

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 .0804

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 security guard pursuant to G.S. 74C-13.

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

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 Director will be subject to review of the Board. However, G.S. 74C-13(f) states that the Board will determine whether to issue or deny an applicant for a firearm registration permit. Staff notes that there is an exception in G.S. 74C-13(f) that allows the Director to issue a temporary permit while pending the Board's decision (based upon rules promulgated by the Board and Department of Public Safety); however, that is not the situation that appears to be addressed by this Rule. The agency does not cite to any authority for the Director to issue a denial such that it is reviewable by the Board, nor any authority of the

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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.

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§ 74C-13. Armed licensee or registered employee required to have firearm registration permit; firearms training.

(a) It shall be unlawful for any person performing private protective services duties to carry a firearm in the performance of those duties without first having met the qualifications of this section and having been issued a firearm registration permit by the Board. A licensee shall register any individual carrying a firearm within 30 days of employment. Before engaging in any private protective services activity, the individual shall receive any required training prescribed by the Board.

(a1) The following definitions apply in this section:

(1) Armed private investigator. - A licensed private investigator who, at any time, wears, carries, or possesses a firearm in the performance of duty.

(1a) Armed security guard. - An individual employed by a contract security company or a proprietary security organization whose principal duty is that of an armed security watchman; armed armored car service guard; armed alarm system company responder; or armed courier service who at any time wears, carries, or possesses a firearm in the performance of duty.

(2) Contract security company. - Any person, firm, association, or corporation engaging in a private protective services profession that provides services on a contractual basis for a fee or other valuable consideration to any other person, firm, association, or corporation.

(3) Proprietary security organization. - Any person, firm, association, or corporation or department thereof which employs security guards, alarm responders, armored car personnel, or couriers who are employed regularly and exclusively as an employee by an employer in connection with the business affairs of the employer.

(b) It shall be unlawful for any person, firm, association, or corporation and its agents and employees to employ an armed security guard or an armed private investigator and knowingly authorize or permit the armed security guard or armed private investigator to carry a firearm during the course of performing his or her duties as an armed security guard or an armed private investigator if the Board has not issued him or her a firearm registration permit under this section or if the person, firm, association, or corporation permits an armed security guard or an armed private investigator to carry a firearm during the course of performing his or her duties whose firearm registration permit has been suspended, revoked, or has otherwise expired:

(1) A firearm registration permit grants authority to the armed security guard, or armed private investigator, while in the performance of his or her duties or traveling directly to and from work, to carry any firearm approved by the Board and not otherwise prohibited by law. The use of any firearm not approved by the Board is prohibited.

(2) All firearms carried by authorized armed security guards in the performance of their duties shall be owned or leased by the employer. Personally owned firearms shall not be carried by an armed security guard in the performance of his or her duties.

(c) The applicant for a firearm registration permit shall submit an application to the Board on a form provided by the Board.

(d) Each firearm registration permit issued under this section to an armed security guard shall be in the form of a pocket card designed by the Board and shall identify the contract security company or proprietary security organization by whom the holder of the firearm registration permit is employed. A firearm registration permit issued to an armed security guard expires one year after the date of its issuance and must be renewed annually unless the permit holder's employment terminates before the expiration of the permit. The Board may require all permit holders to complete continuing education courses approved by the Board before renewal of their permits.

(d1) Each firearm registration permit issued under this section to an armed private investigator shall be in the form of a pocket card designed by the Board and shall identify the name of the armed private investigator. While carrying a firearm and engaged in private protective services, the armed private investigator shall carry the firearms registration permit issued by the Board, together with valid identification, and shall disclose to any law enforcement officer that the person holds a valid permit and is carrying a firearm, whether concealed or in plain view, when approached or addressed by the law enforcement officer, and shall display both the permit and the proper identification upon the request of a law enforcement officer. A private investigator firearm registration permit expires one year from the date of issuance and shall be renewed annually. The Board may require all permit holders to complete continuing education courses approved by the Board before renewal of their permits.

(e) If an armed security guard terminates his or her employment with the contract security company or proprietary security organization, the firearm registration permit expires and must be returned to the Board within 15 working days of the date of termination of the employee.

