for revocation or suspension. A registration card issued pursuant to this article may be suspended or revoked for one or more of the following causes:

- a. the holder is convicted of a serious offense, or of a misdemeanor in the state which, in the discretion of the secretary, bears such a relationship to the performance of the duties of a security guard, as to constitute a bar to employment;
- b. the application contained a material false statement or omission the truth or inclusion of which would have resulted in denial of the application pursuant to §89-k of this article;
- c. the holder is in violation of any provisions of this article or the rules and regulations promulgated pursuant to this article;
- d. employment of the holder as a security guard constitutes a danger to the health, safety or well-being of the public.

3. Procedure. The hearing required by subdivision one of this section shall be held pursuant to the State Administrative Procedure Act, provided, however, that where a registration card has been temporarily suspended pursuant to paragraph b of subdivision 4 of this section, the hearing shall be held within 30 days and the adjudication shall be made within 45 days following the service of notice of such hearing. If such hearing is adjourned at the request of the holder or by reason of any act or omission by the holder or on the holder's behalf such suspension may be continued for the additional period of such adjournment. Where a holder has been served with notice of hearing which has not been adjourned and such holder without good cause fails to appear at the hearing, such hearing may proceed and an adjudication may be made in the absence of such holder.

4. Temporary suspension of registration cards.

- a. Temporary suspension where the holder is charged with a serious offense. Where a holder is charged with a serious offense, such holder's registration card may be suspended (i) by the court pending any prosecution for a serious offense. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of §140.40 of the Criminal Procedure Law and there exists reasonable cause to believe that the holder committed the serious offense with which he is charged. At such time, the holder shall be entitled to an opportunity to make a statement regarding the enumerated issues and to present witnesses and other evidence tending to rebut the court's findings. Where the suspension is imposed upon a pending charge of a serious offense which is a class A misdemeanor and the holder has requested a hearing pursuant to article 170 of the Criminal Procedure Law, or where the suspension is imposed upon a pending charge of a serious offense which is a felony and the holder has requested a hearing pursuant to article 180 of the Criminal Procedure Law, the court shall conduct such hearing. If upon completion of such hearing, the court fails to find that there is reasonable cause to believe

that the holder committed a serious offense, or if the charges are dismissed or the holder is acquitted of such charges or the conviction is reversed on appeal, the court shall promptly notify the secretary and direct restoration of such registration card unless such registration card is suspended or revoked pursuant to any other provision of this section. If a holder is convicted of a serious offense, the court shall promptly notify the secretary and the suspension shall remain in effect pending a hearing held pursuant to subdivision 3 of this section; or (ii) by an officer designated by the secretary pursuant to the State Administrative Procedure Act to preside over a hearing, on application by the secretary on notice to the holder, where such officer finds that such holder has been charged with a serious offense and reasonable cause exists to believe that the holder committed the serious offense with which the holder is charged.

- b. Temporary suspension pending hearing and adjudication. Pending the hearing and adjudication on suspension or revocation of a registration card, the officer designated to preside over the hearing may, on application of the secretary with notice to the holder, suspend such registration card where (i) the holder has been convicted of a serious offense, (ii) the holder has been charged with a serious offense and such officer finds that reasonable cause exists to believe that the holder committed the serious offense with which the holder is charged, or (iii) such officer finds that reasonable cause exists to believe that the employment of the holder as a security guard constitutes a danger to the health, safety or well-being of the public.

5. No registration card may be suspended pursuant to this section based upon the fact that a holder is charged with or convicted of one or more serious offenses, or of a misdemeanor in the state which, in the discretion of the secretary, bears such a relationship to the performance of the duties of a security guard, as to constitute a bar to employment unless:

- a. there is a direct relationship between one or more such serious offenses and the registration card or employment of the holder as a security guard; or
- b. the possession of a registration card by the holder or the employment of the holder as a security guard would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

6. Fines. Where it is determined after hearing that the holder has violated one or more provisions of this article pursuant to paragraph c of subdivision 2 of this section, the secretary may, in lieu of revocation or suspension of the registration card of such holder, impose a fine not to exceed \$1,000 for each violation payable to the department.

7. Surrender of suspended or revoked registration card.

- a. When the court suspends a registration card pursuant to subparagraph (i) of paragraph a of subdivision 4 of this section, the holder shall forthwith surrender the registration card to the court and the court shall promptly send the registration card to the secretary.
- b. Upon suspension or revocation of the registration card by the secretary or by the officer designated by the secretary to preside over the hearing, pursuant to this section, the holder shall, if present at the time of such suspension or revocation, surrender the registration card forthwith. If the holder is not present at the time of such suspension or revocation, the secretary shall send notice of such suspension or revocation to the holder at the address indicated on the registration card or such other last known address, by personal service or by certified mail return receipt requested, in which case the holder shall within five days following receipt of such notice surrender the registration card

by delivering same in person or by certified mail to a location designated by the secretary. Notice of suspension or revocation shall be given by the secretary to the security guard company by which the holder was employed at the time of such suspension or revocation.

8. Reissuance of registration card. A suspended or revoked registration card may be reissued only by the secretary or by a person deputized by the secretary. Except as otherwise provided in this section, where a registration card has been revoked, it may not be reissued for at least one year following revocation.

### **§89-m. Renewal of registration cards**

1. Registration cards shall expire two years from the date of issuance or last renewal as the case may be. Not less than 60 nor more than 90 days prior to the expiration date of a registration card, the department shall mail to each registrant at his last known address, notice of renewal and a registration renewal form. Registration cards shall not be renewed unless not more than 60 nor less than 30 days prior to the expiration date of the registration card, the holder submits to the department, a registration renewal form sworn to or affirmed by the holder under the penalty of perjury together with a biennial renewal fee in the amount of \$25 payable to the department and a certificate certifying that the holder has satisfactorily completed the required annual in-service training courses as prescribed by the commissioner pursuant to subdivision 1 of §841-c of the Executive Law. Unless the department determines the existence of facts which would constitute cause for denial, revocation or suspension of the registration card pursuant to this article, it shall renew the registration card. Denial of renewal hereunder shall be reviewable by an administrative hearing as set forth in §79 of this chapter. The \$25 biennial renewal fee collected by the department shall be deposited to the licensing examinations services account established pursuant to the provisions of §97-aa of the State Finance Law. Notice that a registration card has expired or has not been renewed pursuant to this section shall be given by the secretary to the holder of such registration card and to the security guard company by which such holder was employed at the time of such expiration or non-renewal.

