



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: NORTH CAROLINA REAL ESTATE COMMISSION	
2. Rule citation & name: 21 NCAC 58A .0305 - Petition for Predetermination	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: August 15, 2019 b. Proposed Temporary Rule published on the OAH website: August 21, 2019 c. Public Hearing date: September 11, 2019 d. Comment Period: August 22, 2019 - September 13, 2019 e. Notice pursuant to G.S. 150B-21.1(a3)(2): August 14, 2019 f. Adoption by agency on: October 16, 2019 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2019-91 Effective date: October 1, 2019 <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other: Explain: The proposed adoption of 21 NCAC 58A .0305 would establish a process for individuals who wish to file a petition for a predetermination of whether the individual's criminal history will likely disqualify them from obtaining a real estate license. 21 NCAC 58A .0305 is in response to the recently approved S.L. 2019-91, specifically Section 4, that is effective October 1, 2019.	

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The North Carolina Real Estate Commission will not be able to adopt a rule governing the process for individuals who wish to file a petition for a predetermination of whether the individual's criminal history will likely disqualify them from obtaining a real estate license under permanent rulemaking procedures in time to meet the October 1, 2019, effective date of S.L. 2019-91. The Commission is therefore filing the proposed rule under temporary rulemaking procedures in the public interest so that it can be reviewed, approved, and entered into the Code as soon as possible.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☒ Yes

Agency submitted request for consultation on: August 14, 2019

Consultation not required. Cite authority:

☐ No

9. Rule-making Coordinator:

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10. Signature of Agency Head*:

*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name:

Jeffery J. Malarney

Title:

Chairman of the North Carolina Real Estate Commission

E-Mail: Jeff@DareCountyLaw.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

SESSION LAW 2019-91
HOUSE BILL 770

AN ACT TO CLARIFY AND SIMPLIFY A LICENSEE'S QUALIFICATIONS FOR
LICENSURE AND TO REQUIRE RECOGNITION BY LICENSING BOARDS OF
CERTAIN APPRENTICESHIP AND TRAINING EXPERIENCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-173.2(d) reads as rewritten:

"(d) Unless modified or revoked, a Certificate of Relief relieves all collateral sanctions, except those listed in G.S. 15A-173.3, those sanctions imposed by the North Carolina Constitution or federal law, and any others specifically excluded in the certificate. A Certificate of Relief does not automatically relieve a disqualification; however, an administrative agency, governmental official, or court in a civil proceeding ~~may~~ shall consider a Certificate of Relief favorably in determining whether a conviction should result in disqualification."

SECTION 2. G.S. 93B-1 reads as rewritten:

§ 93B-1. Definitions.

As used in this ~~Chapter~~ Chapter, the following definitions apply:

~~"License" means any~~

- (1) License. – Any license (other than a privilege license), certificate, or other evidence of qualification which an individual is required to obtain before he may engage in or represent himself to be a member of a particular profession or occupation.

~~"Occupational licensing board" means any~~

- (2) Occupational licensing board. – Any board, committee, commission, or other agency in North Carolina which is established for the primary purpose of regulating the entry of persons into, ~~and/or~~ and the conduct of persons within, a particular profession or occupation, and which is authorized to issue ~~licenses;~~ licenses. The phrase "occupational licensing board" does not include State agencies, staffed by full-time State employees, which as a part of their regular functions may issue licenses.

- (3) State agency licensing board. – Any State agency staffed by full-time State employees, which as part of their regular functions issue licenses. This section does not apply to the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission. The following is a nonexclusive list of State agency licensing boards and the profession or occupation for which the board, agency, or officer may issue licenses:

a. The Department of Agriculture and Consumer Services.