(f) A contract security company or proprietary security organization shall be allowed to employ an individual for 30 days as an armed security guard pending completion of the firearms training required by this Chapter, if the contract security company or proprietary security organization obtains prior approval from the Director. The Board and the Secretary of Public Safety shall provide by rule the procedure by which an armed private investigator, a contract security company, or a proprietary security organization applicant may be issued a temporary firearm registration permit by the Director of the Board pending a determination by the Board of whether to grant or deny an applicant a firearm registration permit.

(g) The Board may suspend, revoke, or deny a firearm registration permit if the holder or applicant has been convicted of any crime involving moral turpitude or any crime involving the illegal use, carrying, or possession of a deadly weapon or for violation of this section or rules promulgated by the Board to implement this section. The Director may summarily suspend a firearm registration permit pending resolution of charges involving the illegal use, carrying, or possession of a firearm lodged against the holder of the permit.

(h) The Board and the Secretary of Public Safety shall establish a firearms training program for licensees and registered employees to be conducted by agencies and institutions approved by the Board and the Secretary of Public Safety. The Board and the Secretary of Public Safety may approve training programs conducted by a contract security company and the security department of a proprietary security organization, if the contract security company or security department of a proprietary security organization offers the courses listed in subdivision (1) of

this subsection and if the instructors of the training program are certified trainers approved by the Board and the Secretary of Public Safety:

(1) The basic training course approved by the Board and the Secretary of Public Safety shall consist of a minimum of four hours of classroom training which shall include all of the following:

- a. Legal limitations on the use of hand guns and on the powers and authority of an armed security guard.
- b. Familiarity with this section.
- c. Range firing and procedure and hand gun safety and maintenance.
- d. Any other topics of armed security guard training curriculum which the Board deems necessary.

(2) An applicant for a firearm registration permit must fire a minimum qualifying score to be determined by the Board and the Secretary of Public Safety on any approved target course approved by the Board and the Secretary of Public Safety.

(3) A firearms registrant must complete a refresher course and shall requalify on the prescribed target course prior to the renewal of his or her firearm registration permit.

(4) The Board and the Secretary of Public Safety shall have the authority to promulgate all rules necessary to administer the provisions of this section concerning the training requirements of this section.

(i) The Board may not issue a firearm registration permit to an applicant until the applicant's employer submits evidence satisfactory to the Board that the applicant:

- (1) Has satisfactorily completed an approved training course.
 - (2) Meets all the qualifications established by this section and by the rules promulgated to implement this section.
 - (3) Is mentally and physically capable of handling a firearm within the guidelines set forth by the Board and the Secretary of Public Safety.
- (j) The Board and the Secretary of Public Safety are authorized to prescribe reasonable rules to implement this section, including rules for periodic requalification with the firearm and for the maintenance of records relating to persons issued a firearm registration permit by the Board.
- (k) All fees collected pursuant to G.S. 74C-9(e)(7) and (8) shall be expended, under the direction of the Board, for the purpose of defraying the expense of administering the firearms provisions of this Chapter.

(l) The Board and the Secretary of Public Safety shall establish a training program for certified trainers to be conducted by agencies and institutions approved by the Board and the Secretary of Public Safety. The Board or the Secretary of Public Safety shall have the authority to promulgate all rules necessary to administer the provisions of this subsection.

- (1) The Board and the Secretary of Public Safety shall also establish renewal requirements for certified trainers. The Board may require all certified trainers to complete continuing education courses approved by the Board before renewal of their certifications.
- (2) No certified firearms trainer shall certify a licensee or registrant unless the licensee or registrant has successfully completed the firearms training requirements set out above in subsection (h) of this section.
- (m) The Board and the Secretary of Public Safety shall establish a training program for unarmed security guards to be conducted by agencies and institutions approved by the Board and the Secretary of Public Safety. The Board and the Secretary of Public Safety shall have the authority to promulgate all rules necessary to administer the provisions of this subsection.
- (n) A private investigator shall be permitted to carry a concealed weapon during the performance of his or her duties as a private investigator upon: (i) obtaining a concealed weapon permit issued pursuant to G.S. 14-415.11; (ii) successfully completing the firearms training course approved by the Board and the Secretary of Public Safety; and (iii) having a notation affixed to the face of the firearms registration card designating that the armed private investigator is allowed to carry a concealed weapon. A private investigator who does not carry a weapon during the course of his or her duties as a private investigator but who wishes to carry a concealed weapon while not engaged in private investigative duties shall be permitted to do so upon completion of the requirements set forth in Article 54B of Chapter 14 of the General Statutes. (1979, c. 818, s. 2; 1983, c. 67, s. 3; 1989, c. 759, s. 11; 2001-487, s. 64(h); 2007-511, s. 8; 2009-328, s. 10; 2014-100, s. 17.5(b).)