2. A registration card which was not renewed or which expired may be reissued only in a manner prescribed by rules and regulations promulgated by the department.

### **§89-n. Training requirements**

1. Security guards shall be required to satisfactorily complete training programs given and administered by security guard training schools, schools which provide security guard training programs or security guard companies prescribed, certified and approved by the commissioner pursuant to §841-c of the Executive Law to include:

- a. an eight hour pre-assignment training course;
- b. an on-the-job training course to be completed within 90 working days following employment, consisting of a minimum of 16 hours and a maximum of 40 hours, as determined by the council, generally relating to the security guard's specific duties, the nature of the work place and the requirements of the security guard company;
- c. a 47 hour firearms training course for issuance of a special armed guard registration card;
- d. an eight hour annual in-service training course; and
- e. an additional eight hour annual in-service training course for holders of special armed guard registration cards.

The training programs and courses required by this subdivision may, if approved and certified by the commissioner pursuant to subdivision 2 of

§841-c of the Executive Law, be given and administered by security guard companies.

Nothing herein shall be construed to prohibit a security guard company from voluntarily providing training programs and courses which exceed the minimum requirements provided by this subdivision.

Upon completion of a required training course, a security guard shall receive from the provider a certificate evidencing satisfactory completion thereof in accordance with the requirements prescribed by the commissioner pursuant to §841-c of the Executive Law.

2. a. A security guard who has been or was previously employed as a peace officer for 18 months or more who exhibits a valid certificate awarded pursuant to subdivision 6 of §2.30 of the Criminal Procedure Law attesting to his or her satisfactory completion of the training requirements imposed by §2.30 of the Criminal Procedure Law shall be exempt from the requirements of paragraph c of subdivision 1 of this section provided that such peace officer has completed a course of firearms training approved by the municipal police training council pursuant to the last paragraph of subdivision 1 of §2.30 of the Criminal Procedure Law provided, however, that nothing in this subdivision shall be deemed to authorize such guard to carry, possess, repair or dispose of a firearm unless the appropriate license therefor has been issued pursuant to §400.00 of the Penal Law.

3. A security guard who is also employed as a peace officer for 18 months or more shall be exempt from the requirements of paragraph e of subdivision 1 of this section as long as he or she is currently employed as a peace officer and provides to his or her security guard employer proof of such annual in-service training required under paragraph e of subdivision 1 of this section.

4. The provisions of this section shall not apply to a security guard who is:

- a. a correction officer of any state correctional facility having the powers of a peace officer pursuant to subdivision 25 of section 2.10 of the Criminal Procedure Law;
- b. a bridge and tunnel officer, sergeant or lieutenant of the Triborough Bridge and Tunnel Authority having the powers of a peace officer pursuant to subdivision 20 of §2.10 of the Criminal Procedure Law;
- c. a uniformed court officer of the Unified Court System having the powers of a peace officer pursuant to subdivision 21 of §2.10 of the Criminal Procedure Law;
- d. a court clerk having the powers of a peace officer pursuant to subdivision 21 of §2.10 of the Criminal Procedure Law;
- e. a deputy sheriff having the powers of a peace officer pursuant to subdivision 2 of §2.10 of the Criminal Procedure Law;
- f. a police officer as defined in paragraphs (a), (b), (c), (d), (e), (f), (j), (k), (l), (o), and (p) of subdivision 34 of §1.20 of the Criminal Procedure Law who has been retired from such employment for a period not to exceed 10 years, provided, however, that a retired police officer who has been retired from such employment for a period in excess of 10 years shall be required to provide proof to his or her security guard employer of his or her satisfactory completion of an eight hour annual in-service training course approved by the commissioner, and provided further, however, that a retired police officer who will be required by his or her security guard employer to carry a firearm or will be authorized to have access to a firearm shall provide to such employer proof of his or her satisfactory completion of a 47 hour firearms training course approved by



the commissioner and, if such firearms training course has not been completed within one year prior to such employment, satisfactory completion of an additional eight hour annual firearms in-service training course approved by the commissioner, such training course to be completed at least annually; or

- g. a peace officer as defined in subdivisions 2, 20 and 25 and paragraphs a and b of subdivision 21 of §2.10 of the Criminal Procedure Law who has been retired from such employment for a period not to exceed 10 years, provided, however, that a retired peace officer who has been retired from such employment for a period in excess of 10 years shall be required to provide proof to his or her security guard employer of his or her satisfactory completion of an eight hour annual in-service training course approved by the municipal police training council, and provided further, however, that a retired peace officer who will be required by his or her security guard employer to carry a firearm or will be authorized to have access to a firearm shall provide to such employer proof of his or her satisfactory completion of a 47 hour firearms training course approved by the municipal police training council and, if such firearms training course has not been completed within one year prior to such employment, satisfactory completion of an additional eight hour annual firearms in-service training course approved by the municipal police training council, such training course to be completed at least annually.

### **§89-o. Rules and regulations**

The secretary shall in consultation with the security guard advisory council, adopt rules and regulations implementing the provisions of this article. Such rules and regulations shall include criteria for determining whether a person is a security guard or whether a particular function is a security guard function as defined by subdivision 6 of §89-f of this article.

### **§89-p. Violations and penalties**

Any person who is employed as a security guard or who acts as a security guard in violation of the provisions of §89-g of this article or who knowingly and wilfully makes material misstatements in the application for or renewal of his or her registration card or who permits or authorizes the employment of a person as a security guard in violation of the provisions of §89-g of this article or any security guard company which employs a security guard in violation of the provisions of §89-g of this article shall be guilty of a misdemeanor which, upon conviction, shall be punishable by a term of imprisonment not to exceed six months, or by a fine of not more than \$1,000, or by both such fine and imprisonment upon the first conviction and by a term of imprisonment not to exceed one year or by a fine of not less than \$1,000 and not to exceed \$2,500 or by both such fine and imprisonment upon a subsequent conviction. Any person who shall knowingly and wilfully fail to surrender his or her registration card as required by subdivision 7 of §89-l of this article shall be guilty of a violation punishable by a fine not to exceed \$250 in addition to any other penalty prescribed by law. Each violation of this article shall be deemed a separate offense.

### **§89-q. Separability**

If any item, clause, sentence, subparagraph, subdivision, section or other part of this article, or the application thereof to any person or circumstances shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this article, or the application of such section or part of a section held invalid, to any other person or circumstances, but shall be confined in its operation to the item, clause,

sentence, subparagraph, subdivision, section or other part of this article directly involved in such holding, or to the person and circumstances therein involved.

