

## **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: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0701, .0801, .1301, and .1401

RECOMMENDATION DATE: June 20, 2025

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:

*The above captioned Rule requires employers to submit "an online application for registration" for each employee. The Rule thereafter prescribed documents which shall accompany the application.*

*G.S. 150B-2 (8a) defines the word "rule." It further sets forth items which do not meet the definition the term, including "A form, the contents or substantive requirements of which are prescribed by rule."*

*A form is a form whether it is electronic or on paper.*

*Staff counsel inquired of the agency which rule set forth the contents or substantive requirements of the application. The agency responded:*

*THE NEED FOR A SEPARATE RULE WITH THE SUBSTANTIVE REQUIREMENTS WAS RESOLVED YEARS AGO IN THAT THE ONLY ENTITY THAT CAN ACCESS THE APPLICATION PORTAL IS A LICENSED BUSINESS (AND NOT THE GENERAL PUBLIC) AND ALL THE REQUIREMENTS ARE SELF-EXPLANATORY THEREIN.*

*The agency's response was nonresponsive to the inquiry and the agency provided no further context for its assertion that issue was "resolved." The agency appears to aver that the contents*

William W. Peaslee  
Commission Counsel

*and substantive requirements of its application is neither “an agency regulation, standard, or statement of general applicability” pursuant to G.S. 150B-2(8a).*

*The agency’s interpretation narrowly defines “general applicability,” effectively excluding from rulemaking requirements any forms or applications directed solely at regulated entities. As a result, the agency is able to require regulated entities to provide any information it deems necessary via the online application, without subjecting the requirements to the notice, comment, and participation procedures mandated by the Administrative Procedures Act (APA.) This approach also excludes the general public from meaningful oversight.*

*Such a restrictive reading of “rule” undermines the transparency and public participation that are foundational principles of the APA. By limiting access to the contents and substantive requirements of the application to only licensed businesses and withholding it from public view, the agency circumvents these statutory protections.*

*In summary, the agency requires employers to complete a form but fails to provide any rules specifying the form’s contents and substantive requirements.*

*Accordingly, staff recommends objection to the rule pursuant to G.S. 150B-21.9(a)(2) and (4) for lack of clarity and ambiguousness, and failure to adopt the rule in accordance with Part 2 of Article 2A of the APA.*

**§ 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.)

## **§ 150B-2. Definitions.**

As used in this Chapter, the following definitions apply:

- (1) Administrative law judge. - A person appointed under G.S. 7A-752, 7A-753, or 7A-757.
- (1a) Adopt. - To take final action to create, amend, or repeal a rule.
- (1b) Agency. - An agency or an officer in the executive branch of the government of this State. The term includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.
- (1c) Codifier of Rules. - The person appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings pursuant to G.S. 7A-760(b).
- (1d) Commission. - The Rules Review Commission.
- (2) Contested case. - An administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. The term does not include rulemaking, declaratory rulings, or the award or denial of a scholarship, a grant, or a loan.
- (2a) Repealed by Session Laws 1991, c. 418, s. 3.
- (2b) Hearing officer. - A person or group of persons designated by an agency that is subject to Article 3A of this Chapter to preside in a contested case hearing conducted under that Article.
- (3) License. - Any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes, occupational licenses, and certifications of electronic poll books, ballot duplication systems, or voting systems under G.S. 163-165.7.
- (4) Licensing. - Any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. The term does not include controversies over whether an examination was fair or whether the applicant passed the examination.
- (4a) Occupational license. - Any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.
- (4b) Occupational licensing agency. - Any board, commission, committee, or other agency of the State that is established for the primary purpose of regulating the entry of persons into, or the conduct of persons within a particular profession, occupation, or field of endeavor, and that is authorized to issue and revoke licenses. The term does not include State agencies or departments that may as only a part of their regular function issue permits or licenses.
- (5) Party. - Any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate.
- (5a) Person. - Any natural person, partnership, corporation, body politic, and any unincorporated association, organization, or society that may sue or be sued under a common name.

- (6) Person aggrieved. - Any person or group of persons of common interest directly or indirectly affected substantially in his, her, or its person, property, or employment by an administrative decision.
- (7) Recodified as subdivision (5a) of this section by Session Laws 2021-88, s. 16(a), effective July 22, 2021.
- (7a) Policy. - Any nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by an agency that is intended and used purely to assist a person to comply with the law, such as a guidance document.
- (8) Residence. - Domicile or principal place of business.
- (8a) Rule. - Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
  - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, or by an occupational licensing board, as defined by G.S. 93B-1.
  - c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
  - d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
  - e. Statements of agency policy made in the context of another proceeding, including:
    - 1. Declaratory rulings under G.S. 150B-4.
    - 2. Orders establishing or fixing rates or tariffs.
  - f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
  - g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
  - h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
  - j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
  - k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
  - l. Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.
  - m. Determinations by the Department of Environmental Quality of high hazards pursuant to G.S. 130A-330.
- (8b) Repealed by Session Laws 2011-398, s. 61.2, effective July 25, 2011.
- (8c) Substantial evidence. - Relevant evidence a reasonable mind might accept as adequate to support a conclusion.