1. Commissioner of Agriculture.

I. Scale Technician. Article 6 of Chapter 81A of the General Statutes.

II. Seed Dealer. Article 31 of Chapter 106 of the General Statutes.



- III. Livestock Dealer. Article 35B of Chapter 106 of the General Statutes.
 - 2. North Carolina Pesticide Board.
 - I. Pesticide Applicators and Pesticide Dealers. Parts 3 and 4 of Article 52 of Chapter 143 of the General Statutes.
 - 3. North Carolina Board of Agriculture.
 - I. Boarding Kennel Operator and Pet Shop Owner. Article 3 of Chapter 19A of the General Statutes.
 - II. Poultry, Hatcheries, and Chick Dealers. Article 40 of Chapter 106 of the General Statutes.
 - 4. Structural Pest Control Committee.
 - I. Exterminator and Structural Pest Control Applicator. Article 4C of Chapter 106 of the General Statutes.
 - b. The Department of Environmental Quality.
 - 1. Well Contractors Certification Commission.
 - I. Well Contractor. Article 7A of Chapter 87 of the General Statutes.
 - c. The Department of Health and Human Services.
 - 1. North Carolina Medical Care Commission.
 - I. Ambulance Attendant, Emergency Medical Technician. Article 7 of Chapter 131E of the General Statutes.
 - d. The Department of Insurance.
 - 1. Commissioner of Insurance.
 - I. Bail Bond Runner, Professional Bondsman, Surety Bondsman. Article 71 of Chapter 58 of the General Statutes.
 - II. Insurance Agent, Insurance Company Adjuster, Motor Vehicle Damage Appraiser, Self-Employed Insurance Adjuster. Article 33 of Chapter 58 of the General Statutes.
 - 2. Code Officials Qualifications Board.
 - I. Building Inspector, Code Enforcement Official, Electrical Inspector, Fire Inspector, Mechanical Inspector, Plumbing Inspector. Article 9C of Chapter 58 of the General Statutes.
 - 3. Home Inspection Licensure Board.
 - I. Home Inspector. Article 9F of Chapter 143 of the General Statutes.
 - 4. Manufactured Housing Board.
 - I. Manufactured Housing Salesperson. Article 9A of Chapter 143 of the General Statutes.
 - e. The Department of Justice.
 - 1. North Carolina Sheriffs' Education and Training Standards Commission.
 - I. Justice Officer. Chapter 17E of the General Statutes.
 - 2. North Carolina Criminal Justice Education and Training Standards Commission.
 - I. Law Enforcement Officer. Article 1 of Chapter 17C of the General Statutes.
 - f. The Department of Labor.

1. Boiler Safety Bureau.
 - I. Boiler Inspector. Article 7A of Chapter 95 of the General Statutes.
- g. The Department of Public Instruction.
 1. State Board of Education.
 - I. Teacher, Principal, Superintendent. Article 71E of Chapter 115C of the General Statutes.
- h. The Department of Public Safety.
 1. Alcohol Law Enforcement Branch.
 - I. Boxer, Kickboxer, Mixed Martial Arts, Promoter. Article 8 of Chapter 143 of the General Statutes.
 2. The Alcohol Beverage Control Board.
 - I. Alcoholic Beverage Distributor. Article 9 of Chapter 18B.
 3. Private Protective Services Board.
 - I. Counter Intelligence Licensee, Guard Dog Service Operator, Polygraph Examiner, Private Investigator, Psychological Stress Evaluator, Security Guard, and Patrol Licensee. Article 1 of Chapter 74C of the General Statutes.
- i. The Department of the Secretary of State.
 1. The Secretary of State.
 - I. Athletic Agent. Article 9 of Chapter 78C of the General Statutes.
 - II. Investment Advisor. Article 3 of Chapter 78C of the General Statutes.
 - III. Securities Broker, Securities Dealer, Security Salesman. Article 5 of Chapter 78A of the General Statutes.
 - IV. Professional Solicitor. Article 3 of Chapter 131F of the General Statutes.
- j. The Department of Transportation.
 1. Division of Motor Vehicles.
 - I. New and Used Motor Vehicle Dealer, Motor Vehicle Sales Representative, Distributor, Distributor Branch, Distributor Representative, Wholesaler. Article 12 of Chapter 20 of the General Statutes.
 - II. Commercial Driver, Truck Driver. Article 2 of Chapter 20 of the General Statutes.
 - III. Safety Inspection Mechanic. Article 3A of Chapter 20 of the General Statutes."

