

1 Rule 21 NCAC 29 .0102 is readopted with changes as published in 31:12 NCR 1244-1246 as follows:

2

3 **21 NCAC 29 .0102 MEETINGS**

4 (a) ~~Frequency.~~—The Board shall meet during January and August ~~on the second Mondays of January and August~~
5 and at other times agreed upon by a majority of the Board.

6 (b) ~~Notice.~~—Notification of the time and place of all meetings shall be published on the North Carolina Locksmith
7 Licensing Board ~~website (www.nclocksmithboard.org)~~, website, www.nclocksmithboard.org, not less than 15 days
8 prior to the meeting.

9

10 *History Note: Authority G.S. 74F-5(g);*
11 *Temporary Adoption Eff. August 13, 2002;*
12 *Eff. August 1, 2004;*
13 *Readopted Eff. June 1, 2017.*

1 Rule 21 NCAC 29 .0201 is amended with changes as published in 31:12 NCR 1244-1246 as follows:

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3 **21 NCAC 29 .0201 EXAMINATION FEE**

4 ~~The examination fee shall be two hundred dollars (\$200.00) and shall accompany the examination registration form.~~

5 ~~If the applicant elects to take the exam at a commercial testing center that charges a fee, then the applicant retains~~
6 ~~responsibility for paying the additional fee assessed by the testing center.~~

7 (a) The Board shall charge the examination fee as follows:

8 (1) Two hundred dollars (\$200) for first ~~First-time test takers takers; —two hundred dollars (\$200)~~

9 (2) Fifty dollars (\$50) for second ~~Second-time test takers for~~ applicants who fail to pass pursuant to 21
10 NCAC 29 .0203 .0203; and ~~— fifty dollars (\$50)~~

11 (3) Two hundred dollars (\$200) for third ~~Third~~ and subsequent test takers. takers ~~—two hundred dollars~~
12 ~~(\$200)~~

13 (b) The applicant may take the examination at a commercial testing center that charges a ~~[fee; however]~~ fee. However,
14 the examination fee required in this Rule shall not be affected and the Board shall not be responsible for any additional
15 fee assessed by the testing center.

16

17 *History Note: Authority G.S. 74F-6; 74F-9;*

18 *Temporary Adoption Eff. October 17, 2002;*

19 *Eff. August 1, 2004;*

20 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
21 *2016;*

22 *Amended Eff. June 1, 2017.*

1 Rule 21 NCAC 29 .0204 is readopted with changes as published in 31:12 NCR 1244-1246 as follows:

2

3 **21 NCAC 29 .0204 REQUIREMENTS OF EXAMINEES**

4 (a) Applicants ~~appearing~~ at an examination session shall present a ~~valid government-issued~~ photo ID to the
5 examination proctor before the beginning of the examination session.

6 (b) The applicant shall not bring books, ~~calculators~~ calculators, or other items that may compromise the exam, such
7 as a study guide or objects deemed inappropriate that are disruptive by the proctor into the examination room.

8 (c) ~~Pagers and cellphones~~ Cellphones ~~must shall~~ be turned off during the examination. Applicants shall not speak
9 with others during the examination session.

10 (d) Applicants ~~must shall~~ obey instructions from the proctor regarding when to begin and cease work on the
11 examination.

12 (e) Applicants shall be excused from the room during the examination only with permission from the proctor.

13 (f) Failure to abide by any of ~~these standards~~ the Paragraphs of this Rule shall result in invalidation of the
14 applicant's examination results.

15

16 *History Note: Authority G.S.74F-6; 74F-7;*
17 *Temporary Adoption Eff. November 13, 2002;*
18 *Eff. August 1, 2004;*
19 *Readopted Eff. June 1, 2017.*

1 Rule 21 NCAC 29 .0205 is readopted with changes as published in 31:12 NCR 1244-1246 as follows:

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3 **21 NCAC 29 .0205 FAILURE TO ATTEND SCHEDULED EXAMINATION SESSION**

4 Applicants who fail to appear for a scheduled examination session without prior notification to the Board shall
5 forfeit their examination fee and ~~must~~ shall submit a new ~~registration form along with the required~~ examination fee
6 pursuant to 21 NCAC 29 .0201(a)(1) for a different session. The Board shall waive the ~~additional~~ new examination
7 fee upon the applicant's request if it finds that the applicant's failure to attend as scheduled was the result of a
8 hardship or emergency.

9

10 *History Note: Authority G.S. 74F-6; 74F-7;*
11 *Temporary Adoption Eff. November 13, 2002;*
12 *Eff. August 1, 2004;*
13 *Readopted Eff. June 1, 2017.*

1 Rule 21 NCAC 29 .0206 is readopted with changes as published in 31:12 NCR 1244-1246 as follows:

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3 **21 NCAC 29 .0206 SPECIAL ADMINISTRATION**

4 Applicants with ~~documented~~ disabilities as defined by the Americans with Disabilities Act of 1990 (~~ADA~~)(ADA),
5 which is hereby incorporated by reference, including subsequent amendments and editions, available at no cost at
6 www.ada.gov, and documented by a licensed medical professional shall be administered the NC Locksmith
7 Licensing Exam under conditions that shall minimize the effect of the disabilities on their performance. ~~In general,~~
8 ~~those lifestyle accommodations which an individual uses to compensate for disabilities, and which have become~~
9 ~~accepted practice for the individual since the onset of the applicant's disability, shall be considered as the most~~
10 ~~appropriate accommodation for testing.~~ Special test administrations shall be as comparable as possible to a standard
11 ~~administration,~~administration and shall be granted upon request of the applicant and Board approval.

12

13 *History Note: Authority G.S. 74F-6; 74F-7;*

14 *Eff. November 1, 2007;*

15 *Readopted Eff. June 1, 2017.*

1 Rule 21 NCAC 29 .0401 is readopted with changes as published in 31:12 NCR 1244-1246 as follows:

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3 **21 NCAC 29 .0401 APPLICATION FORM**

4 ~~(a) All applications for licensure shall be submitted on the form prescribed by the Board found on the Board website~~
5 ~~for this purpose purpose, and shall be accompanied by the following supporting documents: The application shall~~
6 ~~request the applicant's name, address, and contact information.~~

7 (b) Applications shall be accompanied by the following:

- 8 (1) two frontal photos of the applicant's face, taken within the preceding three ~~months, size one inch by~~
9 ~~one inch; months;~~
- 10 (2) ~~a complete set of the applicant's fingerprints, collected by local law enforcement and accompanied~~
11 ~~by the applicant's social security number. documentation that the applicant has submitted the~~
12 ~~applicant's fingerprints to the applicant's local law enforcement for submission of the fingerprints~~
13 ~~to be delivered by local law enforcement directly to the SBI or a copy of the applicant's fingerprints~~
14 ~~to the Board;~~
- 15 (3) a completed examination registration request containing the requested exam date; ~~form, unless the~~
16 ~~applicant is exempted by Statute;~~
- 17 (4) ~~a criminal history report, certified by the law enforcement agency or clerk of court in the applicant's~~
18 ~~county of residence;~~
- 19 (5) ~~a criminal history report, certified by the law enforcement agency or clerk of court in the applicant's~~
20 ~~county of employment, if different from the county of residence;~~
- 21 (6) ~~(4) complete and truthful explanations~~ a written explanation of affirmative responses to questions on
22 the application regarding ~~employment history, criminal history and military service, if applicable;~~
- 23 (7) ~~(5) payment in full of all applicable fees, by check or money order; fees;~~
- 24 (8) ~~(6) a copy of the applicant's legal resident documents, if the applicant is not a U.S. citizen;~~
- 25 (9) ~~(7) a copy of a Locksmith License or other relevant license from another state, if applicable;~~
- 26 (10) ~~(8) a copy of the applicant's military discharge document (DD-214 or equivalent), if the applicant has~~
27 ~~served in any branch of the armed forces;~~
- 28 (11) ~~(9) a notarized Authorization for Records Release form; form provided by the State Bureau of~~
29 ~~Investigation, and found in the Locksmith License application; and~~
- 30 (12) ~~(10) a copy of any relevant industry national locksmith certifications, if applicable.~~

31
32 *History Note: Authority G.S. 74F-6; 74F-18(b);*
33 *Temporary Adoption Eff. August 13, 2002;*
34 *Eff. August 1, 2004-2004;*
35 *Readopted Eff. June 1, 2017.*

1 Rule 21 NCAC 29 .0404 is readopted with changes as published in 31:12 NCR 1244-1246 as follows:

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3 **21 NCAC 29 .0404 FEES**

4 The license issuance fee shall be one hundred dollars (\$100.00). The license issuance fee shall accompany the
5 application for licensure. In the event ~~that licensure is denied the applicant,~~ the applicant is denied licensure, the fee
6 shall be refunded.

7

8 *History Note: Authority G.S. 74F-6; 74F-7; 74F-9;*

9 *Temporary Adoption Eff. October 17, 2002;*

10 *Eff. August 1, 2004;*

11 *Readopted Eff. June 1, 2017.*

1 Rule 21 NCAC 29 .0502 is readopted with changes as published in 31:12 NCR 1244-1246 as follows:

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3 **21 NCAC 29 .0502 FAIR BUSINESS PRACTICES**

4 (a) Locksmiths shall conduct all business in compliance with all applicable local, State, and federal laws.

5 (b) Locksmiths shall ~~impartially~~ analyze security problems ~~receiving their attention~~ and advance the best ~~possible~~
6 practicable solution for the protection of the client.