### **§89-r. Preemption**

The provisions of this article shall govern notwithstanding any other law to the contrary and further, no local law shall be enacted which shall require any fee or license for the licensure or registration of security guards.

### **§89-s. Reporting**

On or before February 1, 1994, and on or before February 1st of each succeeding year, the secretary, upon consultation with the commissioner and the security guard advisory council, shall report to the governor, the temporary president of the senate and the speaker of the assembly on the implementation, procedures, operation, training, and enforcement of the Security Guard Act of 1992, together with any recommendations relating thereto. Such report shall include, but not be limited to:

- a. the number of security guards registered and maintained in the security guard registry;
- b. the number of applicants for registration, and the number of applications denied with the reason or reasons therefor;
- c. statistics related to the time it takes to process fingerprint cards, applications and inquiries to the registry by security guard companies;
- d. the number and length of suspensions and revocations, and the number and amount of fines imposed;
- e. the amount of fees collected by the department and the division;
- f. the level of appropriation authority available to the department and the division and the amount of money expended by the department and division for the purposes of carrying out the provisions of this article; and
- g. any other information which the department and the division deem necessary. The division shall provide the department with any information necessary to comply with the requirements of this section.

### **§89-w. Applicability**

The provisions of this article shall not apply to a not-for-profit security guard company, public entity, or tenant or third-party security provider of such tenant of a publicly owned sports venue with a capacity of at least sixty thousand people located in the county of Erie, which hires a security guard or guards for a specific event or events solely for its own proprietary use and which employs such security guards only on a temporary basis for a total period not exceeding fifteen days per year. Notwithstanding anything to the contrary, such tenant or third-party security provider of a publicly owned sports venue with a capacity of at least sixty thousand people located in the county of Erie shall ensure that no less than fifty percent of the security guards that such tenant or third-party security provider hires have obtained a license under this article.

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## **RULES AND REGULATIONS TITLE 19 NYCRR EMPLOYEES**

# PART 170

## §170.1 Security guard

(a) A person described in General Business Law section 89-f(6) is a security guard if he or she principally performs the activities of prevention, deterrence, control or enforcement.

(b) For purposes of this Part:

(1) prevention includes protecting persons and/or property from harm, theft, and other unlawful activity, including response to a security systems alarm;

(2) deterrence includes deterring, observing, detecting, and reporting unlawful or unauthorized activity;

(3) control includes controlling, by street or other patrol service, access to property, including employee personnel, visitors, vehicles and traffic;

(4) enforcement includes enforcing security policies, rules, regulations, and procedures.

(c) Principally performing shall mean:

(1) engaged in the functions set forth in subdivision (b) of this section for more than 50 percent of the person's regularly scheduled work hours; or

(2) employed to perform any or all of the above functions for any duration, with the condition of such employment being that he or she is armed with a weapon; or

(3) employed to perform any or all of the above functions for any duration, with the condition of such employment being that he or she wear a military style uniform or insignia, either being indicative of security guard status.

(d) Police officers

(1) When employed by a security guard company, an off-duty police officer is exempt from the registration, fingerprinting and training provisions of the General Business Law, Article 7A. When employed by a security guard company, a retired or former police officer must comply with the registration, fingerprinting and training provisions of General Business Law Article 7A.

(2) Before employing an off-duty police officer as a security guard, a security guard company licensed pursuant to Article 7 of the General Business Law shall obtain an employee statement from the police officer as required by section 81(2) of the General Business Law; provided, however, a police officer shall be exempt from the fingerprinting provisions of subdivisions 3, 4, 5, 6 and 7 of section 81 of the General Business Law.

(e) Peace officers. When employed by a security guard company, an off-duty peace officer must comply with the registration and fingerprinting provisions of General Business Law Article 7-A. The peace officer must also comply with the training provisions of General Business Law section 89-n subject to that section's special exceptions for peace officers.

(f) For the purposes of General Business Law, Article 7 and 7-A, a security guard is considered to be employed by a security guard company if the security guard is not independently licensed as a private investigator or as a watch, guard or patrol agency pursuant to General Business Law Article 7, even if the security guard is treated as an independent contractor by the security guard company for federal or state tax purposes.

## §170.2 Fingerprinting of employees

(a) Employees of any licensed private investigator or licensed watch, guard or patrol agency whether contractual or proprietary shall be fingerprinted.

(1) All fingerprinting shall be performed at the office of the licensee or of another licensed private investigator or watch, guard or patrol agency by the person who qualifies as the licensee or by a designated person who is employed by the entity and who has been previously fingerprinted.

(2) The designation of such person(s) to take fingerprints shall be made in writing by the qualifying licensee and filed with the Albany Office of the Division of Licensing Services, Department of State.

(3) The form of certification on the fingerprint pattern card as to the taking of the fingerprints of an employee shall be signed by the person authorized to take such fingerprints as provided by this section and shall not be signed by any other person.

(b) The holder of a license shall submit to the Department of State, Division of Licensing Services in Albany one set of fingerprint cards for each employee that is hired within 24 hours of such employment. One set of fingerprint cards shall be retained by the employer and attached to the front of the employee statement of each person hired.

(c) The holder of any private investigator and watch, guard and patrol license that is performing guard service for a proprietary firm, company, partnership or corporation shall fingerprint all employees whose job duties are primarily related to the operation of the security guard entity.

(d) Along with the employee statement and fingerprint card, a copy of the fingerprint transmittal form which accompanies the fingerprint card shall be attached to each employee personnel folder.

(e) Individuals possessing a current security guard registration need only complete an employee statement to be retained in the employee personnel folder, in lieu of fingerprinting.

## §170.3 Employee statements

(a) Employee statement. Each licensed private investigator, watch guard or patrol agency including every proprietary security guard company shall obtain a complete employee statement from each employee at the time of hiring. For a security guard company which has elected to form a security guard entity as provided in section 174.3 of this Title, such requirement shall apply only to those employees whose job duties are primarily related to the operation of such entity.

(b) The employee statement shall be a form prescribed by the Department of State, and shall inquire whether or not the employee has ever been convicted of an offense (other than a minor motor vehicle offense), and any such further information as the Department of State shall require.

(c) A licensee under article 7 of the General Business Law may destroy the employee's statement and fingerprint card referred to in section 81 of said article, provided that the employee has not been in the licensee's employ for the period of at least one year immediately preceding said destruction; no such destruction shall take place in the event that there is any litigation pending and arising out of and in the course of the individual's employment with the licensee.

