

HOUSE BILL 3839

By Turner M

AN ACT to amend Tennessee Code Annotated, Title 62,
Chapter 35, relative to private protective services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 62-35-102, is amended by adding the following language as new, appropriately designated subdivisions:

() "Uniform" means dress of a distinctive design or fashion adopted by or prescribed for members of a particular group and serving as a means of identification;

() "Plainclothes" means a manner of dress worn by a person acting as a security guard/officer that is not a uniform and where no weapon or any symbol, badge, emblem, insignia, or device used to identify the person as a security guard/officer can be observed by any person under normal conditions;

SECTION 2. Tennessee Code Annotated, Section 62-35-106, is amended by adding the following language as a new, appropriately designated subdivision:

() Not be suffering from habitual drunkenness or narcotics addiction or dependence. The commissioner shall develop and conduct a program of drug testing for applicants in accordance with rules promulgated by the commissioner of labor and workforce development pursuant to § 50-9-111. The commissioner is authorized to include the cost of an individual drug test in the application fee imposed pursuant to § 62-35-107.

SECTION 3. Tennessee Code Annotated, Section 62-35-110, is amended by adding the following language as a new, appropriately designated subsection:

() Prior to license renewal, an applicant shall submit to a drug test conducted by the department pursuant to § 62-35-106. The department is authorized to include the

cost of such test in the renewal fee. A renewal shall not be granted to an applicant who fails to pass such drug test.

SECTION 4. Tennessee Code Annotated, Section 62-35-117, is amended by deleting subdivision (5) in its entirety and by substituting instead the following:

(5) Not be suffering from habitual drunkenness or narcotics addiction or dependence. The commissioner shall develop and conduct a program of drug testing for applicants in accordance with rules promulgated by the commissioner of labor and workforce development pursuant to § 50-9-111. The commissioner is authorized to include the cost of an individual drug test in the application fee imposed pursuant to § 62-35-119;

SECTION 5. Tennessee Code Annotated, Section 62-35-122(d), is amended by adding the following language as a new, appropriately designated subdivision:

() Submit to a drug test conducted by the department pursuant to § 62-35-117.

The department is authorized to include the cost of such test in the renewal fee. A renewal shall not be granted to an applicant who fails to pass such drug test.

SECTION 6. Tennessee Code Annotated, Section 62-35-119(a)(1), is amended by deleting subdivisions (B) and (C) in their entirety and by substituting instead the following:

(B) Shall cause the applicant's fingerprints to be submitted to the Tennessee bureau of investigation and the federal bureau of investigation for a search to determine whether the applicant has any recorded convictions. The commissioner shall furnish photographs of the applicant upon request of either agency.

SECTION 7. Tennessee Code Annotated, Section 62-35-119, is amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b) Pending issuance, denial, or renewal of a registration card by the commissioner, the applicant may work as an unarmed security guard/officer if a copy of

the completed application is on file or in the possession of the department. A copy of the completed notarized application shall be kept on the applicant's person while the applicant is performing duties as an unarmed security guard/officer. The commissioner shall notify a qualified applicant that all elements required for the armed registration card have been satisfied except for the federal bureau of investigation report. A qualified applicant may use such written notice from the department as a temporary conditional armed registration card pending receipt of the federal bureau of investigation background report until the application is ultimately granted or denied. The applicant shall keep the temporary conditional armed registration card on the applicant's person while the applicant is performing duties as an armed security guard/officer. The written notification shall contain an expiration date, to be established by the department. If no determination is made on the original application before the expiration of the temporary conditional armed registration card, a second temporary conditional armed registration may be issued.

SECTION 8. Tennessee Code Annotated, Section 62-35-119, is amended by deleting subsection (c) and by substituting instead the following language:

(c) Nothing in this section shall allow an armed security guard/officer to carry a firearm unless the armed security guard/officer has in such security guard/officer's possession a valid armed card issued by the department of commerce and insurance.

(d)

(1) The commissioner shall issue to a qualified applicant a registration card for armed or unarmed security officer registration, upon receipt of the appropriate payment of fees and a statement from a certified trainer that the training required by this chapter has been completed. The commissioner shall establish the appropriate amounts for the fees required by this subsection (d).

(2) Notwithstanding the provisions of § 62-35-103, the commissioner shall issue to a qualified applicant who is a full-time P.O.S.T. certified sworn peace officer a registration card for armed or unarmed security officer registration upon receipt of the appropriate payment of fees and verification of the peace officers standards and training commission certification.

SECTION 9. Tennessee Code Annotated, Section 62-35-128, is amended by deleting the section in its entirety and by substituting instead the following:

§ 62-35-128.