7 (c) Locksmiths shall refrain from associating themselves with or allowing the use of their name (personal or
8 professional) by any enterprise ~~which that~~ in any way ~~countenances~~ supports fraud or misrepresentation.

9 (d) Locksmiths shall not misrepresent the features ~~afforded by any product nor make unwarranted claims about the~~
10 merits of any product or service they offer. Examples ~~include, but are not limited to~~ include the following:

11 (1) Representing to a client that non-restricted or widely available keys (whether stamped "Do Not
12 Duplicate" or not) provide any measure of assurance against unauthorized ~~duplication.~~
13 duplication; or

14 (2) Selling a used product as new.

15 (e) Locksmiths shall avoid using any improper ~~or questionable~~ means of soliciting business. Examples of
16 prohibited ~~Prohibited~~ practices include:

17 (1) Affixing stickers to permanent fixtures such as doors or door frames or in any way defacing the
18 property of any person without his or her express written consent.

19 (2) Installing stickers or any other promotions in such fashion that they falsely represent that the
20 locksmith or company has previously serviced the hardware in that location.

21 (3) Installing or supplying hardware ~~which that~~ curtails the customer's ability to choose a different
22 company or technician for product support or service, unless the locksmith obtains the customer's
23 express written consent.

24 (4) Modifying the customer's hardware in any fashion that will curtail the customer's ability to choose
25 a different company or technician for later product support or service or cause him or her to incur
26 additional expense by doing so, unless the locksmith obtains the customer's express written
27 consent.

28 (5) Direct solicitation in violation of a non-compete agreement, such as an employee offering
29 competing bids to customers of his or her employer.

30 (6) Using a name in advertising ~~which that~~ is similar enough to a competitor's name to cause
31 confusion among consumers.

32
33 *History Note: Authority G.S. 74F-6;*
34 *Temporary Adoption Eff. August 13, 2002;*
35 *Eff. August 1, 2004;*
36 *Readopted Eff. June 1, 2017.*

1 Rule 21 NCAC 29 .0503 is readopted with changes as published in 31:12 NCR 1244-1246 as follows:

2
3 **21 NCAC 29 .0503 PROTECTION OF THE PUBLIC INTEREST**

4 (a) Locksmiths shall refrain from allowing their specialized skills, knowledge, or access to tools and information to
5 be used in ~~any~~ a manner that puts the safety and security of the public at risk.

6 (b) ~~If a locksmith suspects wrongful intent or misrepresentation by a potential client, the locksmith shall refuse service
7 and shall notify the law enforcement agency with jurisdiction. Locksmiths shall reserve the right to refuse service
8 when intent and ownership cannot be verified and shall notify law enforcement within a jurisdiction when a locksmith
9 suspects criminal intent.~~

10 (c) Locksmiths shall not ~~knowingly~~ deliberately infringe a restricted key system.

11 (d) Locksmiths shall record the identity of the customer for all service calls in which the locksmith opens a vehicle,
12 building, ~~room~~ room, or secured container, ~~or~~ originates a ~~key~~ key, or in any other fashion provides the customer with
13 access to any such property.

14 (e) Locksmiths shall endeavor to install all locking devices in compliance with ~~all relevant codes, such as the Uniform
15 International Building Code, which is incorporated by reference, including subsequent amendments and editions,
16 available at no cost at www.iccsafe.org; National Fire Protection Association, Association (NFPA) codes, which are
17 incorporated by reference, including subsequent amendments and editions, available at no cost at www.nfpa.org; and
18 the Americans with Disabilities Act Act; and any local codes or ordinances which that regulate architectural hardware.~~
19 Locksmiths shall not install a locking device ~~which that~~ produces a threat to life or safety. If such a (pre-existing)
20 condition is encountered, the locksmith shall inform the client and may recommend appropriate remedial action.

21 (f) ~~Locksmiths shall not become a party to disputes of ownership or authority. When an authorization dispute is
22 deemed likely to arise, the locksmith shall advise the law enforcement agency having jurisdiction and request the
23 presence of a uniformed officer. The locksmith~~ Locksmiths shall refuse to provide service when there is an unresolved
24 dispute of ownership or authority. Only instructions from a uniformed law enforcement officer or a court order shall
25 be accepted as resolution of any such dispute.

26 (g) Locksmiths shall not ~~knowingly~~ interfere with the maintenance of a known master key system. When master
27 keyed cylinders are encountered, the key presented without its corresponding master key shall be presumed to be a
28 subordinate key until otherwise determined. ~~An attempt must be made~~ The locksmith shall attempt to determine the
29 holder of the master key and seek authorization for cylinder changes or key origination before ~~such~~ the service is
30 performed.

31 (h) Locksmiths shall keep key biting arrays, file ~~keys~~ keys, and all client information confidential. Locksmiths shall
32 not release any information or security device, such as a master key or safe combination, to any person without
33 verifying with the owner that the recipient is entitled to receive it.

34
35 *History Note: Authority G.S. 74F-6;*
36 *Temporary Adoption Eff. August 13, 2002;*
37 *Eff. August 1, 2004;*

1 *Amended Eff. April 1, 2012;*
2 *Readopted Eff. June 1, 2017.*

1 Rule 21 NCAC 29 .0504 is readopted with changes as published in 31:12 NCR 1244-1246 as follows:

2
3 **21 NCAC 29 .0504 TECHNICAL INTEGRITY**

4 (a) Locksmiths shall ~~always endeavor to~~ service and install security devices ~~in a manner that maintains~~ at the
5 highest level of security afforded by the manufacturer of the product.

6 (b) Locksmiths shall inform clients of the dangers of introducing new keys into a master keyed system without
7 reference to the original bitting array. Locksmiths shall not introduce random keys into a master keyed system
8 without obtaining the signature of the client on a written warning ~~notice-~~notice of the compromised system.

9 (c) Locksmiths shall inform clients of the dangers ~~inherent~~ in keying a mechanical lock to operate on several keys
10 in a fashion that requires multiple chambers to be left empty or stacked with more than two master wafers in any
11 chamber (maison keying). Locksmiths shall not key mechanical lock cylinders in this fashion without obtaining the
12 signature of the client on a written warning ~~notice-~~notice of the compromised system.

13 (d) Locksmiths shall follow industry and manufacturer standards and insure random and complete recombination of
14 cylinders and combination locks for optimal security maintenance. Examples ~~of violations include, but are not~~
15 ~~limited to include~~ the following:

- 16 (1) The repeated use of a standard key or combination for multiple customers or job sites.
- 17 (2) Filing the plug on a mechanical lock cylinder as a means to enlarge the shear line.
- 18 (3) Leaving multiple chambers of a mechanical lock ~~empty-~~empty without written notice required by
19 Paragraph (b) of this Rule.

20 (e) Locksmiths shall ~~never~~ follow manufacturer recommendations for the proper installation of locking devices and
21 shall not omit or disable any security feature, such as a safe relocking assembly or deadlatch, to the detriment of the
22 client's safety and security.

23
24 *History Note: Authority G.S. 74F-6;*
25 *Temporary Adoption Eff. August 13, 2002;*
26 *Eff. August 1, 2004;*
27 *Readopted Eff. June 1, 2017.*

1 Rule 21 NCAC 29 .0702 is readopted with changes as published in 31:12 NCR 1244-1246 as follows:

2

3 **21 NCAC 29 .0702 DUE DATE**

4 ~~Applications for license renewal shall be submitted at least 30 days prior to the date of license expiration. Licensees~~
5 ~~who submit their applications for renewal after the due date but before the license expiration date shall pay a late fee~~
6 ~~of one hundred fifty dollars (\$150.00) in addition to the license renewal fee specified in Rule .0404 of this Chapter.~~
7 ~~Applications shall be deemed submitted on the date of their postmark or upon receipt by staff at the Board's offices,~~
8 ~~whichever is earlier.~~

9 (a) Applications for license renewal shall be submitted a minimum of 30 days prior to the date of license expiration.

10 (b) Licensees who submit their applications for renewal after the due date but before the license expiration date shall
11 pay a late fee of one hundred fifty dollars (\$150.00), in addition to the license renewal fee set forth in Rule .0404 of
12 this Chapter.

13 (c) The Board shall deem applications submitted on the date of their postmark or upon receipt by staff at the Board's
14 offices, whichever is earlier.

15

16 *History Note: Authority G.S. 74F-6; 74F-9; 74F-10;*

17 *Eff. July 1, 2005;*

18 *Amended Eff. January 1, 2013;*

19 *Readopted Eff. June 1, 2017.*

1 Rule 21 NCAC 29 .0703 is readopted with changes as published in 31:12 NCR 1244-1246 as follows:

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3 **21 NCAC 29 .0703 REINSTATEMENT OF EXPIRED LICENSE**

4 (a) A former licensee with an expired license may apply for reinstatement ~~of an expired license~~ only if he or she has
5 completed at least eight contact hours of continuing education within one year preceding the application.

6 (b) Applicants for reinstatement must shall pay the following fees:

7 (1) A license ~~License~~-renewal fee as specified set forth in Rule .0404 of these Rules of this Chapter;

8 (2) A late ~~Late~~-fee as specified set forth in Rule .0702 of these Rules of this Section; and

9 (3) A reinstatement fee of one hundred fifty dollars (\$150.00).