## §170.4 Fingerprinting of qualifying licensee(s)

Applicants for licensure for a private investigator or watch guard or patrol agency may be fingerprinted by employees of the Department of State, Division of Licensing Services at designated locations and at appointed times. The fingerprints of any applicant for licensure may also be taken and recorded by local and State Police, or sheriffs and chiefs of police in a form and manner approved by the Division of Criminal Justice Services. In such case, each fingerprint card shall be signed and authenticated by the official who took the fingerprints, with his/her title of office.

### §170.5 Principal business address

All licensees under article 7 of the General Business Law shall maintain a principal place of business within New York State which shall contain the employee and business records for any licensed activities conducted within New York State.

### §170.7 Multiple licenses

A licensed watch, guard or patrol agency or private investigator may not hold an employment agency license or have a financial interest in or participate in the control and management of any employment agency or any other entity engaged in the business of private investigator, except that such prohibition shall not apply in the following situations:

- (a) the licensee owns stock in a corporation whose only business is to undertake for hire the preparation of payrolls and the transportation of payrolls, moneys, securities and other valuables; or
- (b) the licensee owns stock in a corporation whose only business is to provide or furnish protective, guard or private investigator services to the Federal or New York State government or any subdivision, department, commission or agency thereof; or
- (c) the corporation was created or subject to the provisions of chapter 440 of the Laws of 1926 (with respect to raising and breeding of horses) or chapter 254 of the Laws of 1940 (with respect to the parimutuel method of betting); or
- (d) the licensee is a proprietary security guard company.

### §170.8 Business records

Each licensee shall retain and maintain for a period of three years records of all transactions relating to the private investigator or watch, guard or patrol business.

### §170.9 Employees' identification cards issued by licensee

- (a) Each employee of a licensed private investigator or watch, guard or patrol agency providing services as either an investigator or security guard shall be issued a company identification card as described herein.
- (b) The form of the employee identification card shall be as follows:
  - (1) The identification card shall be 2" in height, 3/4" width.
  - (2) Predominate over all other information contained therein shall be the name and business address of the licensee as indicated on the license issued by the Department of State.
  - (3) Below this information shall be the word "employee" followed by the employee's full name, and registration title — Security Guard or Armed Security Guard.
  - (4) In the upper left-hand corner of the identification card shall be placed a current photograph of the employee, approximately 1 1/2" by 1 1/2" in size. The photograph shall at all times be a true likeness of the employee's actual appearance.
  - (5) Employee identification cards will be laminated after the photograph and signatures are affixed.
  - (6) Date of hire.
  - (7) The employee ID card format appears as follows:

3/4"

Employee Photo	(Business Name) (Business Address) (City, State, Zip)
----------------	---

Front

2"

Employee Name (Title)

This business is licensed by THE NEW YORK STATE DEPARTMENT OF STATE

3/4"

Back

Employee Name _____ has been authorized By (BUSINESS NAME) _____ to work as a Security Guard or Investigator. Date of hire: _____ _____ (signature of qualifier)
--

2"

(c) Security guards' identification cards to be temporary. Issuance of a company identification card to those individuals involved exclusively in the activities of a security guard shall be on a temporary basis until the appropriate security guard registration card is issued or denied by the Department of State. In accordance with the provisions of article 7A of the General Business Law, the card shall bear the words "Temporary ID". After the issuance or denial of the State registration card, the temporary card shall be maintained in the personnel files of the employee for the duration of his/her employment or for a one-year period following dismissal.

(d) Termination of employment. Upon termination of employment, each employee of a licensed business shall surrender his/her identification card within five business days. A licensee shall notify the Department of State of the name of each terminated employee on a TERMINATION OF EMPLOYMENT FORM. In addition, employers must indicate on the form if the employee has not surrendered the identification card as required. Surrendered identification cards should be maintained in the personnel file of the terminated employee.

### §170.10 Insignia/symbols of authority

- (a) No licensed private investigator or licensed watch, guard or patrol agency shall use any badge, patch or insignia except as described herein:
  - (1) Any cloth or metal insignia authorized for use shall be no larger than 3" wide by 4" high and rectangular in shape.
  - (2) The insignia used by security guards shall not be similar in design or appearance to the insignia of any police force or governmental agency. Such insignia shall not contain a replica of the Great Seal of the State of New York or the coat of arms of New York State. It shall show the full licensed name of the employer in a prominent and legible manner.
  - (3) Each insignia shall contain the words watch guard, guard, patrol, special service protection, security or armed security. The cloth patch or metal insignia shall be worn either on the shoulder or breast of the guard uniform or a hat.
- (b) The exhibition, wear, or display of any insignia of authority including any badge, emblem, identification card, vehicle emblem or any advertisement which could deceive a reasonable person into believing that such item is authorized by a law enforcement agency or the bearer is a law enforcement officer is prohibited.

## §170.11 Advertisements

All media advertisements placed by an individual or business licensed under this article, other than a proprietary security guard company, shall state, "Licensed by the New York State Department of State."

## §170.12 Contracts and agreements

(a) Consumers conducting business with an individual or firm licensed under this article shall receive a copy of any signed contract and/or agreement.

(b) All contracts and agreements used by an individual or firm licensed under this article shall include the following statement under the name of the business: "This business is licensed by the New York Department of State, Division of Licensing Services."

## §170.13 Supervision

All licensees under article 7 of the General Business Law shall be required to provide supervision of all employees engaged in the business of investigations or security guard work. Such supervision shall consist of regular, frequent and consistent guidance, instruction, oversight and superintendence by the licensee with respect to investigations or security guard work conducted by the licensee, and all matters relating thereto.

## §170.14 State issued identification card

A security guard wearing a military style uniform shall prominently display the state issued registration card on his or her outer garment.

# QUALIFYING SCHOOL REQUIREMENTS FOR BAIL ENFORCEMENT PART 171

## §171.1 Approved entities

Courses of instruction may be given by any college or university accredited by the Commissioner of Education of the State of New York, any public and/or private vocational school, any bail enforcement professional society or organization.

## §171.2 Application for approval of course of study

An application for approval to conduct a 25-hour bail enforcement course shall be made 60 days before the proposed course is to begin and shall be submitted on a form prescribed by the department. The application shall include the following:

- (a) the name and business address of the school;
- (b) the name and business address of the owners;
  - (1) if the owner is an individual, the name and business address of the individual;
  - (2) if the owner is a partnership, the name and business address of each partner;
  - (3) if the owner is a corporation, the name and business address of each shareholder owning five percent or more of the corporate stock;
  - (4) if the owner is a limited liability company, the name and business address of each member of the limited liability company;
  - (5) if the owner is a not-for-profit corporation or education corporation, the name and business address of the corporation's president or chief executive officer;

(c) the name, business address and telephone number of the education coordinator who will be responsible for compliance with the rules contained in this Part;

(d) the locations where classes will be conducted;

(e) a description of any materials that will be distributed during the course;

(f) a copy of any book(s) that will be used for the course;

(g) a course outline including the instructional time for each subject being presented; and

(h) lesson plans along with learning objectives for the established curriculum.