SECTION 3. G.S. 93B-2 reads as rewritten:

"(a) No later than October 31 of each year, each occupational licensing board shall file electronically with the Secretary of State, the Attorney General, and the Joint Legislative Administrative Procedure Oversight Committee an annual report containing all of the following information:

...

- (9a) The number of applicants for a license and, of that number, the number granted a license.

- (9b) The number of applicants with a conviction record and, of that number, the number granted a license, denied a license for any reason, and denied a license because of a conviction.

...

(e) No later than October 31 of each year, each State agency licensing board shall file electronically with the Secretary of State, the Attorney General, and the Joint Legislative Administrative Procedure Oversight Committee an annual report containing all of the following information:

- (1) The number of applicants for a license and, of that number, the number granted a license.
- (2) The number of applicants with a conviction record and, of that number, the number granted a license, denied a license for any reason, and denied a license because of a conviction."

SECTION 4. G.S. 93B-8.1 reads as rewritten:

"§ 93B-8.1. Use of criminal history records.

(a) The following definitions apply in this section:

- (1) Applicant. – A person who makes application for licensure from an occupational licensing board.
- (2) Board. – An occupational licensing board or a State agency licensing board as defined in G.S. 93B-1.
- (3) Criminal history record. – A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon an applicant's or a licensee's fitness to be licensed or disciplined.
- (4) Licensee. – A person who has obtained a license to engage in or represent himself or herself to be a member of a particular profession or occupation.

(b) ~~Unless the law governing a particular occupational licensing board provides otherwise, a board shall not automatically deny licensure on the basis of an applicant's criminal history. If the board is authorized to deny a license to an applicant on the basis of conviction of any crime or for commission of a crime involving fraud or moral turpitude, and the applicant's verified criminal history record reveals one or more convictions of any crime, the board may deny the license if it finds that denial is warranted after consideration of the~~ Unless federal law governing a particular board provides otherwise, a board may deny an applicant on the basis of a conviction of a crime only if the board finds that the applicant's criminal conviction history is directly related to the duties and responsibilities for the licensed occupation or the conviction is for a crime that is violent or sexual in nature. Notwithstanding any other provision of law, a board shall not automatically deny licensure on the basis of an applicant's criminal history, and no board may deny an applicant a license based on a determination that a conviction is for a crime of moral turpitude. The board shall make its determination based on the factors specified in subsection (b1).

(b1) Before a board may deny an applicant a license due to a criminal conviction under subsection (b) of this section, the board must specifically consider all of the following factors:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the crime.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct and the prospective duties of the applicant as a licensee.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the crime was committed.
- (6a) The completion of, or active participation in, rehabilitative drug or alcohol treatment.