10

11 *History Note: Authority G.S. 74F-6; 74F-9; 74F-10;*

12 *Eff. July 1, 2005;*

13 *Readopted Eff. June 1, 2017.*

1 Rule 21 NCAC 29 .0802 is readopted with changes as published in 31:12 NCR 1244-1246 as follows:

2
3 **21 NCAC 29 .0802 REQUIREMENTS**

4 (a) Every licensee shall obtain 24 contact hours of continuing education during each 3-year renewal cycle, except:

5 (1) Persons exempted from eight contact hours in Rule .0805 of this Section; and

6 (2) Persons who:

7 (A) are at least 62 years of age;

8 (B) have at least 15 years of experience as locksmiths;

9 (C) have been North Carolina licensed locksmiths for at least nine years; and

10 (D) are not subject to an investigation by the ~~Locksmith Licensing~~ Board.

11 (b) The contact hours of continuing education shall be in technical and professional subjects ~~directly~~ related to the
12 practice of locksmithing.

13 (c) Licensees shall not carry forward any contact hours of continuing education into the subsequent renewal period.

14 (d) Licensees shall verify completion of the contact hours of continuing education for the previous license period
15 ~~with~~ on their application for license renewal.

16
17 *History Note: Authority G.S. 74F-6;*
18 *Eff. February 1, 2005;*
19 *Amended Eff. April 1, 2012;*
20 *Readopted Eff. June 1, 2017.*

1 Rule 21 NCAC 29 .0803 is readopted with changes as published in 31:12 NCR 1244-1246 as follows:

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3 **21 NCAC 29 .0803 DETERMINATION OF CREDIT**

4 (a) The Board has final authority with respect to approval of course sponsors, courses, ~~programs~~ programs, and
5 contact hours.

6 (b) The Board shall not pre-approve individual courses or programs. The Board may approve sponsors and enter
7 into agreements with course and program sponsors in which the sponsor agrees to offer courses and programs that
8 comply with the subject matter requirements of ~~this Section~~ Rule .0802 of this Section and agrees to maintain for a
9 period of four years the records of course content and attendance. ~~attendance, and agrees~~ In addition, the sponsor
10 shall agree to permit a representative of the Board to monitor or review any course or program the sponsor offers to
11 North Carolina Licensed Locksmiths for credit. Provided the sponsor complies with the sponsor agreement, the
12 Board shall accept as ~~presumptively~~ valid contact hours earned by licensees from approved sponsors.

13 (c) Credit for teaching or instructing qualifying courses shall earn continuing education credit for the instructor at
14 the same rate as for participants.

15 (d) Licensees may claim credit for contact hours for courses or programs that have not been presented by approved
16 sponsors but only credit from approved sponsors shall be ~~presumptively~~ valid. The Board may audit the compliance
17 of individual licensees and may require proof of participation in courses or programs that conform with the content
18 and contact hour calculation contained in the rules of this Section. Such proof shall be in the form of records
19 maintained pursuant to Rule .0804 of this Section.

20

21 *History Note: Authority G.S. 74F-6;*
22 *Eff. February 1, 2005;*
23 *Readopted Eff. June 1, 2017.*

1 Rule 21 NCAC 29 .0804 is readopted with changes as published in 31:12 NCR 1244-1246 as follows:

2

3 **21 NCAC 29 .0804 RECORD KEEPING**

4 The licensee shall maintain records to support credits claimed and supply such records to the Board ~~upon request.~~ at
5 time of renewal. The Board ~~requires:~~ requires any of the following as proof of education:

6 (1) A log showing the type of activity claimed, sponsoring organization, location, duration, the name
7 of the instructor or ~~speaker-speaker,~~ and the contact hours earned; ~~or~~

8 (2) Attendance certificates or other written evidence of participation; ~~participation issued by the~~
9 approved sponsor or presenter; or

10 (3) A transcript from an approved sponsor detailing the licensee's attendance.

11

12 *History Note: Authority G.S. 74F-6;*

13 *Eff. February 1, 2005;*

14 *Readopted Eff. June 1, 2017.*

1 Rule 21 NCAC 29 .0805 is readopted with changes as published in 31:12 NCR 1244-1246 as follows:

2

3 **21 NCAC 29 .0805 EXCEPTIONS**

4 A licensee shall be exempt from ~~the~~ eight hours of the continuing education requirement ~~for one calendar year~~ per
5 renewal cycle for any of the following reasons:

6 (1) A licensee serving on temporary active duty in the armed forces of the United States for a period
7 exceeding 120 consecutive days within the year.

8 (2) A licensee experiencing physical disability or illness if supporting documentation is ~~approved by~~
9 ~~the Board.~~ provided by the licensee. Such documentation shall be in the form of a statement from
10 a ~~physician, physician~~ or medical records ~~which that~~ show that the disability or illness prevented
11 the licensee's participation in the following:

12 (a) a course in which the licensee had ~~enrolled, enrolled;~~ or

13 (b) ~~prevented the licensee's participation in the~~ a continuing education program for at least
14 120 consecutive days in a year.

15 (3) A licensee whose licensed apprentice passes the North Carolina Locksmith Licensing Exam and
16 receives a North Carolina Locksmith License.

17

18 *History Note: Authority G.S. 74F-6; 93B-15;*
19 *Eff. February 1, 2005;*
20 *Amended Eff. November 1, 2007;*
21 *Readopted Eff. June 1, 2017.*

1 Rule 21 NCAC 29 .0806 is readopted with changes as published in 31:12 NCR 1244-1246 as follows:

2

3 **21 NCAC 29 .0806 NON COMPLIANCE**

4 If the Board ~~disallows~~ does not approve any credits claimed by an applicant, then the licensee shall have 90 calendar
5 days after written notification from the Board to substantiate the original claim as stated in Rule .0804 of this
6 Section or obtain other contact hours to meet the minimum requirements. ~~Upon failure~~ If the licensee fails to meet
7 this requirement within the 90 days, the applicant's license shall expire at the end of the 90 days. ~~expire.~~

8

9 *History Note: Authority G.S. 74F-6;*

10 *Eff. February 1, 2005;*

11 *Readopted Eff. June 1, 2017.*



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

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

April 20, 2017

Barden Culbreth
Locksmith Licensing Board
Sent via email only: barden@recanc.com

Re: Extension of the Period of Review for Rules 21 NCAC 29 .0102, .0201, .0204, .0205, .0206, .0401, .0404, .0502, .0503, .0504, .0702, .0703, .0802, .0803, .0804, .0805, and .0806.

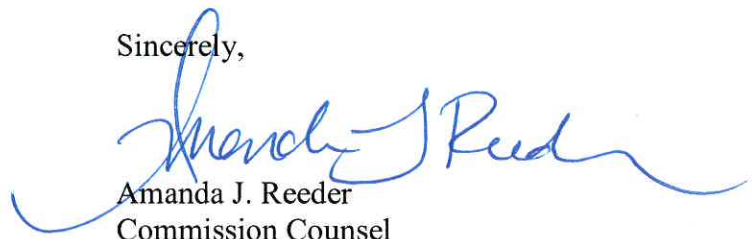
Dear Mr. Culbreth:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to complete requested technical changes and submit the rewritten rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

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

Sincerely,



Amanda J. Reeder
Commission Counsel

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

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Rules Review
Commission
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Civil Rights
Division
919/431-3036
fax: 919/431-3103

Burgos, Alexander N

Subject: FW: 21 NCAC 29 - Extension Request

From: Barden Culbreth [<mailto:barden@recanc.com>]

Sent: Tuesday, April 11, 2017 8:02 AM

To: Rules, Oah <oah.rules@oah.nc.gov>

Cc: Reeder, Amanda J <amanda.reeder@oah.nc.gov>

Subject: 21 NCAC 29 - Extension Request

Dear Rules Review Commission,

The North Carolina Locksmith Licensing Board is requesting additional time to complete technical changes to its rules as part of the re-adoption portion of the Existing Rules Review.

Throughout the Existing Rules Review process, the NC Locksmith Licensing Board has remained on schedule set forth by the Rules Review Commission and staff. However, at the end of 2016, the Board lost four of its nine members. Two of which were term limited, one was replaced by the outgoing Governor, and one due to death. As the Board's sole administrator and Rule Making Coordinator, I have been educating the new board and its new leadership on the Rules Review Process, including the Board's previous opinions on the Rules (some of which have changed under new leadership.)

Finally, the technical corrections presented by the RRC staff are extremely valuable and necessary to comply with the standards of the RRC and the General Assembly's mandate to review, remove and reform needless rules and regulations. Some of our Rules are almost twenty years old. They contain an overwhelming number of unnecessary, duplicative, and vague qualifying language. Some language is not necessary a rule, but guidance language for our regulated profession. These rules need time to be cleaned up to meet the standards of the RRC.

The NC Locksmith Licensing Board takes this task very seriously and requests additional time to make the technical corrections to these rules.

Thank you for your consideration,

Barden Culbreth
Director/Rule Making Coordinator
North Carolina Locksmith Licensing Board
www.nclocksmithboard.org

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OFFICE OF ADMINISTRATIVE HEARINGS

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Street address:
1711 New Hope Church Rd
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April 20, 2017

Barden Culbreth
Locksmith Licensing Board
Sent via email only: barden@recanc.com

Re: Objection to Rules 21 NCAC 29 .0402 and .0601.

Dear Mr. Culbreth:

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 21 NCAC 29 .0402 based upon lack of statutory authority and ambiguity.