1 14B NCAC 16 .0701 is proposed for amendment as published in 39:15 NCR 1034-1040 as follows:

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3 **14B NCAC 16 .0701 APPLICATION FOR UNARMED SECURITY GUARD REGISTRATION**

4 (a) Each employer or his or her designee shall submit an online application for the registration of each ~~employee~~  
5 unarmed security guard to the Board. This online submission shall be accompanied by:

- 6 (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State  
7 Bureau of Investigations or one set of classifiable fingerprints on an applicant fingerprint card that  
8 shall be mailed separately to the Board's office;
- 9 (2) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of  
10 sufficient quality for identification, taken within six months prior to online application and  
11 submitted by uploading the photograph online with the application submission;
- 12 (3) a statement of the results of a statewide criminal history records search by the reporting service  
13 designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided  
14 within the preceding 60 months;
- 15 (4) the applicant's non-refundable registration fee, along with the convenience fee charged by the  
16 Board's on-line application vendor and a separate credit card transaction fee;
- 17 (5) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation  
18 to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected  
19 online by the Private Protective Services Board;
- 20 (6) ~~one original a signed SBI release of information form form; that shall be uploaded online with the~~  
21 ~~original mailed to the Board's administrative office;~~
- 22 (7) a statement signed by a certified trainer that the applicant has completed the training requirements  
23 of Rule .0707 of this ~~Section;~~ Section, unless a valid statement [if is] on file in the Board's office;  
24 and
- 25 (8) a completed affidavit form and public notice statement form.

26 ~~(b) The employer of each applicant for registration shall give the applicant a copy of the online application and a copy~~  
27 ~~of the completed affidavit form to serve as a record of application and shall retain a copy of the application, including~~  
28 ~~affidavit, in the guard's personnel file in the employer's office.~~

29 (b) The applicant's ~~copy~~ copies of the ~~application and~~ application, affidavit, training certification, and the [completed  
30 affidavit form] [a copy of the appropriate] statement required by Subparagraph (a)(7) of this [Rule, unless a valid  
31 statement is on file in the Board's office;] Rule shall together serve as a temporary registration ~~card that~~ card. These  
32 copies shall be carried by the applicant ~~when he or she is working within the scope of his or her [probationary or~~  
33 ~~permanent] employment while performing job duties~~ and shall be exhibited upon the request of any law enforcement  
34 officer or authorized representative of the Board. However, if the statement required by Subparagraph (a)(7) is already  
35 on file with the Board, the applicant does not need to carry or present the statement.

36 (c) A copy of the statement required by Subparagraph (a)(7) of this Rule shall be retained by the licensee in the  
37 individual applicant's personnel file in the employer's office.

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*History Note: Authority G.S. 74C-5; 74C-8.1; 74C-11;*  
*Eff. June 1, 1984;*  
*Amended Eff. May 1, 2012; July 1, 2011; August 1, 1998; December 1, 1995; June 1, 1994;*  
*February 1, 1990; May 1, 1988;*  
*Transferred and Recodified from 12 NCAC 07D .0701 Eff. July 1, 2015;*  
*Amended Eff. November 1, 2017;*  
*Readopted Eff. March 1, 2020;*  
*Amended Eff. July 1, 2025; September 1, 2024; January 1, 2024; July 1, 2021.*



1 14B NCAC 16 .0801 is proposed for amendment as published in 39:15 NCR 1034-1040 as follows:

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3 **14B NCAC 16 .0801 APPLICATION/ARMED SECURITY GUARD FIREARM REGISTRATION**  
4 **PERMIT**

5 (a) Each ~~armed security guard~~ employer or his or her designee shall submit an online application for the registration  
6 of each armed security guard applicant to the Board. This online submission shall be accompanied by:

- 7 (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State  
8 Bureau of Investigations or one set of classifiable fingerprints on an applicant fingerprint card that  
9 shall be mailed separately to the Board's office;
- 10 (2) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of  
11 sufficient quality for identification, taken within six months prior to online application and  
12 submitted by uploading the photograph online with the application submission;
- 13 (3) ~~upload online~~ a statement of the results of a statewide criminal history records search by the  
14 reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the  
15 applicant has resided within the preceding 60 months;
- 16 (4) the applicant's non-refundable registration fee, along with the convenience fee charged by the  
17 Board's on-line application vendor and credit card transaction fee;
- 18 (5) a statement signed by a certified trainer that the applicant has successfully completed the training  
19 requirements of Rule .0807 of this Section;
- 20 ~~(6) a certification by the applicant that he or she is at least 21 years of age;~~
- 21 (6) a statement signed by a certified trainer that the applicant has completed the training requirements  
22 of Rule .0707 of this Chapter, unless a valid statement is on file in the [Boards Board's] office;
- 23 (7) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation  
24 to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected  
25 online by the Private Protective Services Board; ~~and~~
- 26 (8) a signed SBI release of information form; and
- 27 ~~(8) (9)~~ a completed affidavit form and public notice statement form.

28 ~~(b) The employer of each applicant for registration shall give the applicant a copy of the online application, the~~  
29 ~~completed affidavit form, and proof of completion of a Board approved firearms course and shall retain a copy of the~~  
30 ~~application, including affidavit and proof of course completion, in the guard's personnel file in the employer's office.~~

31 ~~(c) (b)~~ The applicant's copy of the ~~application, affidavit, application~~ and proof of completion of a Board approved  
32 firearms course shall serve as a temporary registration card that shall be carried by the applicant when he or she is  
33 working within the scope of his or her employment and shall be exhibited upon the request of any law enforcement  
34 officer or authorized representative of the Board.

35 ~~(d) (c)~~ Applications submitted without proof of completion of a ~~Board approved Board-approved~~ firearms training  
36 course shall not serve as temporary registration cards.

1 ~~(e)~~ (d) The provisions of Paragraphs (a), (b), and (c) of this Rule also apply to any employee whose employment is  
2 terminated within 30 days of employment.

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4 *History Note: Authority G.S. 74C-5; 74C-9; 74C-13;*  
5 *Eff. June 1, 1984;*  
6 *Amended Eff. May 1, 2012; April 1, 2008; August 1, 1998; December 1, 1995; February 1, 1990;*  
7 *May 1, 1988; July 1, 1987;*  
8 *Transferred and Recodified from 12 NCAC 07D .0801 Eff. July 1, 2015;*  
9 *Amended Eff. November 1, 2017;*  
10 *Readopted Eff. March 1, 2020;*  
11 *Amended Eff. July 1, 2025; September 1, 2024; July 1, 2021.*

1 14B NCAC 16 .1301 is proposed for amendment as published in 39:15 NCR 1034-1040 as follows:

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3 **14B NCAC 16 .1301 APPLICATION FOR UNARMED ARMORED CAR SERVICE GUARD**  
4 **REGISTRATION**

5 (a) Each ~~armored car~~ employer or his designee shall complete an online application form for the registration of each  
6 unarmed armored car service guard applicant to the Board. This online form shall be accompanied by:

- 7 (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State  
8 Bureau of Investigations or one set of classifiable fingerprints on an applicant fingerprint card that  
9 shall be mailed separately to the Board's office;
- 10 (2) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of  
11 sufficient quality for identification, taken within six months prior to online application and  
12 submitted by uploading the photograph online with the application submission;
- 13 (3) ~~upload online~~ a statement of the result of a statewide criminal history records search by the reporting  
14 service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has  
15 resided within the preceding 60 months;
- 16 (4) the applicant's non-refundable registration fee, along with the convenience fee charged by the  
17 Board's on-line application vendor and credit card transaction fee;
- 18 (5) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation  
19 to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected  
20 online by the Private Protective Services Board;
- 21 (6) a statement signed by a certified trainer that the applicant has ~~successfully~~ completed the training  
22 requirements of Rule .1307 of this ~~Section, if applicable; and~~ Section unless a valid statement is on  
23 file in the Board's office;
- 24 (7) a signed SBI release of information form; and
- 25 ~~(7) (8)~~ a completed affidavit form and public notice statement form.

26 ~~(b) The employer of each applicant for registration shall give the applicant a copy of the online application and~~  
27 ~~completed affidavit and shall retain a copy of the application, including the affidavit, in the guard's personnel file in~~  
28 ~~the employer's office.~~

29 ~~(c) (b)~~ The applicant's ~~copy~~ copies of the ~~application and~~ application, affidavit, training certification, and the  
30 [completed affidavit form] [a copy of the appropriate] statement required by Subparagraph (a)(6) of this [Rule, unless  
31 a valid statement is on file in the Board's office;] Rule shall together serve as a temporary registration ~~card that card.~~  
32 These copies shall be carried by the applicant ~~when he or she is working is within the scope of his or her [probationary~~  
33 ~~or permanent] employment while performing job duties~~ and shall be exhibited upon the request of any law enforcement  
34 officer or authorized representative of the Board. However, if the statement required by Subparagraph (a)(6) is already  
35 on file with the Board, the applicant does not need to carry or present the statement.