- (6b) A Certificate of Relief granted pursuant to G.S. 15A-173.2.
 - (7) The subsequent commission of a crime by the applicant.
 - (8) Any affidavits or other written documents, including character references.
- (b2) If the board denies an applicant a license under this section, the board shall:
 - (1) Make written findings specifying the factors in subsection (b1) of this section the board deemed relevant to the applicant and explaining the reason for the denial. The board's presiding officer must sign the findings.
 - (2) Provide or serve a signed copy of the written findings to the applicant within 60 days of the denial.
 - (3) Retain a signed copy of the written findings for no less than five years.
- (b3) Each board shall include in its application for licensure and on its public Web site all of the following information:
 - (1) Whether the board requires applicants to consent to a criminal history record check.
 - (2) The factors under subsection (b1) of this section which the board shall consider when making a determination of licensure.
 - (3) The appeals process pursuant to Chapter 150B of the General Statutes if the board denies an applicant licensure in whole or in part because of a criminal conviction.
- (b4) If a board requires an applicant to submit a criminal history record, the board shall require the provider of the criminal history record to provide the applicant with access to the applicant's criminal history record or otherwise deliver a copy of the criminal history record to the applicant. If an applicant's criminal history includes matters that will or may prevent the board from issuing a license to the applicant, the board shall notify the applicant in writing of the specific issues in sufficient time for the applicant to provide additional documentation supporting the application for consideration by the board prior to any final decision to deny the application. After being notified of any potential issue with licensure due to criminal conviction(s), an applicant shall have 30 days to respond by either correcting any inaccuracy in the criminal history record or submitting evidence of mitigation or rehabilitation for consideration by the board.
- (b5) If, following a hearing, a board denies an application for licensure, the board's written order shall include specific reference to any criminal conviction(s) considered as part or all of any basis for the denial and the rationale for the denial, as well as a reference to the appeal process and the applicant's ability to reapply. No applicant shall be restricted from reapplying for licensure for more than two years from the date of the most recent application.
- (b6) Notwithstanding any other provisions in the law, an individual with a criminal history may petition a board at any time, including before an individual starts or completes any mandatory education or training requirements, for a predetermination of whether the individual's criminal history will likely disqualify the individual from obtaining a license. This petition shall include a criminal history record report obtained by the individual from a reporting service designated by the board, the cost of which shall be borne by the applicant. Criminal history records relating to a predetermination petition shall not be considered public records under Chapter 132 of the General Statutes. A board may predetermine that the petitioner's criminal history is likely grounds for denial of a license only after the board has applied the requirements of subsection (b) of this section. Each board shall delegate authority for such a predetermination to its Executive Director or their equivalent, or a committee of the board, so that the predeterminations can be made in a timely manner. No board member having served on a predetermination committee for an individual shall be required to recuse in any later determinations or hearings involving the same applicant. The board shall inform the individual of the board's determination within 45 days of receiving the petition from the individual. The board may charge a fee to recoup its costs not to exceed forty-five dollars (\$45.00) for each

petition. If the board determines an applicant would likely be denied licensure based on their criminal history, the board shall notify the individual in writing of the following:

- (1) The grounds and reasons for the predetermination.
- (2) That the petitioner has the right to complete any requirements for licensure and apply to the board and have their application considered by the board under its application process.
- (3) That further evidence of rehabilitation will be considered upon application.

(b7) A predetermination made under this section that a petitioner's criminal history would likely prevent them from licensure is not a final agency decision and shall not entitle the individual to any right to judicial review under Article 4 of Chapter 150B of the General Statutes.

(b8) A predetermination made under subsection (b6) of this section that a petitioner is eligible for a license shall be binding if the petitioner applies for licensure and fulfills all other requirements for the occupational license and the applicant's submitted criminal history was correct and remains unchanged at the time of application for a license.

(c) The board may deny licensure to an applicant who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories.

(d) This section does not apply to The North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission."

SECTION 5. Chapter 93B of the General Statutes is amended by adding a new section to read:

"§ 93B-8.6. Recognition of apprenticeships and training.

(a) The following definitions shall apply in this section:

- (1) Apprenticeship. – A program that meets the federal guidelines for registered apprenticeships set out in 29 C.F.R. Part 29 and 29 U.S.C. § 50. An apprenticeship can be completed under a State-licensed practitioner of that occupation or at a State-licensed school.
- (2) Career technical education. – Programs of study, clusters, and pathways approved by the North Carolina State Board of Education or the State Board of Community Colleges.
- (3) Licensing. – Any required training, education, or fee to work in a specific profession.