Specifically, the Commission found that the Board lacks statutory authority to refuse to license applicants based solely upon past convictions. The Rule addresses the use of criminal convictions to determine if the applicant may be licensed. In Subparagraph (g)(1) of the Rule, it states that an applicant with any Class A or B felony conviction is ineligible for licensure. Further, the Rule states that a licensed locksmith who is convicted of a Class A or B felony shall be subject to immediate revocation of licensure. However, G.S. 74F-18(c) states that a conviction cannot automatically bar licensure. The Board does not have authority to write a rule that contradicts the statute.

Further, G.S. 74F-15 allows the Board to deny or refuse to renew, suspend, or revoke a license if the licensee is convicted or pleads guilty or no contest to any of the crimes listed in G.S. 74F-18. However, the Board does not have authority to take these actions without considering the factors in G.S. 74F-18.

In addition, G.S. 74F-18(c) lists seven factors that the Board is required to consider to determine whether the applicant may be disqualified based upon criminal conviction. This Rule addresses some of the factors in Paragraphs (d) and (h), but not all of them.

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, those Paragraphs state that the Board only “may” consider the factors, when the Board is required to do so pursuant to G.S. 74F-18(c). If the Board is implementing the statutory factors without listing them in Rule, the Rule is unclear as written as it addresses some, but not all, of the factors required by statute.

The Commission further found that Paragraph (h) of the Rule is unclear as written, as it says the Board may also consider additional factors to determine the present fitness of a person who has been convicted of a crime that relates to the duties and responsibilities of a locksmith. The Rule does not state what those crimes are. G.S. 74F-18(a)(2) defines criminal history as “A history of conviction of [a crime] that bears on an applicant’s fitness for licensure to practice locksmithing.” Given the language of Paragraph (h), it is unclear if Paragraph (c) of the Rule is addressing crimes that do not affect the fitness for licensure, and therefore, Paragraph (c) is in excess of the Board’s statutory authority.

In addition, since Paragraph (c) of the Rule appears to encompass every level of felony and misdemeanor in the State, it is unclear what crimes the Board is referring to in Paragraph (h). However, for these crimes, the Board states that it “may” consider what appears to be four of the seven statutory factors, as well as two additional factors that are not in statute.

The Commission objected to Rule 21 NCAC 29 .0601 based upon lack of statutory authority and ambiguity.

Specifically, the Commission found that the Board lacks statutory authority to require some of the additional information set forth in the Rule in a petition for rulemaking. In the text of the rule, the agency is requiring that a petitioner submit the effect of a proposed new rule or amendment on existing rules or decisions, practices likely to be affected, and an identification of the persons or class of persons most likely to be affected by the proposal in Subparagraphs (a)(5), (6), and (7) of the Rule. The Commission found that the agency does not have statutory authority to require these items from a petitioner, as they are beyond the authority conferred by G.S. 150B-20.

The Commission further found that Subparagraphs (a)(5) or (a)(6) of the Rule may have been intended to address the “effect of the proposed new rule or amendment of the proposed change” expressly allowed by G.S. 150B-20(a). However, as the Rule is written, this is not clear. In addition, (a)(6), which addresses “practices likely to be affected” is unclear as written.

The Commission also found that Paragraph (b), which states that “The Board may request additional information” is unclear, as it does not state how the information will be requested, to whom the request will be made, or under what circumstances the request will be made.

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: All rules submitted

DEADLINE FOR RECEIPT: Monday April 10, 2017

NOTE: This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On the Submission for Permanent Rule form:

- *Please add the name of the Rule after the citation on Box 2.*
- *In Box 8, please confirm that this was approved by OSBM, since this is not how you published the fiscal impact in the NC Register.*

On every Rule:

- *Please insert an introductory statement on the first line. You may say for every readoption, "Rule 21 NCAC 29 .XXXX is readopted as published in 31:12 NCR 1244-1246 as follows:" [See 26 NCAC 02C .0404]*
- *For any rule where you make a change to the text in response to these Requests for Technical Changes or the text differs from that published in the NC Register, state "...readopted with changes as published in..."*
- *Please be sure to apply 1.5 line spacing and 10 point font. [See 26 NCAC 02C .0108(1)(d) and (g)]*
- *Please insert an effective date in the History Note for every rule. You will add a line at the bottom of the History Note, "Readopted Eff." The earliest date you can have is May 1, 2017.*

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: March 24, 2017

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0102

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Why do you need this Rule? Is it to implement G.S. 74F-5(g)?

(g) Meetings. - The Board shall hold at least two meetings each year to conduct business and to review the standards and rules for issuing licenses under this Chapter. **The Board shall adopt rules governing the calling, holding, and conducting of regular and special meetings.** A majority of Board members shall constitute a quorum. (2001-369, s. 1.)

If so, please change the citation in the History Note to specify that by adding (g).

Assuming you need to retain this Rule, I suggest deleting "Frequency." on line 2 and "Notice." on line 4.

In (b), you refer to putting the notice on the Board's website. And I take it the Board is also giving this information to the Secretary of State, as set forth in G.S. 143-318.12(a)?

§ 143-318.12. Public notice of official meetings.

(a) If a public body has established, by ordinance, resolution, or otherwise, a schedule of regular meetings, it shall cause a current copy of that schedule, showing the time and place of regular meetings, to be kept on file as follows:

- (1) For public bodies that are part of State government, with the Secretary of State;

In (b), line 5, consider replacing the parenthesis around the url and just separating it with a comma.

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: March 24, 2017

1 **21 NCAC 29 .0102 MEETINGS**

2 (a) Frequency. The Board shall meet ~~during January and August on the second Mondays of January and August~~ and at
3 other times agreed upon by a majority of the Board.

4 (b) Notice. Notification of the time and place of all meetings shall be published on the North Carolina Locksmith
5 Licensing Board website (www.nclocksmithboard.org) not less than 15 days prior to the meeting.

6

7 *History Note: Authority G.S. 74F-5;*

8 *Temporary Adoption Eff. August 13, 2002;*

9 *Eff. August 1, 2004.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0201

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please submit a correct electronic version of this Rule, showing all changes proposed to be made.

Please note, the Introductory Statement for this Rule will state "Rule 21 NCAC 29 .0201 is amended with changes as published in 31:12 NCR 1244-1246 as follows:"

In (a)(2), so that I'm clear – the intent is that this will only apply to test takers who failed to make at least 70% as set forth in Rule .0203, rather than having test results invalidated pursuant to Rule .0204?

In (a)(2) and (3), lines 11 and 12, please spell out the dollar amount before the parenthesis, as you did in (a)(1). [See Rule 26 NCAC 02C .0108(10)]

In (b), line 13, I recommend ending the sentence after "fee." Then beginning the next sentence with "However,"

In (b), is the Board still administering the test at a commercial testing center? I ask in light of the charge of G.S. 74F-7(3):

§ 74F-7. Qualifications for license.

An applicant shall be licensed as a locksmith if the applicant meets all of the following qualifications:

- (3) Successfully completes an examination **administered by the Board** that measures the knowledge and skill of the applicant in locksmith services and the laws applicable to licensed locksmiths.

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: March 24, 2017

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0204

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

I recommend breaking this down into multiple Paragraphs, wherein each sentence would be a Paragraph.

On line 2, I recommend deleting "appearing"

Also on line 2, what is a "valid" government-issued photo ID?

On line 4, what factors will the proctor use to deem something "inappropriate"?

On line 4, I am merely inquiring – do you still have a need to mention pagers?

On line 5, replace "must" with "shall"

On line 6, replace "must" with "shall"

On line 8, if you changed the Rule to include Paragraphs, replace "these standards" with "the paragraphs of this Rule" If you do not create paragraphs, state "Failure to abide by any of the standards set forth in this Rule..."

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: March 24, 2017

1 **21 NCAC 29 .0204 REQUIREMENTS OF EXAMINEES**

2 Applicants appearing at an examination session shall present a valid government-issued photo ID to the
3 examination proctor before the beginning of the examination session. The applicant shall not bring books,
4 calculators or other items deemed inappropriate by the proctor into the examination room. Pagers and
5 cellphones must be turned off during the examination. Applicants shall not speak with others during the
6 examination session. Applicants must obey instructions from the proctor regarding when to begin and cease
7 work on the examination. Applicants shall be excused from the room during the examination only with
8 permission from the proctor. Failure to abide by any of these standards shall result in invalidation of the
9 applicant's examination results.

10

11 *History Note: Authority G.S.74F-6; 74F-7;*

12 *Temporary Adoption Eff. November 13, 2002;*

13 *Eff. August 1, 2004.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0205

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 2, replace "must" with "shall"

On line 3, what is the form? Is it the form in Rule 21 NCAC 29 .0202?

Also on line 3, what is the "required fee for a different session"? Now that Rule .0201 sets different fees for different times taking the test, what will the fee be?

On lines 3-5, how will this waiver occur? Will the applicant need to ask the Board for the waiver? And will the Board make this determination of "hardship or emergency" at a meeting?

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: March 24, 2017

1 **21 NCAC 29 .0205 FAILURE TO ATTEND SCHEDULED EXAMINATION SESSION**

2 Applicants who fail to appear for a scheduled examination session shall forfeit their examination fee and must
3 submit a new registration form along with the required fee for a different session. The Board shall waive the
4 additional examination fee if it finds that the applicant's failure to attend as scheduled was the result of a
5 hardship or emergency.

6

7 *History Note: Authority G.S. 74F-6; 74F-7;*

8 *Temporary Adoption Eff. November 13, 2002;*

9 *Eff. August 1, 2004.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0206

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 2, what is "documented"?

And how is this administration granted? Does the applicant have to request it?