36 ~~(d) (c)~~ A copy of the statement specified in Subparagraph (a)(6) of this Rule shall be retained by the licensee in the  
37 individual applicant's personnel file in the employer's office.

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2 *History Note: Authority G.S. 74C-3; 74C-5; 74C-8.1(a);*

3 *Eff. January 1, 2013;*

4 *Transferred and Recodified from 12 NCAC 07D .1401 Eff. July 1, 2015;*

5 *Amended Eff. November 1, 2017;*

6 *Readopted Eff. March 1, 2020;*

7 *Amended Eff. July 1, 2025; September 1, 2024; July 1, 2021.*

1 14B NCAC 16 .1401 is proposed for amendment as published in 39:45 NCR 1034-1040 as follows:

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3 **14B NCAC 16 .1401 APPLICATION/ARMED ARMORED CAR SERVICE GUARD FIREARM**  
4 **REGISTRATION PERMIT**

5 (a) Each ~~armed car~~ employer or his or her designee shall submit an online application form for the registration of  
6 each armed armored car service guard applicant to the Board. This online form shall be accompanied by:

- 7 (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State  
8 Bureau of Investigation or one set of classifiable fingerprints on an applicant fingerprint card that  
9 shall be mailed separately to the Board's office;
- 10 (2) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of  
11 sufficient quality for identification, taken within six months prior to online application and  
12 submitted by uploading the photograph online with application submission;
- 13 (3) ~~upload online~~ a statement of the result of a statewide criminal history records search from the  
14 reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the  
15 applicant has resided within the preceding 60 months;
- 16 (4) the applicant's non-refundable registration fee, along with the convenience fee charged by the  
17 Board's on-line application vendor and credit card transaction fee;
- 18 (5) a statement signed by a certified trainer that the applicant has successfully completed the training  
19 requirements of Rule .1407 of this Section;
- 20 ~~(6) a certification by the applicant that he or she is at least 18 years of age;~~  
21 (6) a statement signed by a certified trainer that the applicant has completed the training
- 22 (7) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation  
23 to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected  
24 online by the Private Protective Services Board;
- 25 (8) a signed SBI release of information form; and  
26 ~~(8) (9)~~ a completed affidavit form and public notice statement form.

27 ~~(b) The employer of each applicant for registration shall give the applicant a copy of the online application and~~  
28 ~~completed affidavit form and shall retain a copy of the application, including affidavit, in the guard's personnel file in~~  
29 ~~the employer's office.~~

30 ~~(c) (b)~~ The applicant's copy copies of the [application, affidavit,] ~~[application and a copy of the statement required by~~  
31 ~~Subparagraph (a)(5)]~~ training certification, and the statements required by Subparagraphs (a)(5) and (a)(6) of this  
32 Rule, [training certification and a copy of the statement required by Subparagraph(a)(6), unless a valid statement is  
33 on file in the Board's office,] shall together serve as a temporary registration ~~card that card.~~ These copies shall be  
34 carried by the applicant ~~when he or she is working within the scope of his or her employment~~ while performing job  
35 duties and shall be exhibited upon the request of any law enforcement officer or authorized representative of the Board.  
36 However, if the statement required by Subparagraph (a)(6) is already on file with the Board, the applicant does not  
37 need to carry or present the statement.

1 ~~(d) (c) Online applications~~ Applications submitted without proof of completion of a ~~Board-approved~~ Board-approved  
2 firearms training course shall not serve as temporary registration cards, ~~unless the armored car employer has obtained~~  
3 ~~prior approval from the Director. The Director shall grant prior approval if the armored car employer provides proof~~  
4 ~~that the applicant has received prior Board-approved firearms training.~~

5 ~~(e) (d)~~ The provisions of Paragraphs (a), (b), and (c) of this Rule also apply to any employee whose employment is  
6 terminated within 30 days of employment.

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8 *History Note: Authority G.S. 74C-3; 74C-5; 74C-8.1(a); 74C-13;*  
9 *Eff. January 1, 2013;*  
10 *Transferred and Recodified from 12 NCAC 07D .1501 Eff. July 1, 2015;*  
11 *Amended Eff. November 1, 2017;*  
12 *Readopted Eff. March 1, 2020;*  
13 *Amended Eff. July 1, 2025; September 1, 2024.*