(b) Unless otherwise required by federal law, including requirements pertaining to eligibility for federal grant funding, an occupational licensing board shall grant a license to any applicant who meets the following criteria:

- (1) Completed an apprenticeship approved by the North Carolina State Approving Agency or federal Department of Labor, or otherwise permitted under State or federal law.
- (2) Passed an examination, if one is deemed to be necessary by the licensing authority.
- (3) With the exception of any prelicensing education requirements, has met any other requirements for licensure set forth in the law or rules related to the particular board.

(b1) This section shall not apply to occupational licensing boards governing professions requiring advanced knowledge acquired by a prolonged course of specialized intellectual study, including those requiring a bachelor's or advanced degree.

(c) Each occupational licensing board shall establish a passing score for the board's examinations which shall not exceed the passing score that is required under the board's standard licensing processes. If the relevant law or rule does not require an examination for the standard licensing process, no examination may be required for applicants who complete an

apprenticeship in that occupation. Except as otherwise required by federal law, apprenticeships for an occupation shall not be required to exceed the number of hours required by the relevant licensing authority or statute for that occupation.

(d) Applicants for licensure shall be permitted to apply training hours earned through career technical education provided by North Carolina public schools and colleges towards the requirements for licensure in the same occupation in accordance with the standards and procedures authorized in accordance with this Chapter.

(e) The State Board of Community Colleges and occupational licensing boards shall adopt rules for the implementation of this section."

SECTION 6. This act becomes effective October 1, 2019, and applies to Certificates of Relief granted or applications for licensure submitted on or after that date.

In the General Assembly read three times and ratified this the 28th day of June, 2019.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Sarah Stevens
Speaker Pro Tempore of the House of Representatives

s/ Roy Cooper
Governor

Approved 11:49 a.m. this 8th day of July, 2019

TEMPORARY RULE
REQUEST FOR TECHNICAL CHANGE

AGENCY: Real Estate Commission

RULE CITATION: 21 NCAC 58A .0305

DEADLINE FOR RECEIPT: November 15, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

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:

At line 6, please consider providing the address to the Commission's website.

In (b)(7), since you used the term "crime(s)" in (b)(9), do you also want to use it here? If so, are you requesting the employment history since the first crime or the last crime?

In (b)(8), does the Commission designate a specific reporting service? Please see G.S. 93B-8.1(b6) - "This petition shall include a criminal history record report obtained by the individual from a reporting service designated by the board, the cost of which shall be borne by the applicant."

In (b)(13), what do you mean by "intends to submit for review?" Are these submitted on a different timeline or are you referring to documents the applicant intends to submit when they apply for licensure instead of a predetermination?

In (b)(14), what is a "certification?"

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

Ashley Snyder
Commission Counsel
Date submitted to agency: November 5, 2019

21 NCAC 58A .0305 is proposed for adoption under temporary procedures as follows:

21 NCAC 58A .0305 PETITION FOR PREDETERMINATION

(a) An individual who wishes to file a petition for a predetermination of whether the individual's criminal history will likely disqualify the individual from obtaining a real estate license shall submit a petition on the Commission's website.

(b) The petition shall include the petitioner's:

(1) legal name;

(2) mailing, physical, and email addresses;

(3) social security number;

(4) date of birth;

(5) telephone number;

(6) places of residence for the past seven years;

(7) employment history since the date the crime was committed;

(8) criminal record report prepared no more than 60 days prior to the date of petition;

(9) written statement describing the circumstances surrounding the commission of the crime(s);

(10) written statement of any rehabilitation efforts, if applicable;

(11) rehabilitative drug or alcohol treatments, if applicable;

(12) Certificate of Relief granted pursuant to G.S. 15A-173.2, if applicable;

(13) affidavits or other written documents, including character references, that the petitioner intends to submit for review;

(14) certification; and

(15) signature.

(c) The fee for a petition for predetermination shall be forty-five dollars (\$45.00).

History Note: Authority G.S. 93A-4; 93B-8.1;

Temporary Adoption Eff.