§ 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.

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- (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.)

1 14B NCAC 16 .0804 is amended as published in 33:15 NCR 1544 as follows:

2
3 **14B NCAC 16 .0804 INVESTIGATION/ARMED SECURITY GUARD FIREARM REGISTRATION**
4 **PERMIT**

5 (a) After the administrator receives a complete application for registration, the ~~administrator~~ Director may cause to be
6 made such further investigation of the applicant as deemed necessary.

7 (b) Any denial of an applicant for registration by the ~~administrator~~ Director shall be subject to review by the Board.

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

10 *Eff. June 1, 1984;*

11 *Transferred and Recodified from 12 NCAC 07D .0804 Eff. July 1, ~~2015~~. 2015;*

12 *Amended Eff. October 1, 2019.*

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AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0901

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 lack of statutory authority. Specifically, in Paragraph (e) of this readopted Rule, the Board states that applicants under Paragraph (d) must pay an application fee. Paragraph (d) addresses applications made pursuant to G.S. 93B-15.1. That statute was amended in 2017 to specifically forbid a licensing board from charging an application fee in Subsection (k), which states:

§ 93B-15.1. Licensure for individuals with military training and experience; proficiency examination; licensure by endorsement for military spouses; temporary license.

(k) An occupational licensing board shall not charge a military-trained applicant or a military spouse an initial application fee for a license, certification, registration, or temporary practice permit issued pursuant to this section. Nothing in this subsection shall be construed to prohibit an occupational licensing board from charging its ordinary fee for a renewal application or prohibit a third party from charging actual costs for a service such as a background check

Additionally, in Paragraph (f), the agency requires a military spouse to follow the requirements of 14B NCAC Section .0200. Rule 14B NCAC .0202 requires the payment of an application fee.

Therefore, staff believes that the requirement for these applicants to pay an application fee contained in Paragraphs (e) and (f) is beyond the statutory authority of the Board.

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§ 93B-15.1. Licensure for individuals with military training and experience; proficiency examination; licensure by endorsement for military spouses; temporary license.

(a) Except as provided by subsection (a2) of this section, and notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in this State if, upon application to an occupational licensing board, the applicant satisfies the following conditions:

(1) Has been awarded a military occupational specialty and has done all of the following at a level that is substantially equivalent to or exceeds the requirements for licensure, certification, or registration of the occupational licensing board from which the applicant is seeking licensure, certification, or registration in this State: completed a military program of training, completed testing or equivalent training and experience, and performed in the occupational specialty.

(2) Has engaged in the active practice of the occupation for which the person is seeking a license, certification, or permit from the occupational licensing board in this State for at least two of the five years preceding the date of the application under this section.

(3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed and has no pending complaints.

(4) Repealed by Session Laws 2017-28, s. 3, effective July 1, 2017, and applicable to applications submitted on or after that date.

(a1) No later than 30 days following receipt of an application, an occupational licensing board shall notify an applicant when the applicant's military training or experience does not satisfy the requirements for licensure, certification, or registration and shall specify the criteria or requirements that the board determined that the applicant failed to meet and the basis for that determination.

(a2) An occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in this State if the military-trained applicant, upon application to the occupational licensing board:

(1) Presents official, notarized documentation, such as a U.S. Department of Defense Form 214 (DD-214), or similar substantiation, attesting to the applicant's military occupational specialty certification and experience in an occupational field within the board's purview; and

(2) Passes a proficiency examination offered by the board to military-trained applicants in lieu of satisfying the conditions set forth in subsection (a) of this section; however, if an applicant fails the proficiency examination, then the applicant may be required by the board to satisfy those conditions.

