



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

June 18, 2020

Jeff Gray, Rulemaking Coordinator
Private Protective Services Board
Sent via email only: jgray@bdixon.com

Re: Objection to Rules 14B NCAC 16 .1001, .1002, .1003, .1207, .1304, and .1404

Dear Mr. Gray:

At its meeting today, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule 14B NCAC 16 .1001, .1002, and .1003 for lack of statutory authority. Specifically, these three rules comprise the entirety of 14B NCAC 16 .1000, the Section named "Recovery Fund." These rules address the process for an individual to apply to the Board for recovery of funds when he or she believes a member of the regulated public harmed them. All three rules cite to G.S. 74C-31 as sole authority for the rules. G.S. 74C-31 was repealed by Session Law 2009-328. That Session Law further eliminated the Recovery Fund that was previously addressed in G.S. 74C, Article 2 and created an Education Fund. The roles of those funds do not appear to be similar. The Commission found that the Board does not have any statutory authority to regulate this now defunct fund.

The Commission objected to Rule 14B 16 .1207 for lack of necessity. The Commission found that this Rule simply repeated the requirements of Rule 14B NCAC 16 .1205(b) and was therefore unnecessary.

The Commission objected to Rules 14B NCAC 16 .1304 and .1404 for lack of statutory authority and ambiguity. Specifically, the Commission found that the use of the term "administrator" throughout the Rules was ambiguous, as changes to G.S. 74C through Session Law 2001-487 established a new position of "Director" and it does not appear that the administrator position exists anymore.

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

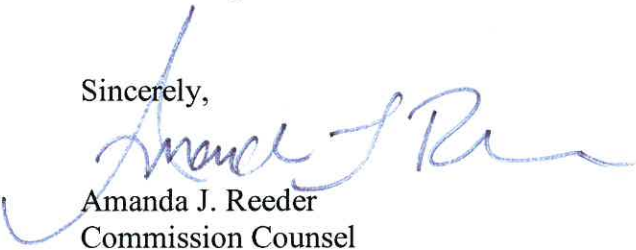
Civil Rights
Division
919/431-3036
fax: 919/431-3103

In addition, Paragraph (a) of each Rule states that there shall be “such further investigation of the applicant as deemed necessary.” The Rules do not say who will deem the investigation necessary, nor how the necessity will be determined. The Commission found that this language was ambiguous.

In Paragraph (b), the Rules state that any denial of the registration by the administrator will be subject to review of the Board. However, G.S. 74C-12 states that any denial of an application will be made by the Board. The agency did not cite to any authority for the administrator to issue a denial such that it is reviewable by the Board, nor any authority of the Board to delegate this decision. Therefore, the Commission found that the agency lacks statutory authority for this Paragraph in each Rule.

Please respond to this letter 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,



Amanda J. Reeder
Commission Counsel

cc: Charles McDarris

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 .1001, .1002, and .1003

RECOMMENDED ACTION:

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

COMMENT:

Staff recommends objection to the three cited rules for lack of statutory authority. These three rules comprise the entirety of 14B NCAC 16 .1000, named "Recovery Fund." These three rules address the process for an individual to apply to the Board for recovery of funds when he or she believes a member of the regulated public harmed them. All three rules cite to G.S. 74C-31 as sole authority for the rules.

G.S. 74C-31 was repealed by Session Law 2009-328. That Session Law further eliminated the Recovery Fund that was previously addressed in G.S. 74C, Article 2 and created an Education Fund. The roles of those funds do not appear to be similar.

Staff is not aware that the Board has any other authority to create requirements for the now defunct fund. Therefore, staff is recommending objection to all three rules for lack of statutory authority.

Amanda J. Reeder
Commission Counsel
Issued May 29, 2020

Article 2.

Private Protective Services Education Fund.

§ 74C-30. Private Protective Services Education Fund created; payments to Fund; management; use of funds.

(a) There is hereby created and established a special fund to be known as the "Private Protective Services Education Fund" (hereinafter Fund) which shall be set aside and maintained in the Office of the State Treasurer. The Fund shall be used in the manner provided in this Article for the education of licensees and registrants as deemed appropriate by the Board.

(b) Repealed by Session Laws 2009-328, s. 13, effective October 1, 2009.

