



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

March 17, 2023

Barden Culbreth, Executive Director.
North Carolina Locksmith Licensing Board
Sent via email only to: director@nclocksmithboard.org

Re: Objection to 21 NCAC 29 .0705

Dear Mr. Culbreth:

At its meeting on March 16, 2023, the Rules Review Commission (RRC) objected to the above-captioned Rule pursuant to 150B-21.9(a). Specifically, the RRC adopted the opinion of counsel attached hereto and incorporated by reference.

Please respond to this objection in accordance with the provisions of G.S. 150B-21.12.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Brian Liebman
Commission Counsel

Enc: Staff opinion issued 3/14/23

Donald Robert van der Vaart, Director
Chief Administrative Law Judge

Fred G. Morrison, Jr.
Senior Administrative Law Judge

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RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0705

DATE ISSUED: March 14, 2023

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

This Rule would allow locksmith licensees who are actively deployed on military service to place their license into "inactive status" upon notifying the Board. The term "inactive status" is not defined or used in any of the Locksmith Licensing Board's other rules, or in any part of Chapter 74F.

Nonetheless, the Rule creates a process for requesting a license to be placed on and removed from inactive status. With respect to what being on inactive status means, the Rule states only that while on inactive status a licensee "shall not provide locksmith services to the public, nor shall they supervise a locksmith apprentice." The Rule is silent as to whether inactive licensees must continue to meet the obligations of their license, such as continuing education requirements or ethical requirements. Thus, to the extent that the Rule does not adequately explain how going on inactive status impacts the other requirements of licensure, it is staff's opinion that the Rule is impermissibly unclear and ambiguous.

Additionally, in response to staff's requests for changes, the agency stated the purpose of the rule is "to allow the licensee to 'pause' their license without penalty. If a license is valid for 3 years (36 months, and the licensee is deployed for 6-12 months, the Board wants to make sure they were allowed the full 36 months that the Board granted to them." Staff notes first that the text of the Rule does not actually say that the term of the license would be paused, and thus to the extent the Board intends to enforce the Rule in this way, the Rule is impermissibly unclear and ambiguous.

Brian Liebman
Commission Counsel

More importantly, to enforce the Rule in this way would violate G.S. 74F-10, which explicitly states that “all licenses shall expire three years after the date they were issued unless renewed” (emphasis added). The agency has cited no authority allowing it to waive or otherwise toll the statutory duration of the license, and to the extent the agency will use this Rule to do so, staff recommends objection for lack of statutory authority.

Brian Liebman
Commission Counsel

§ 74F-10. Issuance, renewal, replacement, and transfer of licenses.

(a) The Board shall issue a license, upon payment of the license fee, to any applicant who has satisfactorily met the requirements of this Chapter as administered by the Board. Licenses shall show the full name of the person and an identification number and shall be signed by the chair and one other officer of the Board.

(b) **All licenses shall expire three years after the date they were issued unless renewed.** All applications for renewal shall be filed with the Board and shall be accompanied by the renewal fee as required by G.S. 74F-9. A license that has expired for failure to renew may be reinstated after the applicant pays the late and reinstatement fees as required by G.S. 74F-9. If an applicant whose license has expired can show good cause to the Board the reason for allowing the license to expire, the Board, in its discretion, may adjust the renewal and reinstatement fees accordingly.

(c) The Board shall replace any license that is lost, destroyed, or mutilated subject to rules established by the Board.

(d) A license may not be transferred or assigned. (2001-369, s. 1; 2013-370, s. 6.)

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)