## §171.3 Subjects of study for bail enforcement agents

The following are the subject to be included in the 25-hour course of instruction for bail enforcement agents. All approved schools must use this course outline in their programs.

(a) New York State Licensing Law and Regulations;

(b) liability issues;

(1) civil;

(2) criminal;

(3) search or seizure of bailee/fugitive; and

(4) entering homes, businesses and vehicles;

(c) rights of bailee/fugitive;

(1) *Taylor v. Taintor*;

(2) rights of accused under State law;

(3) rights of accused under Federal law;

(4) extradition;

(d) criminal and civil law relating to bail bonds;

(e) basic concepts of criminal justice law;

(f) ethics and professionalism; and

(g) report writing.

## §171.4 Attendance

To receive credit, a student must complete the entire 25-hour course of instruction.

## §171.5 Certificate of successful completion

Upon satisfactory completion of the 25-hour course of instruction by a student, the school must give the student a certificate of completion which shall be signed and dated by the school's course coordinator. The certificate must include the following information:

(a) the name of the school;

(b) the title of the course, which shall be "Bail Enforcement Course, 25 hours";

(c) the school's code number;

(d) a statement that the student, who shall be named, has satisfactorily completed a 25-hour course of study in bail enforcement subjects approved by the Secretary of State in accordance with article 7 of the General Business Law; and

(e) the date on which the student completed the course.

## **§171.6 Faculty**

An individual who wishes to teach any part of the 25-hour course shall submit a resume to the Department of State along with evidence that the applicant meets one of the following qualifications:

- (a) is an attorney;
- (b) is a police instructor;
- (c) is an FBI instructor;
- (d) has a teacher's certificate from the New York State Education Department;
- (e) has five years of full-time experience as a police officer;
- (f) has a four-year college degree majoring in criminal justice; or
- (g) has five years, full-time experience as a licensed private investigator with significant bail enforcement experience.

## **§171.7 Retention of records**

Schools conducting approved courses shall retain records for students completing the school's courses for a period of three years after completion of the course. Such records shall, at all times during that period, be available for inspection by a duly authorized representative of the Department of State.

## **§171.8 Lists**

Within 30 days of the completion of a 25-hour course, a school must submit to the Department of State a list of the names and addresses of each student who successfully completed the course.

## **§171.9 Facilities**

Each 25-hour course shall be presented at a facility as necessary to properly present the course.

## **§171.10 Auditing**

A duly authorized representative of the Department of State may audit any course, verify attendance and inspect the records of attendance, at any time during its presentation and for a period of three years after the completion of the course.

## **§171.11 Suspensions and denials of course approval**

(a) Within 60 days after receipt of the application for approval of a 25-hour course, the Department of State shall inform the school whether the course has been approved or denied, or whether additional information is needed.

(b) The Department of State may deny, suspend or revoke the approval of a bail enforcement course or instructor if it is determined that either is not in compliance with article 7 of the General Business Law or the rules promulgated thereunder, or if it is determined that either has not adequately presented the course material set forth in section 171.3 of this Part.

## **§171.12 Credit for equivalent education in the bail enforcement field**

The Department of State may grant credit for equivalent education if the applicant provides evidence, satisfactory to the Department of State, of having completed a course of study at an accredited college or university, which course of study includes course work substantially similar to that set forth in section 171.3 of this Part. To qualify for credit, the equivalent education may not be less than 25 hours.

## **§171.13 Registration period and fees**

Each registration or renewal period for an approved course shall be 12 months or a part thereof. The registration or renewal period shall commence on January 1st or on the date on which the course is approved and shall expire on December 31st of the same year. The fee for registering a course with the Department of State shall be \$25.00 for each registration period. Those registrants who wish to provide courses at locations other than the primary location listed on their initial application shall pay a fee of \$25.00 for each additional location.

# **APPLICATIONS PART 172**

## **§172.1 Equivalent position and experience— private investigator**

To qualify for equivalent position and experience, under the provisions of section 72(1) of the General Business Law, as amended, an applicant for licensure as a private investigator shall have performed investigations as to the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, efficiency, loyalty, reputation, character, credit, business or financial responsibility or any person, group of persons, association, organization, society, firm or corporation, or as to the origins or responsibility for crimes and offenses, the location or recovery of lost or stolen property, the cause or origin of, or responsibility for losses or accidental damage or injury to persons or to real or personal property, or to secure evidence to be used before any authorized investigating committee, board of award, board of arbitration or in the trial of civil or criminal cases including as to the credibility of any witnesses. Such investigations shall have been performed for a period of three years, for an employer, firm, organization or governmental agency, whether subject to the provisions of article 7 of the General Business Law or otherwise, which required such investigations in the course of its regular operations, and which such investigations were conducted on a full-time basis in a position the primary duties of which were to conduct investigations and same comprised the major portion of the applicant's activities therein; an applicant may substitute three years' experience supervising and reviewing the work of at least three persons performing such investigations, obtained in a full-time position with such an employer, firm, organization or governmental agency, the primary duties and activities of which were such investigation supervision and review.

## **§172.2 Equivalent position and experience— watch, guard or patrol agency**

To qualify as an equivalent position and experience under the provisions of section 72(1) of the General Business Law, an applicant for licensure as a watch, guard or patrol agency shall have performed services as described in article 7-A, section 89-f(6). Such services shall have been performed for a period of two years for an employer, firm, organization or governmental agency, whether subject to the provisions of article 7 of the General Business Law or otherwise, which required such services in the course of its regular operations, on a full-time basis, in a position, the primary duties of which were the performance of such services and same comprised the major portion of the applicant's activities therein; an applicant may substitute two years' experience supervising and reviewing the work of at least three persons performing such services obtained in a position with such an employer, firm, organization or governmental agency, the primary duties and activities of which were such guard supervision and review.

### **§172.3 Notice of criminal conviction**

Any watch, guard or patrol agency licensee or any licensed private investigator, or any registered security guard who is convicted of a crime as defined in the Penal Law in this State or an offense which would constitute a crime in New York in any other state or Federal or foreign jurisdiction, shall give notice of such conviction to the Department of State, Division of Licensing Services, at its Albany Office, by certified mail, return receipt requested, within 10 days from date of conviction. Such notice shall be given notwithstanding pendency of appeal.