(c) In addition to the fees provided for elsewhere in this Chapter, the Board shall charge the following fees which shall be deposited into the Fund:

(1) Repealed by Session Laws 2007-511, s. 10.

(2) The Board shall charge each new applicant for a licensee or trainee permit fifty dollars (\$50.00), provided that for purposes of this Article a new applicant is hereby defined as an applicant who did not possess a license or trainee permit on July 1, 1983; and

(3) The Board is authorized to charge each licensee and trainee an additional amount, not to exceed fifty dollars (\$50.00), on July 1 of any year in which the balance of the Fund is less than twenty-five thousand dollars (\$25,000), provided that any amount so assessed will be only so much as is needed to raise the level of the Fund to twenty-five thousand dollars (\$25,000).

(d) The State Treasurer shall invest and reinvest the moneys in the Fund in a manner provided by law. The Board, in its discretion, may use the Fund for any of the following purposes:

(1) To advance education and research in the private protective services field for the benefit of those licensed or registered under the provisions of this Chapter and for the improvement of the industry.

(2) To underwrite educational seminars, training centers and other educational projects for the use and benefit generally of licensees, registrants, and trainees.

(3) To sponsor, contract for and to underwrite any and all additional educational training and research projects of a similar nature having to do with the advancement of the private protective services field in North Carolina. The Board shall have the authority to sponsor courses given by private individuals, associations, or corporations. However, the Board shall only grant funds as necessary to offset the actual cost of the educational course. Any individual, association, or corporation receiving grant money from the Board shall make the course available to the industry at large. Any individual, association, or corporation receiving grant money from the Board and advertising the course to the industry is required to include in its advertising the following statement: "The course is being given in whole or in part by a grant from the Private Protective Services Board."

Amanda J. Reeder
Commission Counsel
Issued May 29, 2020

(e) By a unanimous vote of the Board, funds in the Fund in excess of fifty thousand dollars (\$50,000) may be converted to offset the operating expenses of the Board. However, in converting the funds, the Board shall make findings of fact by a written order or resolution supporting the need to make the conversion. (1983, c. 673, s. 2; 1985, c. 597, ss. 10, 11; 2007-511, s. 10; 2009-328, s. 13.)

§ 74C-31: Repealed by Session Laws 2009-328, s. 14, effective October 1, 2009.

§ 74C-32: Repealed by Session Laws 2009-328, s. 14, effective October 1, 2009.

§ 74C-33: Repealed by Session Laws 2009-328, s. 14, effective October 1, 2009.

1 14B NCAC 16 .1001 is readopted as published in 33:15 NCR 1544 as follows:

2
3 **14B NCAC 16 .1001 DEFINITIONS**

4 In addition to the definitions under Article 2 of Chapter 74C of the General Statutes of North Carolina, the following
5 definitions shall apply throughout this Section:

- 6 (1) "Board" means the Private Protective Services Board.
- 7 (2) "Fund" means the Recovery Fund of the Private Protective Services Act.
- 8 (3) "Aggrieved Party" means a person who has suffered a reimbursable loss because of a licensee's
9 defaulting on an obligation owed to the person while providing private protective services.
- 10 (4) "Licensee" means a person who, at the time of the act complained of, was licensed by the Private
11 Protective Services Board.
- 12 (5) "Reimbursable Loss" means:
- 13 (a) only those losses of money or other property which meet all of the following tests:
- 14 (i) The obligation was incurred on or after July 1, 1983;
- 15 (ii) The loss was caused by a licensee or trainee's defaulting on an obligation owed
16 where such obligation was entered into by the licensee or trainee within the scope
17 of the licensee's or trainee's employment in providing private protective services;
18 and
- 19 (iii) The aggrieved party has exhausted all civil remedies against the licensee or his
20 estate and has complied with these rules.
- 21 (b) the following shall be excluded from "reimbursable losses":
- 22 (i) Losses of spouses, children, parents, grandparents, siblings, partners, associates
23 and employees of the licensee or trainee causing the losses;
- 24 (ii) Losses covered by any bond, surety agreement, or insurance contract to the extent
25 covered thereby; and
- 26 (iii) Losses which have been otherwise received from or paid by or on behalf of the
27 licensee who defaulted on an obligation.
- 28 (6) "Trainee" means a person who, at the time of the act complained of, was licensed as a trainee by the
29 Private Protective Services Board.