(a) No security guard/officer shall wear any military or police-style uniform, except for rainwear or other foul-weather clothing, unless such uniform has:

(1) Affixed over the left breast pocket or either shoulder on the outermost garment and on any cap or headwear, a badge or patch on which an emblem, logo, or insignia identifying the security guard/officer's employer appears. Such badge or patch shall be distinct in design from that utilized by any law enforcement agency in this state; and

(2) Affixed over the right breast pocket on the outermost garment the security guard/officer's embroidered name or a name plate or tape with the name of the security guard/officer on it. Company identification or other identification cards may be worn in addition to, but shall not substitute for, the embroidered name or name plate or tape required by this subdivision.

(b) Notwithstanding the provisions of § 62-35-103, at any time a security guard/officer, or a full-time sworn peace officer acting as a security guard/officer under the employment of a private business licensed pursuant to this chapter, is in plainclothes or undercover, any firearm, weapon, identification, or any other item or credential that may identify the wearer as a security guard/officer shall be kept concealed.

SECTION 10. Tennessee Code Annotated, Title 62, Chapter 35, Part 1, is amended by adding the following language as a new, appropriately designated section:

§ 62-35-1__.

(a) Within thirty (30) days of the effective date of this act, every licensee and proprietary security organization in this state shall submit three (3) recent color photographs taken within the last six (6) months and three (3) sets of classifiable fingerprints for each full or part-time employee of such licensee or organization that is not a security guard/officer registered with the department pursuant to this chapter and that has access to records, diagrams, plans, keys, phone numbers, cash/deposits or other sensitive information or materials pertaining to the security of employees, other persons, or property to the commissioner. The commissioner shall cause such fingerprints to be submitted to the Tennessee bureau of investigation and the federal bureau of investigation for a search to determine whether the employee has any recorded convictions. The department shall furnish photographs of the applicant upon request of either agency.

(b)

(1) Any person employed by a licensee or a proprietary security organization who is not a security guard/officer registered with the department pursuant to this chapter and that has access to records, diagrams, plans, keys, phone numbers, cash/deposits or other sensitive information or materials pertaining to the security of employees, other persons, or property shall furnish the employing licensee or organization with the following:

(A) Three (3) sets of classifiable fingerprints;

(B) Three (3) recent color photographs taken within the last six (6) months;

(C) A completed application with a list of all convictions and pending charges of commission of a felony or misdemeanor in any jurisdiction; and

(D) Evidence that such person is at least eighteen (18) years of age.

(2) Such licensee or proprietary security organization shall submit the photographs and fingerprints of the employee to the commissioner within ten (10) days of employment. The commissioner shall cause the employee's fingerprints to be submitted to the Tennessee bureau of investigation and the federal bureau of investigation for a search to determine whether the employee has any recorded convictions. The department shall furnish photographs of the applicant upon request of either agency.

(c) Any costs incurred by the Tennessee bureau of investigation or the federal bureau of investigation in conducting the investigations of employees required by this section shall be paid to the commissioner by the licensee or proprietary security organization. The licensee or proprietary security organization may require reimbursement of such costs from the individual who seeks employment or is employed. Payments of the costs to the Tennessee bureau of investigation are to be made in accordance with the provisions of § 38-6-109.

(d) A licensee or proprietary security organization that declines to employ or terminates a person based upon criminal background information provided to the department under this section shall be immune from suit by or on behalf of that person for the termination of or refusal to employ that person.

SECTION 11. Tennessee Code Annotated, Title 62, Chapter 35, Part 1, is amended by adding the following language as a new, appropriately designated section:

§ 62-35-1__.

(a) Each licensee and proprietary security organization in this state shall conduct mandatory random drug testing of each full or part-time employee of such licensee or organization that is a security guard/officer registered with the department pursuant to this chapter or that has access to records, diagrams, plans, keys, phone numbers, cash/deposits or other sensitive information or materials pertaining to the security of employees, other persons, or property. Such testing shall be conducted in accordance with rules promulgated by the commissioner of labor and workforce development pursuant to § 50-9-111.

(b) If an employee of a licensee or proprietary organization fails to pass a drug test conducted pursuant to subsection (a), then the licensee or proprietary organization shall notify the department within ten (10) days of receipt of the test results. The department shall revoke the registration of such employee upon receipt of the notification.

SECTION 12. Tennessee Code Annotated, Section 62-35-135, is amended by designating the current language as subsection (a) and by adding the following language as a new subsection (b):

(b) A licensee or registrant may appeal the denial of an application or renewal or the revocation of a registration pursuant to a failed drug test to the department. Such appeal shall be a contested case under the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 13. The commissioner shall promulgate rules to effectuate the purposes of this act. Such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 15. For purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2009.