## **STATEMENT OF SERVICES TO BE PERFORMED PART 173**

### **§173.1 Advance statement of services and charges**

(a) No licensed private investigator, watch, guard or patrol agency shall undertake to perform any services on behalf of a client unless such licensee shall have delivered to the client a written statement, signed by the licensee, which shall set forth the specific service or services to be performed and the charge or fee therefor. In the event any or all of the services are to be performed on an hourly or other periodic basis, the rate therefor shall be set forth and a limit fixed as to the number of such periodic units of such services that may be performed without any specific authorization from the client; such statement shall also acknowledge that the licensee shall not perform any services beyond such limit unless the client shall consent thereto in writing.

(b) Anything to the contrary of this Part notwithstanding, the statement provided for in subdivision (a) of this section shall not be required to be delivered if the client and the licensee have entered into an agreement in writing, setting forth the services to be rendered and the fee or charge therefor, except that if the agreement provides for or relates to services to be rendered on a periodic basis and no limit as to such services is established by the agreement and there is no express understanding by the client waiving the fixing of any such limit, the licensee shall deliver the statement provided for in subdivision (a) of this section, to the extent of setting forth a limit as to the number of periodic units to be performed, beyond which no such services shall be performed without the written consent of the client.

(c) The licensee shall obtain an acknowledgment in writing from the client of receipt of any statement of services or charges or executed agreement delivered, or maintain receipt or proof of delivery of such statement.

### **§173.2 Records to be maintained**

Unless otherwise agreed to in writing the licensee shall deliver to the client a written report, setting forth the services performed on the client's behalf. This report shall be presented to the client at the time of billing and shall be maintained by the licensee for a period of three years after completion of the service, unless there is litigation pending which would require the records to be maintained until the litigation is completed.

## **SECURITY GUARD COMPANIES PART 174**

### **§174.2 Exempt entities**

(a) Public entities shall not be required to obtain a license under article 7 of the General Business Law, but shall register employees who provide guard services as defined in article 7A of the General Business Law and these regulations.

(b) Operators of central security or fire alarm stations, whose employees conduct monitoring and reporting services at the central station to police or fire departments, shall not be required to obtain a license under article 7 of the General Business Law, but shall register employees as required in article 7-A.

(c) Entities exempt from the licensing requirement of article 7 shall comply with all sections of law and regulations with regard to the registration and supervision of security guards, the maintenance of personnel records, and the filing of evidence of liability insurance.

### **§174.5 Fingerprint requirement**

(a) The holder of any license pursuant to article 7 of the General Business Law shall submit the fingerprints of all employees as provided in section 170.2 of this Title, or, if a designation has been made pursuant to section 174.3 of this Part, of those employees within the security guard entity.

(b) Security guard companies not subject to licensure pursuant to article 7 shall submit the fingerprints of all security guard employees. Such fingerprints may be taken by any of the methods set forth in section 170.2 of this Title, or by a designated person who is employed by the security guard company and who has been previously fingerprinted.

(c) Security guard training schools approved by the Division of Criminal Justice Services may submit the fingerprints of potential security guard registrants and of registered security guards. Such fingerprints may be taken by a designated employee of the training school who has been previously fingerprinted.

### **§174.6 Employment as a security guard: due diligence**

Security guard companies shall exercise the following minimum due diligence steps to determine the qualification of an applicant for employment as a security guard:

(a) When the potential guard employee is already registered by the Secretary of State:

(1) Company will have the guard employee applicant complete an employee statement form, as prescribed by the Secretary.

(2) Company will examine the registration card and record the identification number on the employee statement.

(3) Company will call or contact the licensing guard registry and will:

(i) verify the validity of the registration card; and

(ii) confirm training status and determine:

(a) if on-the-job training has been satisfactorily completed;

(b) when the annual in-service training course is due; and

(c) in the case of an armed guard, when the annual armed in-service training is due;

(iii) record guard registry transaction number and date on the employee personnel file.

(4) Submit to the Department of State, within seven days of employment, by regular mail a "Notice of Employment."

(b) When the potential guard employee has an application for registration pending which was submitted by another company:

(1) Company will have the guard employee applicant complete an employee statement form, as prescribed by the Secretary.

(2) Company will examine the temporary registration card issued by another company to the employee applicant and attach copy to employee statement.

(3) Company will call or contact the licensing guard registry and will:

(i) verify validity of the pending guard registration application;

(ii) verify that all information necessary for the registration to be issued has been submitted; and

(iii) confirm training status and determine:

(a) if on-the-job training has been satisfactorily completed;

(b) when the annual in-service training course is due; and

(c) in the case of an armed guard, when the annual armed in-service training is due;

(iv) record guard registry transaction number and date on the employee personnel file;

(v) company will issue the guard employee a temporary registration card on a form prescribed by the Secretary.

(4) Submit to the Department of State, within seven days of employment, by regular mail a "Notice of Employment."

(c) When the potential guard employee is new to the industry:

(1) Company will have the guard employee applicant complete an employee statement form, as prescribed by the Secretary.

(2) Company will call or contact the licensing guard registry and will:

(i) verify that no application is pending for the potential guard; and

(ii) verify that no prior disqualification of this potential guard has been made.

(3) Record guard registry transaction number and date on the employee personnel file.

(4) Verify identity. Such verification may be made by checking identifying documents such as a State- issued driver's license or State-issued I.D. card with a photograph or a U.S. military card.

(5) Verify prior employment record as indicated on the employee statement form. Such verification may be made by the procurement and filing of reference letters from former employers.

(6) Company will have the guard employee complete an application for a security guard registration, and review criminal history answers to determine eligibility for employment.

(7) Company will verify that all necessary documents are attached to the application:

(i) photo;

(ii) one set of fingerprints of the guard applicant on standard fingerprint cards approved by the division;

(iii) [Reserved]

(iv) certification that the guard applicant has satisfactorily completed the preassignment training, and armed guard training where applicable;

(v) fees as prescribed in section 89-h of article 7A of the General Business Law;

(vi) a certification that the company has exercised due diligence to verify as true the information contained in the employee statement; and

(vii) a completed "Notice of Employment".

(8) Company will issue the guard employee a temporary registration card on a form prescribed by the Secretary.

### **§174.7 Notice of employment**

All employers shall provide information on the employment of security guards to the Department of State on a notice of employment form.