30
31 *History Note: Authority G. S. 74C-31;*
32 *Eff. June 1, 1989;*
33 *Transferred and Recodified from 12 NCAC 07D .1001 Eff. July 1, ~~2015~~; 2015;*
34 *Readopted Eff. July 1, 2020.*

1 14B NCAC 16 .1002 is readopted as published in 33:15 NCR 1544 as follows:

2
3 **14B NCAC 16 .1002 PETITION FOR HEARING/APPLICATION FOR RELIEF**

4 The board shall prepare a Form of Petition for Hearing and Application for Relief which shall require the following
5 minimum information:

- 6 (1) The name and address of the aggrieved party;
- 7 (2) The name and address of the licensee or trainee who defaulted on an obligation;
- 8 (3) The amount of the alleged loss for which application is made;
- 9 (4) The date or period of time during which the alleged loss was incurred;
- 10 (5) A general statement of facts relative to the application;
- 11 (6) Verification by the aggrieved party;
- 12 (7) All supporting documents, including, but not limited to:
 - 13 (a) Copies of all contracts, invoices, returned checks, etc.;
 - 14 (b) Copies of all court proceedings against the licensee/trainee; and
 - 15 (c) Copies of all documents showing any reimbursement or receipt of funds in payment of any
16 portion of the loss.

17
18 *History Note: Authority G. S. 74C-31;*
19 *Eff. June 1, 1989;*
20 *Transferred and Recodified from 12 NCAC 07D .1002 Eff. July 1, ~~2015~~. 2015;*
21 *Readopted Eff. July 1, 2020.*

1 14B NCAC 16 .1003 is readopted as published in 33:15 NCR 1544 as follows:

2
3 **14B NCAC 16 .1003 PROCESSING APPLICATIONS**

4 (a) The board shall cause each application to be sent to the administrator for investigation and report. A copy of the
5 application shall be served upon or sent by registered mail to the last known address of the licensee/trainee who it is
6 claimed defaulted on an obligation.

7 (b) The administrator shall conduct such investigation in such manner as he deems necessary and desirable in order
8 to determine whether the application is for a reimbursable loss and in order to guide and advise the board in
9 determining the extent, if any, for which the application should be paid from the fund.

10 (c) A report from the administrator shall be submitted to the chairman of the board within a reasonable time.

11 (d) The board shall hold a hearing on every application filed by an aggrieved party. The hearing shall be held before
12 the board and shall follow the guidelines set out in Chapter 150B of the General Statutes of North Carolina.

13
14 *History Note: Authority G. S. 74C-31;*

15 *Eff. June 1, 1989;*

16 *Transferred and Recodified from 12 NCAC 07D .1003 Eff. July 1, ~~2015~~; 2015;*

17 *Readopted Eff. July 1, 2020.*

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 .1207

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:

Staff recommends objection to the cited rule for lack of necessity. This Rule merely repeats the requirements of Rule .1205(b) and is therefore unnecessary.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .1207

DEADLINE FOR RECEIPT: Friday, June 10, 2020

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Why is this Rule necessary? What is it saying that Rule .1205 is not?

If you do need it, delete the first sentence. Then delete "After January 1, 2012,"

In the History Note, why are you citing to G.S. 74C-2, 4, and 5?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 29, 2020

1 14B NCAC 16 .1207 is readopted as published in 33:15 NCR 1544 as follow:

2
3 **14B NCAC 16 .1207 CREDIT FOR CE COURSES**

4 Licensees shall receive credit for completion of CE courses approved by the Board after January 1, 2010. After
5 January 1, 2012, all licensees shall submit certificates of CE completion with their renewal applications.

6
7 *History Note: Authority G.S. 74C-2; 74C-4; 74C-5; 74C-22;*

8 *Eff. February 1, 2010;*

9 *Transferred and Recodified from 12 NCAC 07D .1307 Eff. July 1, ~~2015~~. 2015;*

10 *Readopted Eff. July 1, 2020.*

RRC STAFF OPINION

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AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .1304

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:

Staff recommends objection to this Rule for ambiguity and lack of statutory authority. This Rule is being readopted pursuant to G.S. 150B-21.3A, and appears to be governing applications to register as an unarmed armored car service guard.