In any case where a proficiency examination is not offered routinely by an occupational licensing board, the board shall design a fair proficiency examination for military-trained applicants to obtain licensure, certification, or registration under this section. If a proficiency examination is

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offered routinely by an occupational licensing board, that examination shall satisfy the requirements of this section.

(b) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military spouse to allow the military spouse to lawfully practice the military spouse's occupation in this State if, upon application to an occupational licensing board, the military spouse satisfies the following conditions:

(1) Holds a current license, certification, or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for licensure, certification, or registration of the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(2) Can demonstrate competency in the occupation through methods as determined by the Board, such as having completed continuing education units or having had recent experience for at least two of the five years preceding the date of the application under this section.

(3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.

(4) Is in good standing; has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit; and has no pending complaints.

(5) Repealed by Session Laws 2017-28, s. 3, effective July 1, 2017, and applicable to applications submitted on or after that date.

(c) All relevant experience of a military service member in the discharge of official duties or, for a military spouse, all relevant experience, including full-time and part-time experience, regardless of whether in a paid or volunteer capacity, shall be credited in the calculation of years of practice in an occupation as required under subsection (a) or (b) of this section.

(c1) Each occupational licensing board shall publish a document that lists the specific criteria or requirements for licensure, registration, or certification by the board, with a description of the criteria or requirements that are satisfied by military training or experience as provided in this section, and any necessary documentation needed for obtaining the credit or satisfying the requirement. The information required by this subsection shall be published on the occupational licensing board's Web site and the Web site of the Department of Military and Veterans Affairs.

(d) A nonresident licensed, certified, or registered under this section shall be entitled to the same rights and subject to the same obligations as required of a resident licensed, certified, or registered by an occupational licensing board in this State.

(e) Nothing in this section shall be construed to apply to the practice of law as regulated under Chapter 84 of the General Statutes.

- (f) An occupational licensing board shall issue a temporary practice permit to a military-trained applicant or military spouse licensed, certified, or registered in another jurisdiction while the military-trained applicant or military spouse is satisfying the requirements for licensure under subsection (a) or (b) of this section if that jurisdiction has licensure, certification, or registration standards substantially equivalent to the standards for licensure, certification, or registration of an occupation licensing board in this State. The temporary permit shall remain valid for the later of one year or the required renewal date for the occupation the temporary practice permit was issued for or until a license, certification, or registration is granted by the occupational licensing board.
- (g) An occupational licensing board may adopt rules necessary to implement this section.
- (h) Nothing in this section shall be construed to prohibit a military-trained applicant or military spouse from proceeding under the existing licensure, certification, or registration requirements established by an occupational licensing board in this State.
- (i) For the purposes of this section, the State Board of Education shall be considered an occupational licensing board when issuing teacher licenses under Article 17E of Subchapter V of Chapter 115C of the General Statutes.
- (j) For the purposes of this section, the North Carolina Medical Board shall not be considered an occupational licensing board.
- (k) An occupational licensing board shall not charge a military-trained applicant or a military spouse an initial application fee for a license, certification, registration, or temporary practice permit issued pursuant to this section. Nothing in this subsection shall be construed to prohibit an occupational licensing board from charging its ordinary fee for a renewal application or prohibit a third party from charging actual costs for a service such as a background check. (2012-196, s. 1; 2014-67, s. 1; 2015-143, s. 1; 2015-241, s. 24.1(r); 2015-268, s. 7.3(a); 2017-28, s. 3; 2017-189, s. 6(a).)