(a) Notice of employment forms contained on the original application for security guard registration may be filed without additional fee.

(b) Notice of employment forms filed subsequent to the original registration application shall be accompanied by a \$25 filing fee.

### **§174.10 Disqualifying disability**

A disqualifying disability shall mean: having a physical or mental disability or disability by reason of intoxication or the use of, addiction to or dependence on alcohol or drugs which, as determined by the department, renders the applicant unable to perform the essential functions of the security guard positions, with or without reasonable accommodation, or who, as determined by the department poses a direct threat to health or safety.

### **§174.11 Investigation waiver**

The department may after consultation with the Division of Criminal Justice Services waive background investigation and applicable fees if it determines that the security guard company or a security guard applicant submitting the application has been subject to such a background investigation requirement which meets or exceeds the requirements of article 7 or article 7A of the General Business Law. The department shall not be required to initiate background investigations for applicants who are also employed as police officers or as peace officers, and who have fingerprints on file with the Division of Criminal Justice Services.

### **§174.12 Security guard registration**

(a) All individuals hired on or after January 1, 1994 as security guards in New York State shall be registered in accordance with the provisions of article 7A of the General Business Law.

(b) All individuals hired prior to January 1, 1994 as security guards in New York State shall be registered in accordance with the provisions of article 7A of the General Business Law within a 24-month period.

(1) Those individuals hired prior to January 1, 1994 in an even year shall be registered during the calendar year 1994 by the anniversary date of their hiring.

(2) Those individuals hired prior to January 1, 1994 in an odd year shall be registered during the calendar year 1995 by the anniversary date of their hiring.

# GLOSSARY OF TERMS

**Abandonment.** Desertion by a husband or wife, of his or her spouse, with the intention of creating a permanent separation.

**Abscond.** To hide from the jurisdiction of a court in order to avoid confinement.

**Accessory.** Although not the principal actor in the commission of an offense, a person who solicits, requests, commands or intentionally aids the principal actor to engage in the commission of such offense.

**Accomplice.** A person who is liable to prosecution for the identical offense charged against a defendant on trial.

**Acquit.** To free a person legally from an accusation of criminal guilt.

**Affidavit.** A written statement under oath.

**Alibi.** A defense of having been in another place at the time the crime was committed.

**Appeal.** A review, by a higher court, to determine whether the decision, order or verdict in the lower court should be reversed, modified or affirmed.

**Arbitration.** The settlement of a disagreement, out of court, by an arbitrator chosen by the parties to the argument.

**Arraignment.** Calling a defendant before the court to answer an accusation.

**Arson.** The willful and malicious burning of property.

**Assault.** Intentionally, recklessly or with criminal negligence causing physical injury to another person.

**Attachment.** The legal seizure of the property of a defendant before judgement.

**Autopsy.** The dissection of a dead human body, by an authorized doctor, to determine the cause of death.

**Bail.** To set free or liberate from arrest and imprisonment, upon security given that the person released shall appear and answer in court.

**Ballistics.** The examination of bullets that have been fired for the purpose of discovering from which weapon a given bullet has been fired. The science that deals with the motion of projectiles.

**Bench Warrant.** A court order, in which a criminal action is pending, directing a police officer, or a uniformed court officer, to take custody of the defendant, in such action, and bring him before the court.

**Blackmail.** The extortion of goods, money, or the procuring of an illegal act by a threat, in writing, of criminal prosecution or the destruction of a person's reputation or social standing or personal injury.

**Bribery.** Promising or offering money to a witness or a public officer or official to influence his action or testimony.

**Bug.** An instrument or device used to intentionally overhear a conversation or discussion, without the consent of at least one party thereto, by a person not present thereat.

**Burglary.** To knowingly enter or remain unlawfully in a building with the intent to commit a crime therein.

**Capital Offense.** A crime for which a life sentence or the death penalty is prescribed by law.

**Circumstantial Evidence.** Evidence which includes facts, conditions, and events from which an inference may be drawn as to the existence of the fact to be established.

**Coercion.** To compel or induce a person to engage in conduct, that he has a legal right to engage in or not, by means of force or threat.

**Confession.** A statement by a person accused of a crime admitting his guilt.

**Conspiracy.** A combination of two or more persons to accomplish a criminal or unlawful act.

**Contempt of Court.** Behavior disrespectful of the authority of a court, which obstructs the execution of court orders.

**Contract.** An agreement to do or not to do a certain thing.

**Corpus Delicti.** The body of a crime.

**Corroborating Evidence.** Evidence supplementary to that already given and tending to strengthen or confirm it.

**Criminal Impersonation.** A person who impersonates or pretends to be another, and does an act, in such assumed character, with intent to obtain a benefit or to injure or defraud another.

**Criminal Trespass.** To knowingly enter or remain unlawfully in or upon premises.

**Deposition.** A sworn statement made before an officer qualified to administer oaths, which is to be used as evidence in a court proceeding.

**Direct Evidence.** Evidence in form of testimony from a witness who actually saw, heard or touched the subject of interrogation.

**Disorderly Conduct.** Intentionally causing public inconvenience, annoyance or alarm, or recklessly causing a risk.

**Duress.** Any illegal imprisonment, or legal imprisonment used for an illegal purpose, or threats of bodily or other harm, or other means amounting to or tending to coerce the will of another, and actually inducing him/her to do an act contrary to his/her free will.

**Embezzlement.** Fraudulent appropriation by a person acting in a fiduciary capacity, of money or property entrusted by another.

**Entrapment.** The act of a public servant, or a person acting for a public servant, in inducing or encouraging a person to commit a crime not contemplated by him, for the purpose of criminal prosecution.

**Estoppel.** A legal prohibition which stops a person from making a particular statement of claim because of something he has said or done before.

**Executor.** The person named, by a testator, to carry out the provisions of his will.

**Extortion.** Taking or obtaining property from another with his consent, induced by a wrongful use of force or fear.

**Extradition.** Delivery from one state or notice to another, of fugitives from justice.

**Felony.** A crime punishable by imprisonment for a term of one year or more.

**Fiduciary.** A person who on behalf of or for the benefit of another transacts business or handles money or property not the person's own; such relationship implies great confidence and trust.

**Forgery.** The falsely making or materially altering of any instrument or article, with the intent to defraud, deceive or injure another.

**Garnishment.** The attachment of a debtor's wages or salary to satisfy or pay a judgment.

**General Release.** A formal document made out by individual certifying that he has no further cause for action against another.