In the History Note, the Board cites to G.S. 74C-3, which contains definitions, and to G.S. 74C-5, which is the general rulemaking authority of the Board.

The language throughout the Rule states that the "administrator" will make a determination. However, there is no longer an "administrator" following changes to G.S. 74C by SL 2001-487, which established the position of Director. Therefore, staff believes the Rule is ambiguous when it uses the term "administrator," as the position does not appear to exist.

In Paragraph (a), the Rule states that there shall be "such further investigation of the applicant as deemed necessary." The Rule does not say who will deem the investigation necessary, nor how the necessity will be determined. Staff believes that the agency is relying upon G.S. 74C-5(5) to approve the individual applicants, so staff is not recommending objection to this Paragraph based upon lack of statutory authority at this time. However, there is no guidance in this Rule as to how or when this investigation will occur. Therefore, staff believes this Paragraph is ambiguous as written.

In Paragraph (b), the Rule states that any denial of the registration by the administrator will be subject to review of the Board. However, G.S. 74C-12 states that any denial of an application will

Amanda J. Reeder
Commission Counsel
Issued May 29, 2020

be made by the Board. The agency does not cite to any authority for the administrator to issue a denial such that it is reviewable by the Board, nor any authority of the Board to delegate this decision. Further, staff believes the law is clear that the Board must make the decision. Therefore, staff believes the agency lacks statutory authority for this Paragraph.

Staff notes that as part of this readoption process, the agency also readopted and then submitted other rules that contained this language. The RRC has objected to all of those Rules. In response, the agency repealed those rules and they were removed from the Code.

§ 74C-3. Private protective services profession defined.

(a) As used in this Chapter, the term "private protective services profession" means and includes the following:

(1) Armored car profession. - Any person, firm, association, or corporation which for a fee or other valuable consideration provides secured transportation and protection from one place or point to another place or point of money, currency, coins, bullion, securities, checks, documents, stocks, bonds, jewelry, paintings, and other valuables. This definition does not include a person operating an armored car business pursuant to a motor carrier certificate or permit issued by the North Carolina Utilities Commission which grants operating rights for such business; however, armed armored car service guards shall be subject to the provisions of G.S. 74C-13.

(2) Repealed by Session Laws 1983, c. 786, s. 2.

(3) Redesignated as subdivision (a)(5a) by the Revisor of Statutes. See Editor's notes.

(4) Courier service profession. - Any person, firm, association, or corporation which for a fee or other valuable consideration transports or offers to transport from one place or point to another place or point documents, papers, maps, stocks, bonds, checks, or other small items of value which require expeditious services. Armed courier service guards shall be subject to the provisions of G.S. 74C-13.

(5) Detection of deception examiner. - Any person, firm, association, or corporation which uses any device or instrument, regardless of its name or design, for the purpose of the detection of deception or any person who reviews the work product of an examiner including charts, tapes or other methods of record keeping for the purpose of detecting deception or determining accuracy.

(5a) Electronic countermeasures profession. - Any person, firm, association, or corporation which for a fee or other valuable consideration discovers, locates, or disengages by electronic, electrical, or mechanical means any listening or other monitoring equipment surreptitiously placed to gather information concerning any individual, firm, association, or corporation.

(6) Security guard and patrol profession. - Any person, firm, association, or corporation that provides a security guard on a contractual basis for another person, firm, association, or corporation for a fee or other valuable consideration and performs one or more of the following functions:

a. Prevention or detection of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property.

b. Prevention, observation, or detection of any unauthorized activity on private property.

c. Protection of patrons and persons lawfully authorized to be on the premises or being escorted between premises of the person, firm, association, or corporation that entered into the contract for security services.

d. Control, regulation, or direction of the flow or movement of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of properties.

(7) Guard dog service profession. - Any person, firm, association, or corporation which for a fee or other valuable consideration contracts with another person, firm, association, or corporation to place, lease, rent, or sell a trained dog for the purpose of protecting lives or property.