1 14B NCAC 16 .0901 is amended as published in 33:15 NCR 1544 as follows:

2
3 **14B NCAC 16 .0901 REQUIREMENTS FOR A FIREARMS TRAINER CERTIFICATE**

4 (a) Firearms trainer applicants shall:

- 5 (1) meet the minimum standards established by Rule .0703 of this Chapter;
- 6 (2) have a minimum of one year of ~~supervisory~~ experience in security with a contract security company
- 7 or proprietary security organization, or one year of experience with any federal, state, county or
- 8 municipal law enforcement agency;
- 9 (3) attain a 90 percent score on a firearm's prequalification course approved by the Board and the
- 10 Secretary of Public Safety, with a copy of the firearm's course certificate to be kept on file in the
- 11 administrator's office;
- 12 (4) to teach handgun qualification, complete a training course approved by the Board and the Secretary
- 13 of Public Safety that shall consist of a minimum of 32 hours of classroom and practical range
- 14 training in safety and maintenance, range operations, night firearm training, control and safety
- 15 procedures, and methods of handgun firing;
- 16 (5) to teach shotgun ~~or rifle~~ qualification, complete a training course approved by the Board and the
- 17 Secretary of Public Safety that shall consist of a minimum of ~~24~~ 12 hours of classroom and practical
- 18 range training in shotgun ~~and rifle~~ safety and maintenance, range operations, night firearm training,
- 19 control and safety procedures, and methods of shotgun ~~and rifle~~ firing;
- 20 (6) to teach rifle qualification, complete a training course approved by the Board and the Secretary of
- 21 Public Safety that shall consist of a minimum of 16 hours of classroom and practical range training
- 22 in rifle safety and maintenance, range operations, night firearm training, control and safety
- 23 procedures, and methods of rifle firing;
- 24 ~~(6)(7)~~ pay the certified trainer application fee established in Rule .0903(a)(1) of this Section; and
- 25 ~~(7)(8)~~ successfully complete the requirements of the Unarmed Trainer Certificate set forth in Rule .0909
- 26 of this Section.

27 (b) The applicant's score on the prequalification course set forth in Subparagraph (a)(3) of this Rule is valid for 180

28 days after completion of the course.

29 (c) In lieu of completing the training course set forth in Subparagraph (a)(4) of this Rule, an applicant may submit to

30 the Board a current Criminal Justice Specialized Law Enforcement Firearms Instructor Certificate from the North

31 Carolina Criminal Justice Education and Training Standards Commission.

32 (d) In lieu of Subparagraphs (a)(2) and (4) of this Rule, an applicant may establish that the applicant satisfies the

33 conditions set forth in G.S. 93B-15.1(a) for firearm instruction and two years of verifiable experience within the past

34 five years in the U.S. Armed Forces as a firearms instructor.

35 (e) All applicants subject to Paragraphs (c) and (d) of this Rule shall comply with the provisions of Subparagraph

36 (a)(3), pay the application fee amount as set forth in Rule .0903 of this Section, and complete the eight-hour course

37 given by the Board on rules and regulations.

1 (f) In addition to the requirement of Section .0200 of this Chapter, an applicant for a firearms trainer certificate who
2 is the spouse of an active duty member of the U.S. Armed Forces shall establish that the application satisfies the
3 conditions set forth in G.S. 93B-15.1(b).

4 (g) A Firearms Trainer Certificate expires two years after the date of issuance.
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6 *History Note: Authority G.S. 74C-5; 74C-9; 74C-13; 93B-15.1;*

7 *Eff. June 1, 1984;*

8 *Amended Eff. July 1, 2014; October 1, 2013; December 1, 2008; January 1, 2008; August 1, 2004;*

9 *November 1, 1991;*

10 *Transferred and Recodified from 12 NCAC 07D .0901 Eff. July 1, 2015;*

11 *Amended Eff. October 1, 2019; February 1, 2016; October 1, 2015.*

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AGENCY: Private Protective Services Board

RULE CITATION: 14B NCAC 16 .0909

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 lack of statutory authority. Specifically, in Subparagraph (a)(5) of this Rule, it states that applicants must submit an application as set forth in Rule 14B NCAC 14B .0910. That Rule requires the submission of an application fee. This Subparagraph is applicable to applicants in Paragraph (c), which are the applicants under G.S. 93B-15.1. That statute was amended in 2017 to specifically forbid a licensing board from charging an application fee in Subsection (k), which states:

§ 93B-15.1. Licensure for individuals with military training and experience; proficiency examination; licensure by endorsement for military spouses; temporary license.