**Grand Jury.** An official body, consisting of not less than 16, nor more than 23 persons, called to hear and examine evidence concerning offenses, whether criminal or otherwise, and to take action with respect to such evidence.

**Grand Larceny.** Unlawfully taking property belonging to another, which is valued at more than \$1,000.00.

**Habeas Corpus.** A written order commanding the bringing of the body, of a certain person, before a certain court.



**Harassment.** To intentionally engage in a course of conduct or repeatedly commit acts which alarm or seriously annoy a person and which serve no legitimate purpose.

**Hearsay Evidence.** An out of court statement, offered in court for its truth.

**Homicide.** The killing of one human being by the act or omission of another human being.

**Indictment.** The accusation in writing, presented by the Grand Jury, to a superior court charging a person with a crime.

**Injunction.** A writ or order issued by a court or judge, requiring a person to refrain from a particular act.

**Inquest.** An official hearing to determine the cause of death of a human being.

**Intestate.** A person who dies without having a valid will or testament.

**Ipso Facto.** By the mere effect of an act or a fact.

**Irrevocable Consent.** A written consent by a non-resident individual or nonresident/foreign partnership or corporation, submitting to the jurisdiction of the courts of New York State, designating the Secretary of the State of New York as the agent upon whom may be served any summons, subpoena or other process, in any action, commenced in the State of New York.

**Jostling.** Unnecessarily crowding against a person with the intent to place a hand in the proximity of such person's pocket, pocketbook or handbag.

**Judgment.** The official decision of a court or justice on the claims of parties to a litigation.

**Jump Bail.** Failure to make an appearance in court in accordance with the terms imposed at the time bail was fixed.

**Jurat.** That part of an affidavit where the officer certifies that it was sworn to before him.

**Jury Tampering.** The attempt to corruptly influence a juror.

**Laches.** Failure to assert a right for an unreasonable length of time.

**Levy.** Taking possession of property by an official to satisfy a judgment.

**Libel.** A written defamatory statement that is injurious to the reputation of another.

**Lien.** A legal right or claim upon a specific property which holds the property until a debt is satisfied.

**Lis Pendens.** A legal document, filed in the office of the county clerk, giving notice that an action or proceeding is pending in the courts affecting the title to real property.

**Malingering.** The act of feigning or faking an illness or injury.

**Mandamus.** An instrument, in writing, ordering a court or administrative officer to perform some specific duty.

**Manslaughter.** To recklessly cause the death of another person.

**Misdemeanor.** An offense, other than a "traffic infraction," for which a sentence to a term of imprisonment may be in excess of 15 days or up to one year.

**Modus Operandi.** The term used to indicate the method or technique followed in the performance of a criminal act.

**Moral Turpitude.** The quality of a crime involving grave infringement of the moral sentiment of the community.

**Negligence Actions.** The general class of civil suits arising from the defendant's failure to exercise reasonable care.

**Ordinance.** A rule enacted by the legislative body of a municipality.

**Parole.** A conditional release from prison.

**Peremptory Challenge.** The right of the defendant and the prosecution in a criminal trial to offer objection to a certain number of jurors without giving any explanation.

**Perjury.** The act of willfully swearing falsely.

**Petit Jury.** The ordinary jury of men or woman for the trial of a civil or criminal action.

**Petit Larceny.** Unlawfully taking property belonging to another, which is valued at less than \$1,000.00.

**Physical Evidence.** Anything that may be found, by investigators, to have a connection with a crime (for example; an article of clothing worn by the victim).

**Plaintiff.** A person who brings a civil action against another.

**Pleadings.** The formal allegations made by the parties of their respective claims and defenses for the judgment of the court.

**Police Power.** The authority inherent in a government to enact laws to promote the safety, health and general welfare of society.

**Prima Facie.** So far as can be judged from the first appearance or at first sight.

**Probate.** The act and process of proving, before a proper court, that a document is the valid will of a testator.

**Probation.** The type of penalty, whereby, a convicted person is put under the jurisdiction of the court for a stated period of time, in addition to, or instead of being sent to prison.

**Referee.** A person to whom a court action is referred, to take testimony, hear the parties and report thereon to the court.

**Relevant.** Applying to the matter in question and consequently, providing something useful to the purpose.

**Reprieve.** The withdrawing of a sentence for an interval of time, which operates in delay of execution.

**Res Gestae.** Those circumstances, which are not deliberate acts of the parties, and which are incidental to an act litigated. They can be offered in evidence to explain the act litigated.

**Robbery.** The unlawful taking of the personal property of another from his person or in his presence by force, or violence, or fear in injury.

**Rough Shadowing.** Shadowing which is done in such a manner as to cause the subject discomfort or annoyance, or interferes with him in any way.

**Search Warrant.** A written order, issued by a court, for the search of a designated premises, vehicle, or person for evidence of the commission of a crime.

**Sentence.** A judgment passed by a court on a person on trial as a criminal offender.

**Shadowing.** An unobserved close watch.

**Statute of Limitations.** A law which limits the time within which a criminal prosecution or a civil action must be started.

**Subpoena.** A writ or order directed to a person and requiring his attendance at a particular time and place to testify as a witness.

**Subpoena Duces Tecum.** A process by which the court, at the instances of a party, commands a witness who has in his possession or control some document or paper that is pertinent to the issues of a pending controversy, to produce it at the trial.

**Subornation of Perjury.** Wilfully procuring or inducing another to testify falsely under oath.

**Subrogation.** Substitution of one person's claims, rights or securities for those of another person.

**Summary Proceedings.** An action by which a case or controversy is settled, in a prompt and simple manner without the aid of a jury, presentation of facts or indictment.

**Summons.** An instrument used to commence a civil action or special proceeding and is a means of acquiring jurisdiction over a party.

**Surveillance.** To keep a close watch over someone or something.  
(Certain types not permissible.)

**Tail.** (See shadowing.)

**Testator.** A person who makes a last will and testament.

**Testimony.** Any statement or statements made by witnesses, under oath, in a judicial proceeding.

**Tort.** A wrongful act, wrong, injury; violation of a legal right.

**Trespass.** An unlawful interference with one's person, property or rights.

**True Bill.** An indictment handed down by a Grand Jury.

**Turpitude.** Everything done contrary to justice, honesty, modesty or good morals, is said to be done with turpitude.

**Venue.** The neighborhood, place or county in which an injury is declared to have been done, or fact declared to have happened.

**Warrant.** A writ, issued by a court, authorizing the arrest of a person, or the seizure of property.

**Writ.** An order issued from a court requiring the performance of a specified act, or giving authority to have it done.