(8) Private detective or private investigator. - Any person who engages in the profession of or accepts employment to furnish, agrees to make, or makes inquiries or investigations concerning any of the following on a contractual basis:

a. Crimes or wrongs done or threatened against the United States or any state or territory of the United States.

b. The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person.

c. The location, disposition, or recovery of lost or stolen property.

d. The cause or responsibility for fires, libels, losses, accidents, damages, or injuries to persons or to properties.

e. Securing evidence to be used before any court, board, officer, or investigative committee.

f. Protection of individuals from serious bodily harm or death.

(9) Special limited guard and patrol profession. - Any person who is licensed under Chapter 74D of the General Statutes of North Carolina and provides armed alarm responders pursuant to G.S. 74C-13. Applicants for this limited license shall not be required to meet the experience requirements for a security guard and patrol license. Any experience gained under this limited license shall not be counted as experience for a security guard and patrol license.

(b) "Private protective services" shall not include any of the following:

(1) Licensed insurance adjusters legally employed as such and who engage in no other investigative activities unconnected with adjustment or claims against an insurance company.

(2) An officer or employee of the United States, this State, or any political subdivision of either while the officer or employee is engaged in the performance of his or her official duties within the course and scope of his or her employment with the United States, this State, or any political subdivision of either.

(3) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating or credit worthiness of persons; and a person who provides consumer reports in connection with:

- a. Credit transactions involving the consumer on whom the information is to be furnished and involving the extensions of credit to the consumer,
 - b. Information for employment purposes,
 - c. Information for the underwriting of insurance involving the consumer,
 - d. Information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility, or
 - e. A legitimate business need for the information in connection with a business transaction involving the consumer.
- (4) An attorney at law licensed to practice in North Carolina while engaged in the practice of law and the attorney's agent, provided the agent is performing duties only in connection with his or her principal's practice of law.
- (5) The legal owner or lien holder, and his or her agents and employees, of personal property which has been sold in a transaction wherein a security interest in personal property has been created to secure the sales transaction, who engage in repossession of the personal property.
- (6) Repealed by Session Laws 1989, c. 759, s. 3.
- (7) Repealed by Session Laws 1981, c. 807, s. 1.
- (8) Employees of a licensee who are employed exclusively as undercover agents; provided that for purposes of this section, undercover agent means an individual hired by another person, firm, association, or corporation to perform a job for that person, firm, association, or corporation and, while performing the job, to act as an undercover operative, employee, or independent contractor of a licensee, but under the supervision of a licensee.
- (9) A person who is engaged in an alarm systems business subject to the provisions of Chapter 74D of the General Statutes.
- (10) A person who obtains or verifies information regarding applicants for employment, with the knowledge and consent of the applicant, and is (i) engaged in business as a private personnel service as defined in G.S. 95-47.1 or engaged in business as a private employer fee pay personnel service, (ii) engaged in the business of obtaining or verifying information regarding applicants for employment, or (iii) an employer with whom the applicant has applied for employment.
- (11) A person who conducts efficiency studies. An efficiency study is an analysis of an employer's business, made at the request of the employer, to determine one or more of the following:
- a. The most efficient procedures by which an employee of the business can perform the employee's assigned duties.

b. The adequacy of an employee's performance of the employee's assigned duties that require interaction with a client or customer of the business.

If a person making an efficiency study observes an instance of theft or another illegal act committed by an employee of the business, the person may report the instance to the employer without violating G.S. 74C-3(a)(8).

(12) Research laboratories and consultants who analyze, test, or in any way apply their expertise to interpreting, evaluating, or analyzing facts or evidence submitted by another in order to determine the cause or effect of physical or psychological occurrences, and give their opinions and findings to the requesting source or to a designee of the requestor.

(13) A person who works regularly and exclusively as an employee of an employer in connection with the business affairs of that employer. If the employee is an armed security guard and wears, carries, or possesses a firearm in the performance of the employee's duties, the provisions of G.S. 74C-13 apply.

(14) An employee of a security department of a private business or other employee whose primary duty involves loss prevention or that conducts investigations on matters internal to the business affairs of the business or related to the location, disposition, or recovery of lost or stolen property reasonably believed to be owned by the business.

(15) Representatives of nonprofit organizations funded all or in part by business improvement districts who provide information and directions to local tourists and residents, engage in street cleaning and beautification services within the business improvement districts, and notify local law enforcement of any illegal activity observed by the representatives within the business improvement districts.