(k) An occupational licensing board shall not charge a military-trained applicant or a military spouse an initial application fee for a license, certification, registration, or temporary practice permit issued pursuant to this section. Nothing in this subsection shall be construed to prohibit an occupational licensing board from charging its ordinary fee for a renewal application or prohibit a third party from charging actual costs for a service such as a background check

Additionally, in Paragraph (d), the agency requires a military spouse to follow the requirements of 14B NCAC Section .0200. Rule 14B NCAC .0202 requires the payment of an application fee.

Therefore, staff believes that the requirement for these applicants to pay an application fee contained in Paragraphs (c) and (d) is beyond the statutory authority of the Board.

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1 14B NCAC 16 .0909 is amended as published in 33:15 NCR 1544 as follows:

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3 **14B NCAC 16 .0909 UNARMED TRAINER CERTIFICATE**

4 (a) To receive an unarmed trainer certificate, an applicant shall meet the following requirements:

- 5 (1) comply with the requirements of Rule .0703 of this Chapter;
- 6 (2) have a minimum of one year of experience in security with a contract security company or
- 7 proprietary security organization, or one year of experience with any federal, state, county or
- 8 municipal law enforcement agency;
- 9 (3) successfully complete a training course approved by the Board and the Secretary of Public Safety
- 10 which shall consist of a minimum of 24 hours classroom instruction to include the following topic
- 11 areas:
- 12 (A) civil liability for the security trainer -- (two hours);
- 13 (B) interpersonal communications in instruction -- (three hours);
- 14 (C) teaching adults -- (four hours);
- 15 (D) principles of instruction -- (one hour);
- 16 (E) methods and strategies of instruction -- (one hour);
- 17 (F) principles of instruction: audio-visual aids -- (three hours); and
- 18 (G) student performance -- (45 minute presentation);
- 19 (4) receive a favorable recommendation from the employing or contracting ~~licensee~~; licensee or other
- 20 individual knowledgeable of the applicant's experience and teaching skills; and
- 21 (5) submit the application required by Rule .0910 of this Section, which is available on the Board's
- 22 website at www.ncdps.gov/PPS.

23 (b) In lieu of completing the training course set forth in Subparagraph (a)(3) of this Rule, an applicant may submit to

24 the Board:

- 25 (1) a Criminal Justice General Instructor Certificate from the North Carolina Criminal Justice Education
- 26 and Training Standards Commission; or
- 27 (2) any training certification that meets or exceeds the requirements of Subparagraph (a)(3) of this Rule
- 28 and is approved by the Director of PPS.

29 (c) In lieu of the experience requirement of Subparagraph (a)(2) of this Rule and completing the training course set

30 forth in Subparagraph (a)(3) of this Rule, an applicant may establish that the applicant satisfies the conditions set forth

31 in G.S. 93B-15.1(a) for an unarmed trainer and two years of verifiable experience within the past five years in the

32 U.S. Armed forces as an unarmed guard trainer.

33 (d) In addition to the requirements of Section .0200 of this Chapter, an applicant for an unarmed guard trainer

34 certificate that is the spouse of an active duty member of the U.S. Armed Forces shall establish that the applicant

35 satisfies the conditions set forth in G.S. 93B-15.1(b).

36 ~~(e) An Unarmed Trainer Certificate shall expire two years after the date of issuance.~~

37 (e) The holder of an unarmed trainer certificate may teach as:

1 (1) an employee of a licensed security guard and patrol business;

2 (2) as a contractor of a licensed security guard and patrol business; and

3 (3) in a program sponsored by a public high school defined by G.S. 115C-75(a)(2) or a community
4 college established pursuant to G.S. 115D-2(2).

5 (f) An Unarmed Trainer Certificate shall expire two years after the date of issuance.

6
7 *History Note: Authority G.S. 74C-8; 74C-9; 74C-11; 93B-15.1;*

8 *Eff. October 1, 2004;*

9 *Amended Eff. October 1, 2013; January 1, 2013; January 1, 2008;*

10 *Transferred and Recodified from 12 NCAC 07D .0909 Eff. July 1, 2015;*

11 *Amended Eff. October 1, 2019; October 1, 2015.*