Also on line 2, please incorporate this law by reference using G.S. 150B-21.6. Since the law has been amended since 2007, do you wish to incorporate subsequent amendments and editions?

On line 4, what do you mean by "In general"? Could you simply delete it?

On lines 4 and 5, replace "which" with "that"

What exactly are you trying to say on lines 4-7? That if the applicant has a disability that will require special arrangements to take the examination, the candidate shall request such arrangements in his or her application and the Board shall accommodate them, while trying to ensure that the administration is comparable to the standard administration? If so, you may wish to say that. In addition, you may wish to look at similar rules from licensing boards, such as 21 NCAC 14N .0107, for examples of language.

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: March 24, 2017

1 **21 NCAC 29 .0206 SPECIAL ADMINISTRATION**

2 Applicants with documented disabilities as defined by the Americans with Disabilities Act of 1990 (ADA)
3 shall be administered the NC Locksmith Licensing Exam under conditions that shall minimize the effect of
4 the disabilities on their performance. In general, those lifestyle accommodations which an individual uses to
5 compensate for disabilities, and which have become accepted practice for the individual since the onset of the
6 applicant's disability, shall be considered as the most appropriate accommodation for testing. Special test
7 administrations shall be as comparable as possible to a standard administration.

8

9 *History Note: Authority G.S. 74F-6; 74F-7;*

10 *Eff. November 1, 2007.*

11

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0401

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 4, what is on the form? Please note, G.S. 150B-2(8a)(d) states that while forms themselves are not required to be in rule, the contents are. Are the contents of the form in another Rule or law that you can cross-reference?

Also, how does someone obtain this form? Is it on the Board's website? Or do they need to contact the Board to request it?

In Item (2), define "complete"

In Item (3), what statute are you referring to? Please state that here. And is the "examination registration form" the form in Rule 21 NCAC 29 .0202?

In Items (4) and (5), what is the purpose of this? G.S. 74F-18(b) requires the Board to provide to DPS the information needed for a State criminal record check. Is this intended to be in addition to the requirements of the statute?

(b) All applicants for licensure or apprentice designation shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure or apprentice designation to an applicant. **The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Public Safety the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Public Safety.** The Board shall keep all information obtained pursuant to this section confidential. The Board shall collect any fees required by the Department of Public Safety and shall remit the fees to the Department of Public Safety for expenses associated with conducting the criminal history record check.

And I also note G.S. 74-18(c), which states:

If, after reviewing these factors, the Board determines that the applicant's criminal history disqualifies the applicant for licensure, the Board may deny licensure or apprentice designation of

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 24, 2017

the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

So, how does this self-reporting work in conjunction with the Board's charge to get the criminal record check?

Also, does the Board not mention the consent for the criminal record check and fee required by law in this Rule because it believes the statute addresses this sufficiently?

In Item (6), define "complete" and "truthful" on line 15.

Also on line 15, what do you mean by "affirmative responses"? Is someone really going to explain that they were employed somewhere?

In Item (7), what are the applicable fees? Will your regulated public know?

In Item (9), what "relevant" license are you referring to? G.S. 74F-8(a) refers to being a licensed locksmith in another state.

In Item (11), what are the contents of this form? Is this in another Rule or law that you can cross-reference?

In Item (12), what are these "relevant" industry certifications, and why would they be applicable? I don't see any reference to a certification in the licensing laws in G.S. 74F.

Depending upon the response to the questions about Items (4) and (5), you may wish to include G.S. 74F-18 in the History Note.

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: March 24, 2017

RRC STAFF OPINION

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

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0402

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 because staff does not believe the Board has statutory authority to refuse to license applicants based solely upon past convictions. In addition, staff believes the Rule is unclear as written.

This Rule is named "Establishment of Moral and Ethical Character" and in the History Note, the Board cites to 74F-7. That statute states, in relevant part:

§ 74F-7. Qualifications for license.

An applicant shall be licensed as a locksmith if the applicant meets all of the following qualifications:

- (1) Is of good moral and ethical character, as evidenced in part by a criminal history record check conducted in accordance with G.S. 74F-18.

Therefore, it appears that the Board is using this Rule to establish what is "good moral and ethical character" as set forth in law.

G.S. 74F-7(1) states that part of the determination of moral and ethical character shall be as evidenced by the applicant's criminal background check, as set forth in G.S. 74F-18. That statute states, in relevant part:

Amanda J. Reeder
Commission Counsel

§ 74F-18. Criminal history record checks of applicants for licensure or apprentice designation.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

- (1) The level of seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
- (6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
- (7) The subsequent commission by the person of a crime listed in subdivision (a)(2) of this section.

If, after reviewing these factors, the Board determines that the applicant's criminal history disqualifies the applicant for licensure, the Board may deny licensure or apprentice designation of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

The Rule mainly addresses the use of criminal convictions to determine if the applicant may be licensed. In Subparagraph (g)(1), it states that an applicant with any Class A or B felony conviction is ineligible for licensure. Further, the Rule states that a licensed locksmith who is convicted of a Class A or B felony shall be subject to immediate revocation of licensure. However, G.S. 74F-18(c) states that a conviction cannot automatically bar licensure. Staff does not believe that the Board has authority to write a rule that contradicts the statute.

Staff notes that G.S. 74F-15 states, in relevant part:

§ 74F-15. Disciplinary procedures.

- (a) The Board may deny or refuse to renew, suspend, or revoke a license or apprenticeship designation if the licensee, apprentice, or applicant:
 - (2) Has been convicted of or pled guilty or no contest to any of the crimes listed in G.S. 74F-18(a)(2).

This statute allows the Board to deny or refuse to renew, suspend, or revoke a license if the licensee is convicted or pleads guilty or no contest to any of the crimes listed in G.S. 74F-18. However, staff does not believe that the Board has authority to take these actions without considering the factors in G.S. 74F-18. Further, even if the Commission were to determine that G.S. 74F-18 applies to only initial applicants, then Subparagraph (g)(1) of the Rule still contradicts the statute as it relates to those individuals.

In addition, G.S. 74F-18(c) lists seven factors that the Board is required to consider to determine whether the applicant may be disqualified based upon criminal conviction. This Rule appears to address some of the factors in Paragraphs (d) and (h), but not all of them. In addition, those Paragraphs state that the Board only "may" consider the factors, when the Board is required to do

so pursuant to G.S. 74F-18(c). It may be that the Board is implementing the statutory factors without listing them in Rule, but if that is the case, it appears that they are addressing at least some of them in this Rule; therefore, the Rule is unclear as written.

Paragraph (h) of the Rule is unclear as written, as it says the Board may also consider additional factors to determine the present fitness of a person who has been convicted of a crime that relates to the duties and responsibilities of a locksmith. The Rule does not state what those crimes are. Staff notes that G.S. 74F-18(a)(2) defines criminal history as "A history of conviction of [a crime] that bears on an applicant's fitness for licensure to practice locksmithing." Given the language of Paragraph (h), It is unclear if Paragraph (c) of the Rule is addressing crimes that do not affect the fitness for licensure, and therefore, Paragraph (c) is in excess of the Board's statutory authority.

In addition, since Paragraph (c) of the Rule appears to encompass every level of felony and misdemeanor in the State, it is unclear what crimes the Board is referring to in Paragraph (h). However, for these unknown crimes, the Board states that it "may" consider what appears to be four of the seven statutory factors, as well as two additional factors that are not in statute.

Therefore, staff recommends objection to this Rule as written for lack of statutory authority and for ambiguity.

§ 74F-6. Powers of the Board.

The Board shall have the power and duty to:

- (1) Administer and enforce the provisions of this Chapter.
- (2) Adopt rules as may be necessary to carry out the provisions of this Chapter.
- (3) Examine and determine the qualifications and fitness of applicants for licensure and renewal of licensure.
- (4) Issue, renew, deny, suspend, or revoke licenses or apprenticeship designations and conduct any disciplinary actions authorized by this Chapter.
- (5) Set fees as provided in G.S. 74F-9.
- (6) Establish and approve continuing education requirements for persons licensed under this Chapter.
- (7) Receive and investigate complaints from members of the public.
- (8) Conduct investigations for the purpose of determining whether violations of this Chapter or grounds for disciplining licensees exist.
- (9) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.
- (10) Maintain a record of all proceedings conducted by the Board and make available to licensees and other concerned parties an annual report of all Board action.
- (11) Maintain a list of the names and addresses of all persons licensed by the Board.
- (12) Employ and fix the compensation of personnel that the Board determines is necessary to carry out the provisions of this Chapter and incur other expenses necessary to perform the duties of the Board.
- (13) Adopt and publish a code of ethics.
- (14) Adopt a seal containing the name of the Board for use on all licenses and official reports issued by the Board.
- (15) Employ an attorney to assist or represent the Board in enforcing this Chapter.
- (16) Request that the Department of Public Safety conduct criminal history record checks of applicants for licensure and apprenticeships pursuant to G.S. 143B-946.
- (17) Authorize the chair, by majority vote, to issue subpoenas allowing the Board to obtain the records of a person or company offering locksmith services, including an employee of a company, a contractor, or a subcontractor. The records obtained shall include invoices and receipts, specifically any invoices and receipts that pertain to locksmith tools, equipment, or parts. (2001-369, s. 1; 2003-350, ss. 3, 4; 2004-177, s. 1; 2013-370, s. 4; 2014-100, s. 17.1(gg).)

§ 74F-7. Qualifications for license.