(16) Emergency medical services personnel credentialed under Article 7 of Chapter 131E of the General Statutes who engage in search and rescue activities at the request of either the State, a political subdivision of the State, or one of the following types of facilities: an adult care home licensed under Chapter 131D of the General Statutes, a health care facility or agency licensed under Chapter 131E of the General Statutes, or a facility licensed to offer mental health, developmental disabilities, or substance abuse services under Chapter 122C of the General Statutes. For the purposes of this subdivision, "search and rescue" means activities and documents relating to efforts to locate an individual following the individual's disappearance. This exemption shall not apply if the emergency medical services provider provides services beyond emergency search and rescue and said activities meet the definition of private protective services as defined in G.S. 74C-3.

(17) A person engaged in (i) computer or digital forensic services or in the acquisition, review, or analysis of digital or computer-based information, whether for the purposes of obtaining or furnishing information for evidentiary or other purposes, or for providing expert testimony before a court; or (ii) network or system vulnerability testing, including network scans and risk assessment and analysis of computers connected to a network. (1973, c. 528, s. 1; 1977, c. 481; 1979, c. 818, s. 2; 1981, c. 807, ss. 1-3; 1983, c. 259; c. 786, ss. 2, 3; c. 794, s. 1; 1987, c. 284; c. 657, s. 1; 1989, c. 759, s. 3; 2001-487, s. 64(a); 2006-264, s. 46; 2007-469, s. 6; 2007-511, s. 1; 2009-328, s. 1; 2019-193, s. 1(a).)

§ 74C-5. Powers of the Board.

In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power to do all of the following:

- (1) Adopt rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this Chapter.
- (2) Determine minimum qualifications, establish and require written or oral examinations, and establish minimum education, experience, and training standards for applicants and licensees under this Chapter.
- (3) Conduct investigations regarding alleged violations and to make evaluations as may be necessary to determine if licensees and trainees under this Chapter are complying with the provisions of this Chapter.
- (4) Adopt and amend bylaws, consistent with law, for its internal management and control.
- (5) Approve individual applicants to be licensed or registered according to this Chapter.
- (6) Deny, suspend, or revoke any license or trainee permit issued or to be issued under this Chapter to any applicant, licensee, or permit holder who fails to satisfy the requirements of this Chapter or the rules established by the Board. The denial, suspension, or revocation shall be in accordance with Chapter 150B of the General Statutes of North Carolina.
- (7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment pursuant to G.S. Chapter 5A, Article 2, for acts occurring in matters pending before the Private Protective Services Board which would constitute civil contempt if the acts occurred in an action pending in court.
- (8) Repealed by Session Laws 1989, c. 759, s. 5.
- (9) Adopt rules governing detection of deception schools, and charge fees for reimbursement of costs incurred pursuant to approval of the schools.
- (10) Contract for services as necessary to carry out the functions of the Board.
- (11) Approve training schools, instructors, and course materials for any person, firm, association, or corporation wishing to provide training described in this Chapter.
- (12) Approve a design for a badge or shield that indicates a person is licensed or registered to engage in private protective services. The badge or shield shall be approved by the North Carolina Sheriffs' Association and the North Carolina Association of Chiefs of Police. (1973, c. 528, s. 1; c. 1331, s. 3; 1979, c. 818, s. 2; 1981 (Reg. Sess., 1982), c. 1359, s. 3; 1983, c. 794, s. 2; c. 810; 1989, c. 759, s. 5; 1999-456, s. 19; 2007-511, s. 2.)

Amanda J. Reeder
Commission Counsel
Issued May 29, 2020

§ 74C-12. Denial, suspension, or revocation of license, registration, or permit; duty to report criminal arrests.

(a) The Board may, after compliance with Chapter 150B of the General Statutes, deny, suspend or revoke a license, registration, or permit issued under this Chapter if it is determined that the applicant, licensee, registrant, or permit holder has done any of the following acts:

- (1) Made any false statement or given any false information in connection with any application for a license, registration, or permit or for the renewal or reinstatement of a license, registration, or permit.
- (2) Violated any provision of this Chapter.
- (3) Violated any rule adopted by the Board pursuant to the authority contained in this Chapter.
- (4) Repealed by Session Laws 1989, c. 759, s. 10.
- (5) Impersonated or permitted or aided and abetted any other person to impersonate a law enforcement officer of the United States, this State, any other state, or any political subdivision of a state.
- (6) Engaged in or permitted any employee to engage in a private protective services profession when not lawfully in possession of a valid license issued under the provisions of this Chapter.
- (7) Willfully failed or refused to render to a client service as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties.
- (8) Knowingly made any false report to the employer or client for whom information is being obtained.
- (9) Committed an unlawful breaking or entering, assault, battery, or kidnapping.
- (10) Knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee.
- (11) Repealed by Session Laws 1989, c. 759, s. 10.
- (12) Undertaken to give legal advice or counsel or to in any way falsely represent that he or she is representing any attorney or he or she is appearing or will appear as an attorney in any legal proceeding.
- (13) Issued, delivered, or uttered any simulation of process of any nature which might lead a person to believe that such simulation - written, printed, or typed - may be a summons, warrant, writ or court process, or any pleading in any court proceeding.
- (14) Failed to make the required contribution to the Private Protective Services Education Fund or failed to maintain the certificate of liability insurance required by this Chapter.

- (15) Violated the firearm provisions set forth in this Chapter.
- (16) Repealed by Session Laws 1989, c. 759, s. 10.
- (17) Failed to notify the Director by a business entity other than a sole proprietorship licensed pursuant to this Chapter of the cessation of employment of the business entity's qualifying agent within the time set forth in this Chapter.
- (18) Failed to obtain a substitute qualifying agent by a business entity within 30 days after its qualifying agent has ceased to serve as the business entity's qualifying agent.
- (19) Been judged incompetent by a court having jurisdiction under Chapter 35A or former Chapter 35 of the General Statutes or committed to a mental health facility for treatment of mental illness, as defined in G.S. 122C-3, by a court under G.S. 122C-271.
- (20) Failed or refused to offer a report to a client within 30 days of the client's written request after the client has paid for services rendered.
- (21) Been previously denied a license, registration, or permit under this Chapter or previously had a license, registration, or permit revoked for cause. The denial or revocation shall include a principal in the applicant's business.
- (22) Engaged in a private protective services profession under a name other than the name under which the license was obtained under the provisions of this Chapter.
- (23) Divulged to any person, except as required by law, any information acquired by the license holder except at the direction of the employer or client for whom the information was obtained. A licensee may divulge to any law enforcement officer or district attorney or district attorney's representative any information the law enforcement officer may require to investigate a criminal offense with the prior approval and consent of the client.
- (24) Fraudulently held himself or herself out as employed by or licensed by the State Bureau of Investigation or any other governmental authority.
- (25) Demonstrated intemperate habits or a lack of good moral character. The acts that are prima facie evidence of intemperate habits or lack of good moral character under G.S. 74C-8(d)(2) are prima facie evidence of the same under this subdivision.
- (26) Advertised or solicited business using a name other than that in which the license was issued.
- (27) Worn, carried, or accepted any badge or shield purporting to indicate that the person is a law enforcement officer while licensed under the provisions of this Chapter as a private investigator.
- (28) Possessed or displayed a badge or shield while providing private protective services that was not designed and approved by the Board pursuant to G.S. 74C-5(12).
- (29) Failed or refused to reasonably cooperate with the Board or its agents during an investigation of any complaint, allegation, suspicion of wrongdoing, or violation of this Chapter.

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(30) Failed to properly make any disclosure to the Board or provide documents or information required by this Chapter or rules adopted by the Board.

(31) Engaged in conduct constituting dereliction of duty or otherwise deceived, defrauded, or harmed the public in the course of professional activities or services.

(32) Demonstrated a lack of financial responsibility.

(b) The denial, revocation, or suspension of a license, registration, or permit by the Board shall be in writing, be signed by the Director of the Board, and state the grounds upon which the Board decision is based. The aggrieved person shall have the right to appeal from this decision as provided in Chapter 150B of the General Statutes. The aggrieved person shall file the appeal within 60 days of receipt of the Board's decision.

(c) The following persons may not be issued a license under this Chapter:

(1) A sworn court official.

(2) A holder of a company police commission under Chapter 74E of the General Statutes.

(d) A licensee shall report to the Board in writing within 30 days any charge, arrest for, or conviction of a misdemeanor or felony for any of the following:

(1) Crimes that have as an essential element dishonesty, deceit, fraud, or misrepresentation.