An applicant shall be licensed as a locksmith if the applicant meets all of the following qualifications:

- (1) Is of good moral and ethical character, as evidenced in part by a criminal history record check conducted in accordance with G.S. 74F-18.
- (2) Is at least 18 years of age.

- (3) Successfully completes an examination administered by the Board that measures the knowledge and skill of the applicant in locksmith services and the laws applicable to licensed locksmiths.
- (4) Pays the required fee under G.S. 74F-9. (2001-369, s. 1; 2003-350, s. 5.)

§ 74F-15. Disciplinary procedures.

- (a) The Board may deny or refuse to renew, suspend, or revoke a license or apprenticeship designation if the licensee, apprentice, or applicant:
 - (1) Gives false information to or withholds information from the Board in procuring or attempting to procure a license.
 - (2) Has been convicted of or pled guilty or no contest to any of the crimes listed in G.S. 74F-18(a)(2).
 - (3) Has demonstrated gross negligence, incompetency, or misconduct in performing locksmith services.
 - (4) Has willfully violated any of the provisions of this Chapter.
- (b) The Board may assess the costs of disciplinary action, including attorneys' fees, against an applicant or licensee found to be in violation of this Chapter or rules adopted by the Board. (2001-369, s. 1; 2003-350, s. 8; 2013-370, s. 8.)

§ 74F-18. Criminal history record checks of applicants for licensure or apprentice designation.

- (a) Definitions. – The following definitions shall apply in this section:
 - (1) Applicant. – A person applying for licensure as a locksmith pursuant to G.S. 74F-7 or apprentice designation pursuant to G.S. 74F-7.1.
 - (2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice locksmithing. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S.

Amanda J. Reeder
Commission Counsel

18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(b) All applicants for licensure or apprentice designation shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure or apprentice designation to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Public Safety the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Public Safety. The Board shall keep all information obtained pursuant to this section confidential. The Board shall collect any fees required by the Department of Public Safety and shall remit the fees to the Department of Public Safety for expenses associated with conducting the criminal history record check.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

- (1) The level of seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
- (6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
- (7) The subsequent commission by the person of a crime listed in subdivision (a)(2) of this section.

If, after reviewing these factors, the Board determines that the applicant's criminal history disqualifies the applicant for licensure, the Board may deny licensure or apprentice designation of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited Immunity. – The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure or apprentice designation to an applicant based on information provided in the applicant's criminal history record check. (2003-350, s. 11; 2004-177, s. 2; 2012-12, s. 2(ee); 2014-100, s. 17.1(o); 2015-181, s. 47.)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0402

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please insert page numbers in this Rule as it is more than one page. Also, please reset the line numbers on each Page at 1. [See Rule 26 NCAC 02C .0108(1)(f) and (h)]

In (a), line 2, what is in the application and where is it obtained?

On line 2, define "truthful"

On lines 3-4, what matters "reflect on the applicant's suitability for licensure"?

In (b), so that I'm clear – if an applicant has several convictions, the person shall be placed into a category that is determined by the most serious offense? So, an applicant with a Class A felony, and several Class A-I misdemeanors shall be classified as a "Category I" applicant?

In (c)(1), "Class" is capitalized but it is not in the rest of (c). I believe it should be capitalized everywhere, but please be consistent in the Rule.

In (d), define "directly"

In (d), line 16, you state the Board "may" consider the factors, but factors (d)(1) and (2) are required to be reviewed pursuant to G.S. 74-18(c). So, do you mean "shall"? If you do mean "may" then when will the Board not consider these factors?

In (e), how will the Board make this determination?

In (f), line 25, I suggest replacing "does relate" with "relates"

In (g)(1), Page 2, line 29, and (g)(2) on line 33, define "immediate" Are you doing this pursuant to G.S. 150B-3 or after hearing in G.S. 74F-15?

In (g)(2), line 30, (g)(3), line 34, and (g)(4), line 38, generally "at least" is not favored language in rules, as they set the minimum requirements. However, I take the Board needs to retain the language here?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 24, 2017

In (g)(3), line 34, please replace “7” with “seven” [See Rule 26 NCAC 02C .0108(9)(a)]

In (g)(3), line 36, and (g)(4), line 40, since you say they “may” when will the individuals not be subject to “immediate license revocation” and please see my question for (g)(1) and (2) regarding the immediate revocation.

In (h), line 42, you state that the Board “may” consider the factors, but (h)(1), (2), (3) and (4) are at least part of the requirements that the Board must consider as set forth in G.S. 74F-18(c). So, do you mean “shall”? And if not, then when will the Board not consider these?

On line 43, replace “which” with “that”

On line 43, what are the crimes that relate to the duties and responsibilities of being a locksmith? Who determines this?

In (h)(1), you refer to the applicant’s age when crime was committed, but the statute refers to date of conviction.

In (h)(3), what will serve as evidence of this?

In (h)(5), are these required? Or only if submitted?

In (h)(6), who determines relevance? If it’s the Board, how will the Board determine this? And when will it be requested?

In (i), define “history of chemical dependency”

On lines 52 and 53, I take it you need to retain “at least”? What is the evidence needed, and what is “continuous”?

In (j), wouldn’t the Board’s action to revoke or suspend a license be taken pursuant to G.S. 150B, Article 3A?

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

1 **21 NCAC 29 .0402 ESTABLISHMENT OF MORAL AND ETHICAL CHARACTER**

2 (a) Information supplied on the application and in supporting documents must be truthful. Falsification or concealment
3 of facts relating to employment, military service, criminal conviction or court-martial, age or other matters that reflect on
4 the applicant's suitability for licensure shall be grounds for license denial, revocation, or suspension.

5 (b) Applicants with criminal histories from any jurisdiction shall be categorized according to the seriousness of the
6 offense. The category shall be determined by the most serious offense.

7 (c) These categories are as follows:

8 (1) Category I. This Category consists of all Class A and B felonies.

9 (2) Category II. This Category consists of all felonies of classes C-F.

10 (3) Category III. This Category consists of all felonies of classes G or lesser, and all misdemeanors of
11 classes A1 and 1. Three or more Category III convictions (committed as separate incidents) shall be
12 reclassified as a Category II offense.

13 (4) Category IV. This Category consists of misdemeanors of classes 2 and 3. Three or more Category IV
14 convictions (committed as separate incidents) shall be reclassified as a Category III offense.

15 (d) The Board shall determine if the conviction is directly related to the duties and responsibilities of a locksmith. The
16 Board may consider the following factors:

17 (1) The nature and seriousness of the crime;

18 (2) The relationship of the crime to the purposes for requiring a license as a locksmith;

19 (3) The extent to which a license might offer an opportunity to engage in further criminal activity of the
20 same type; and

21 (4) The relationship of the crime to the ability, capacity, or fitness required to perform the duties and
22 discharge the responsibilities of a licensed locksmith.

23 (e) If the Board determines that the conviction does not relate to the duties and responsibilities of a locksmith, the Board
24 shall process the application according to standard procedures.

25 (f) If the Board determines that the conviction does relate to the duties and responsibilities of a locksmith, the Board
26 shall evaluate the present fitness of the individual to provide locksmith services.

27 (g) The Board shall use the following guidelines in evaluating an individual's present fitness:

28 (1) An applicant with a Category I conviction is ineligible for licensure. A licensed locksmith with a
29 Category I conviction shall be subject to immediate revocation of license.

30 (2) An applicant with a Category II conviction shall have at least 12 years since the applicant has
31 completed all aspects of his or her sentence received as a result of the last Category II conviction to be
32 eligible for licensure. A licensed locksmith convicted of a Category II offense shall be subject to
33 immediate license revocation.

34 (3) An applicant with a Category III conviction shall have at least 7 years since the applicant has
35 completed all aspects of his or her sentence received as a result of the last Category III conviction to
36 be eligible for licensure. A licensed locksmith convicted of a Category III offense may be subject to
37 immediate license revocation.

38 (4) An applicant with a Category IV conviction shall have at least three years since the applicant has
39 completed all aspects of his or her sentence received as a result of the last Category IV conviction to
40 be eligible for licensure. A licensed locksmith convicted of a Category IV offense may be subject to
41 immediate license revocation.

42 (h) The Board may also consider the following factors in determining the present fitness of a person who has been
43 convicted of a crime which relates to the duties and responsibilities of a locksmith:

44 (1) The age at the time each crime was committed;

45 (2) The conduct and work history of the person before and after the criminal conviction;

46 (3) Evidence of the person's rehabilitation efforts and outcome;

47 (4) The extent and nature of the past criminal history;

48 (5) Two letters of recommendation from licensed locksmiths; and

49 (6) Other evidence of fitness that may be relevant to the Board's assessment, such as a psychological test,
50 mental health status report or substance abuse assessment.

51 (i) If the person's criminal activity is related to a history of chemical dependency, the Board shall also consider the
52 person's efforts and success in achieving and maintaining recovery. Applicants with a history of chemical dependency
53 shall demonstrate evidence of treatment or rehabilitation and at least two years of continuous recovery.

54 (j) An individual whose application is denied or whose license is suspended or revoked may request a hearing under the
55 procedures established in of G.S. 150B, Article 3A.

56

57 *History Note: Authority G.S. 74F-6; 74F-7;*

58 *Temporary Adoption Eff. August 13, 2002;*

59 *Eff. August 1, 2004.*

60

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0404

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 3, I suggest changing the order of the wording in the second sentence. "In the event the applicant is denied licensure, the fee shall be refunded."