(2) Illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage.

(3) Illegal use, carrying, or possession of a firearm.

(4) Acts involving assault.

(5) Acts involving unlawful breaking or entering, burglary, or larceny.

(6) Any offense involving moral turpitude.

For purposes of this section, the term "conviction" includes the entry of a plea of guilty, a plea of nolo contendere, prayer for judgment continued, or a finding of guilt by a court of competent jurisdiction. The licensee's failure to report a charge, arrest for, or conviction of a misdemeanor or felony is grounds for revocation of the license. (1979, c. 818, s. 2; 1981, c. 807, s. 6; 1987, c. 550, s. 20; c. 657, s. 6; 1989, c. 759, s. 10; 1991 (Reg. Sess., 1992), c. 1043, s. 5; 2001-487, s. 64(g); 2007-511, s. 7; 2009-328, ss. 8, 9.)

1 14B NCAC 16 .1304 is readopted as published in 33:15 NCR 1544 as follow:

2
3 **14B NCAC 16 .1304 INVESTIGATION FOR UNARMED ARMORED CAR SERVICE GUARD**
4 **REGISTRATION**

5 (a) After the administrator receives a complete application for registration as an armored car service guard, the
6 administrator shall cause to be made such further investigation of the applicant as the administrator deems necessary
7 based upon the criminal history, financial history, or other information received.

8 (b) Any denial of an applicant for registration by the administrator is subject to review by the Board.

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10 *History Note: Authority G.S. 74C-3; 74C-5;*

11 *Eff. January 1, 2013;*

12 *Transferred and Recodified from 12 NCAC 07D .1404 Eff. July 1, ~~2015~~. 2015;*

13 *Readopted Eff. July 1, 2020.*

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 .1404

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:

Staff recommends objection to this Rule for ambiguity and lack of statutory authority. This Rule is being readopted pursuant to G.S. 150B-21.3A, and appears to be governing applications to register as an armed armored car service guard.

The language throughout the Rule states that the "administrator" will make a determination. However, there is no longer an "administrator" following changes to G.S. 74C by SL 2001-487, which established the position of Director. Therefore, staff believes the Rule is ambiguous when it uses the term "administrator," as the position does not appear to exist.

In Paragraph (a), the Rule states that there shall be "such further investigation of the applicant as deemed necessary." The Rule does not say who will deem the investigation necessary, nor how the necessity will be determined. Staff believes that the agency is relying upon G.S. 74C-5(5) to approve the individual applicants, so staff is not recommending objection to this Paragraph based upon lack of statutory authority at this time. However, there is no guidance in this Rule as to how or when this investigation will occur. Therefore, staff believes this Paragraph is ambiguous as written.

In Paragraph (b), the Rule states that any denial of the registration by the administrator will be subject to review of the Board. However, G.S. 74C-12 states that any denial of an application will be made by the Board. The agency does not cite to any authority for the administrator to issue a denial such that it is reviewable by the Board, nor any authority of the Board to delegate this

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decision. Further, staff believes the law is clear that the Board must make the decision. Therefore, staff believes the agency lacks statutory authority for this Paragraph.

Staff notes that as part of this readoption process, the agency also readopted and then submitted other rules that contained this language. The RRC has objected to all of those Rules. In response, the agency repealed those rules and they were removed from the Code.

1 14B NCAC 16 .1404 is readopted as published in 33:15 NCR 1544 as follow:
2

3 **14B NCAC 16 .1404 INVESTIGATION/ARMED ARMORED CAR SERVICE GUARD FIREARM**
4 **REGISTRATION PERMIT**

5 (a) After the administrator receives a complete application for registration as an armed armored car service guard, the
6 administrator shall cause to be made such further investigation of the applicant as the administrator deems necessary,
7 based upon the criminal history, financial history, or other information received.

8 (b) Any denial of an applicant for registration by the administrator is subject to review by the Board.
9

10 *History Note: Authority G.S. 74C-3; 74C-5; 74C-13;*

11 *Eff. January 1, 2013;*

12 *Transferred and Recodified from 12 NCAC 07D .1504 Eff. July 1, ~~2015~~. 2015;*

13 *Readopted Eff. July 1, 2020.*