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: March 24, 2017

1 **21 NCAC 29 .0404 FEES**

2 The license issuance fee shall be one hundred dollars (\$100.00). The license issuance fee shall accompany the
3 application for licensure. In the event that licensure is denied the applicant, the fee shall be refunded.

4

5 *History Note: Authority G.S. 74F-6; 74F-7; 74F-9;*

6 *Temporary Adoption Eff. October 17, 2002;*

7 *Eff. August 1, 2004.*

8

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0502

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please insert page numbers in this Rule as it is more than one page. Also, please reset the line numbers on each Page at 1. [See Rule 26 NCAC 02C .0108(1)(f) and (h)]

In (a), line 2, what are the applicable laws?

In (b), define "impartially" and what do you mean here?

In (c), line 6, define "countenances misrepresentation"

In (d), line 7, what are "unwarranted claims"?

On line 8, I suggest you state "Examples include:" or "Examples include the following:"

End (d)(1) with a semicolon and "or" Like this, "... unauthorized ~~duplication.~~ duplication; or"

In (e), line 12, define "improper or questionable means"

In (e)(1), so that I'm clear, the idea is to prevent locksmiths from putting stickers on fixtures without permission? But they can put stickers elsewhere?

On line 15, state "his or her"

On lines 15, 19, and 23, does your regulated public know what "express written consent" means?

In (e)(3), line 18, replace "which" with "that"

In (e)(4), line 22, state "him or her"

In (e)(5), is the Board enforcing non-compete agreements?

On line 25, state "his or her"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 24, 2017

In (e)(6), line 26, replace “which” with “that”

Also, how is (e)(6) determined? Who determines this is “similar enough” or will “cause confusion among confusion”?

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: March 24, 2017

1 **21 NCAC 29 .0502 FAIR BUSINESS PRACTICES**

2 (a) Locksmiths shall conduct all business in compliance with all applicable laws.

3 (b) Locksmiths shall impartially analyze security problems receiving their attention and advance the best possible
4 solution for the protection of the client.

5 (c) Locksmiths shall refrain from associating themselves with or allowing the use of their name (personal or
6 professional) by any enterprise which in any way countenances misrepresentation.

7 (d) Locksmiths shall not misrepresent the features afforded by any product nor make unwarranted claims about the
8 merits of any product or service they offer. Examples include, but are not limited to the following:

9 (1) Representing to a client that non-restricted or widely available keys (whether stamped "Do Not
10 Duplicate" or not) provide any measure of assurance against unauthorized duplication.

11 (2) Selling a used product as new.

12 (e) Locksmiths shall avoid using any improper or questionable means of soliciting business. Prohibited practices
13 include:

14 (1) Affixing stickers to permanent fixtures such as doors or door frames or in any way defacing the
15 property of any person without his express written consent.

16 (2) Installing stickers or any other promotions in such fashion that they falsely represent that the
17 locksmith or company has previously serviced the hardware in that location.

18 (3) Installing or supplying hardware which curtails the customer's ability to choose a different company or
19 technician for product support or service, unless the locksmith obtains the customer's express written
20 consent.

21 (4) Modifying the customer's hardware in any fashion that will curtail the customer's ability to choose a
22 different company or technician for later product support or service or cause him to incur additional
23 expense by doing so, unless the locksmith obtains the customer's express written consent.

24 (5) Direct solicitation in violation of a non-compete agreement, such as an employee offering competing
25 bids to customers of his employer.

26 (6) Using a name in advertising which is similar enough to a competitor's name to cause confusion among
27 consumers.

28

29 *History Note: Authority G.S. 74F-6;*
30 *Temporary Adoption Eff. August 13, 2002;*
31 *Eff. August 1, 2004.*
32

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0503

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please insert page numbers in this Rule as it is more than one page. Also, please reset the line numbers on each Page at 1. [See Rule 26 NCAC 02C .0108(1)(f) and (h)]

In (a), what does this mean? Does your regulated public know?

On line 3, define "any manner"

In (b), how will this be suspected?

In (c), define "knowingly"

In (d), consider changing line 8 to insert a comma after "room" and remove "or" before "originates" and insert a comma after "key"

On line 8, I take it that "in other fashion" is known to your regulated public?

In (e), line 10, what are "relevant codes"?

On lines 10 and 11, do you need to incorporate these standards using G.S. 150B-21.6 or have you done that elsewhere?

On line 11, is "National Fire Protection Association" a Code or just an organization that adopts codes?

On line 12, replace "which" with "that" both places.

On line 14, I take it the appropriate action is as determined by the locksmith, based upon his or her training and experience?

In (f), what do you mean by "become a party"?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 24, 2017

Also on line 16, who will deem the dispute likely to arise?

Should the sentence on lines 17 through 18, "The locksmith shall refuse to provide service when there is an unresolved dispute of ownership or authority." be the first sentence in this Paragraph? If so, do you need the first sentence you currently have?

In (g), line 20, what do you mean by "knowingly"?

On line 22, replace "must" with "shall" and who will make this attempt? The locksmith? If so, I recommend stating "The locksmith shall make an attempt to determine the holder of the master key and seek..."

In (h), what are "key biting arrays"? I take it your regulated public knows?

On line 24, I recommend inserting a comma after "file keys"

On line 25, how will the locksmith verify this information?

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: March 24, 2017

1 **21 NCAC 29 .0503 PROTECTION OF THE PUBLIC INTEREST**

2 (a) Locksmiths shall refrain from allowing their specialized skills, knowledge, or access to tools and information to be
3 used in any manner that puts the safety and security of the public at risk.

4 (b) If a locksmith suspects wrongful intent or misrepresentation by a potential client, the locksmith shall refuse service
5 and shall notify the law enforcement agency with jurisdiction.

6 (c) Locksmiths shall not knowingly infringe a restricted key system.

7 (d) Locksmiths shall record the identity of the customer for all service calls in which the locksmith opens a vehicle,
8 building, room or secured container, or originates a key or in any other fashion provides the customer with access to any
9 such property.

10 (e) Locksmiths shall endeavor to install all locking devices in compliance with all relevant codes, such as Uniform
11 Building Code, National Fire Protection Association, and Americans with Disabilities Act and any local codes or
12 ordinances which regulate architectural hardware. Locksmiths shall not install a locking device which produces a threat
13 to life safety. If such a (pre-existing) condition is encountered, the locksmith shall inform the client and recommend
14 appropriate remedial action.

15 (f) Locksmiths shall not become a party to disputes of ownership or authority. When an authorization dispute is deemed
16 likely to arise, the locksmith shall advise the law enforcement agency having jurisdiction and request the presence of a
17 uniformed officer. The locksmith shall refuse to provide service when there is an unresolved dispute of ownership or
18 authority. Only instructions from a uniformed law enforcement officer or a court order shall be accepted as resolution of
19 any such dispute.

20 (g) Locksmiths shall not knowingly interfere with the maintenance of a master key system. When master keyed
21 cylinders are encountered, the key presented without its corresponding master key shall be presumed to be a subordinate
22 key until otherwise determined. An attempt must be made to determine the holder of the master key and seek
23 authorization for cylinder changes or key origination before such service is performed.

24 (h) Locksmiths shall keep key biting arrays, file keys and all client information confidential. Locksmiths shall not
25 release any information or security device, such as a master key or safe combination, to any person without verifying that
26 the recipient is entitled to receive it.

27
28 *History Note: Authority G.S. 74F-6;*

29 *Temporary Adoption Eff. August 13, 2002;*
30 *Eff. August 1, 2004;*
31 *Amended Eff. April 1, 2012.*
32

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0504

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), what are you saying? Why do you have “always endeavor” and “in a manner” and “the highest level of security”? How is this achieved?

In (b), line 4, you refer to “new keys” and on line 5, you refer to “random keys” Are these the same thing? If so, please use the same language for both. If not, what is the difference? Does your regulated public know?

On line 5, I take it your regulated public knows what a “biting array” is?

In (b), line 6, and (c), line 10, what is the content of this “written warning notice”? Is it just a recitation of the Paragraphs?

In (c), line 7, what are the “dangers inherent”? I take it your regulated public knows, but does the public? What is the locksmith supposed to warn against?

On line 8, I take it your regulated public knows what “chambers left empty or stacked” means?

On line 9, is “maison keying” being defined by the language before it? If not, then why is this term in parenthesis?

In (d), line 11, are the “industry and manufactured standards” known to your regulated public?

On line 11, define “complete”

On lines 12 - 13, I suggest you state “Examples include:” or “Examples include the following:”

In (d)(1), define “repeated”

In (d)(2), I take it your regulated public knows what this means?

In (d)(3), isn't this allowed by (c), with a signed warning notice?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 24, 2017

In (e), line 17, do you really mean “honor” and not “follow”?

On line 17, what is “proper”?

On line 18, so that I’m clear, the locksmith can omit or disable a security feature if it won’t be to the detriment of the client’s safety and security? And who will determine this? The locksmith or the client?

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: March 24, 2017

1 **21 NCAC 29 .0504 TECHNICAL INTEGRITY**

2 (a) Locksmiths shall always endeavor to service and install security devices in a manner that maintains the highest level
3 of security afforded by the manufacturer of the product.

4 (b) Locksmiths shall inform clients of the dangers of introducing new keys into a master keyed system without reference
5 to the original bitting array. Locksmiths shall not introduce random keys into a master keyed system without obtaining
6 the signature of the client on a written warning notice.

7 (c) Locksmiths shall inform clients of the dangers inherent in keying a mechanical lock to operate on several keys in a
8 fashion that requires multiple chambers to be left empty or stacked with more than two master wafers in any chamber
9 (maison keying). Locksmiths shall not key mechanical lock cylinders in this fashion without obtaining the signature of
10 the client on a written warning notice.

11 (d) Locksmiths shall follow industry and manufacturer standards and insure random and complete recombination of
12 cylinders and combination locks for optimal security maintenance. Examples of violations include, but are not limited to
13 the following:

- 14 (1) The repeated use of a standard key or combination for multiple customers or job sites.
- 15 (2) Filing the plug on a mechanical lock cylinder as a means to enlarge the shear line.
- 16 (3) Leaving multiple chambers of a mechanical lock empty.

17 (e) Locksmiths shall honor manufacturer recommendations for the proper installation of locking devices and shall not
18 omit or disable any security feature, such as a safe relocking assembly or deadlatch, to the detriment of the client's safety
19 and security.

20

21 *History Note: Authority G.S. 74F-6;*
22 *Temporary Adoption Eff. August 13, 2002;*
23 *Eff. August 1, 2004.*

24

RRC STAFF OPINION

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

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0601

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 because staff does not believe the Board has statutory authority to require some of the additional information set forth in the Rule in a petition for rulemaking. Further, staff believes the Rule is unclear as written.

Petitions for rulemaking are governed by G.S. 150B-20. The statute states, in relevant part:

§ 150B-20. Petitioning an agency to adopt a rule.

- (a) Petition. - A person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition requesting the adoption. A person may submit written comments with a rule-making petition. If a rule-making petition requests the agency to create or amend a rule, the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change. Each agency must establish by rule the procedure for submitting a rule-making petition to it and the procedure the agency follows in considering a rule-making petition.

In the text of the readopted rule, the agency is requiring that a petitioner submit the effect of a proposed new rule or amendment on existing rules or decisions, practices likely to be affected, and an identification of the persons or class of persons most likely to be affected by the proposal. [See Subparagraphs (a)(5), (6), and (7)]

Amanda J. Reeder
Commission Counsel

Staff does not believe the agency has the authority to request all of this information from a petitioner.

Staff notes that this rule is being readopted with no changes to the text that has been in the NC Administrative Code since 2004. However, in 2011, the General Assembly implemented G.S. 150B-19.1, which states in relevant part:

§ 150B-19.1. Requirements for agencies in the rule-making process.

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

(2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.

Staff believes that requiring the petitioner submit the information in (a)(5), (6), and (7) of this Rule creates burdens upon the petitioner. Staff does not believe that the agency has authority to establish additional burdens upon the public in this Rule that are not included in the governing statute.

Staff notes that (a)(5) or (a)(6) may be intended to address the “effect of the proposed new rule or amendment of the proposed change” expressly allowed by G.S. 150B-20(a). However, as the Rule is written, this is not clear.

In addition, staff believes that (a)(6), which references “practices likely to be affected” is unclear as written. Does this address industry standards? If so, if a member of the general public submits a petition for rulemaking, how will they know these standards?

Also, staff believes that Paragraph (b), which states that “The Board may request additional information” is unclear, as it does not state how the information will be requested, to whom the request will be made, or under what circumstances the request will be made. It may be that the Board will request additional information from the petitioner if it determines it necessary to do so in order to grant or deny the petition, but the Rule does not say this. Therefore, staff believes this Paragraph is unclear as written.

§ 150B-19.1. Requirements for agencies in the rule-making process.

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

- (1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.
- (2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.
- (3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- (4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.
- (5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).
- (6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

(b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its Web site, no later than the publication date of the notice of text in the North Carolina Register, all of the following:

- (1) The text of a proposed rule.
- (2) An explanation of the proposed rule and the reason for the proposed rule.
- (3) The federal certification required by subsection (g) of this section.
- (4) Instructions on how and where to submit oral or written comments on the proposed rule, including a description of the procedure by which a person can object to a proposed rule and subject the proposed rule to legislative review.
- (5) Any fiscal note that has been prepared for the proposed rule.

If an agency proposes any change to a rule or fiscal note prior to the date it proposes to adopt a rule, the agency shall publish the proposed change on its Web site as soon as practicable after the change is drafted. If an agency's staff proposes any such change to be presented to the rule-making agency, the staff shall publish the proposed change on the agency's Web site as soon as practicable after the change is drafted.

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule and approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

- (1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.
- (2) Post the certification on the agency Web site in accordance with subsection (c) of this section.
- (3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

(h) Repealed by Session Laws 2014-120, s. 6(a), effective September 18, 2014, and applicable to proposed rules published on or after that date. (2011-398, s. 2; 2012-187, s. 3; 2013-143, s. 1.1; 2014-120, s. 6(a).)

§ 150B-20. Petitioning an agency to adopt a rule.

(a) **Petition.** – A person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition requesting the adoption. A person may submit written comments with a rule-making petition. If a rule-making petition requests the agency to create or amend a rule, the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change. Each agency must establish by rule the procedure for submitting a rule-making petition to it and the procedure the agency follows in considering a rule-making petition.

(b) **Time.** – An agency must grant or deny a rule-making petition submitted to it within 30 days after the date the rule-making petition is submitted, unless the agency is a board or commission. If the agency is a board or commission, it must grant or deny a rule-making petition within 120 days after the date the rule-making petition is submitted.

(c) **Action.** – If an agency denies a rule-making petition, it must send the person who submitted the petition a written statement of the reasons for denying the petition. If an agency grants a rule-making petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rule-making proceedings. When an agency grants a rule-making petition, the notice of text it publishes in the North Carolina Register may state that the agency is initiating rule making as the result of a rule-making petition and state the name of the person who submitted the rule-making petition. If the rule-making petition requested the creation or amendment of a rule, the notice of text the agency publishes may set out the text of the requested rule change submitted with the rule-making petition and state whether the agency endorses the proposed text.

(d) **Review.** – Denial of a rule-making petition is a final agency decision and is subject to judicial review under Article 4 of this Chapter. Failure of an agency to grant or deny a rule-making petition within the time limits set in subsection (b) is a denial of the rule-making petition.

(e) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 7.10(b). (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 418, s. 1; c. 477, s. 2; 1996, 2nd Ex. Sess., c. 18, s. 7.10(b); 1997-34, s. 2; 2003-229, s. 1.)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0601

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 5, what is the Board's address? I do not see it set forth anywhere in Chapter 29.

In (a)(2), line 8, I suggest replacing "to" after "citation" with "for"

What is your authority to require (a)(4)? If you wish to allow this to be submitted, rather than require it, you need to state that.

In (a)(5) or (a)(6), is the intent of "on existing rules or decisions" to address the highlighted portion of G.S. 150B-20?

§ 150B-20. Petitioning an agency to adopt a rule.

(a) Petition. - A person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition requesting the adoption. A person may submit written comments with a rule-making petition. **If a rule-making petition requests the agency to create or amend a rule, the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change.** Each agency must establish by rule the procedure for submitting a rule-making petition to it and the procedure the agency follows in considering a rule-making petition.

In (a)(6), what are these practices?

In (b), when will the Board request this? From whom? How will the request be sent?

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: March 24, 2017

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0702

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

I recommend making this a three Paragraph rule, using the same sequence you used when you published the Rule in the Register.

On line 2, what is the content of this application? Is it the form referenced in Rule .0701?

Also on line 2, do you need to retain "at least"?

On line 3, is the "due date" the 30 days before the expiration?

On line 4, I suggest inserting a comma after "(\$150.00)

Also on line 4, I recommend that you replace "specified" with "set forth" or just delete it altogether.

On line 5, who will deem it? The Board? If so, state "The Board shall deem..."

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: March 24, 2017

1 **21 NCAC 29 .0702 DUE DATE**

2 Applications for license renewal shall be submitted at least 30 days prior to the date of license expiration. Licensees
3 who submit their applications for renewal after the due date but before the license expiration date shall pay a late fee
4 of one hundred fifty dollars (\$150.00) in addition to the license renewal fee specified in Rule .0404 of this Chapter.
5 Applications shall be deemed submitted on the date of their postmark or upon receipt by staff at the Board's offices,
6 whichever is earlier.

7

8 *History Note: Authority G.S. 74F-6; 74F-9; 74F-10;*

9 *Eff. July 1, 2005;*

10 *Amended Eff. January 1, 2013.*

11

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0703

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

I highly recommend you use the changes to the language that you used when you published this Rule in the Register. I understand the agency no longer wishes to make the change to the fee amount in Item (3), and that's fine. However, all of the other changes that were published should be used here.

If you do not do that:

On line 2, what is a "former" licensee?

On line 2, state "his or her"

On line 2, do you need to retain "at least"

On line 2, by "contact hour" do you mean the term as defined in Rule .0801?

On line 3, replace "must" with "shall"

In Items (1) through (3), please use articles at the beginning of each Item, such as "The"

In Items (1) and (2), please "specified" with "set forth" or just delete the phrase.

In Item (1), state "Rule .0404 of this Chapter;"

In Item (2), state "Rule .0702 of this Section;"

So that I'm clear, I know that G.S. 74F-10 expressly allows the fees in Items (2) and (3) to reinstate an expired license. But what is the authority to charge the fee in Item (1)?

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

(a) The Board shall issue a license, upon payment of the license fee, to any applicant who has satisfactorily met the requirements of this Chapter as administered by the Board. Licenses shall

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 24, 2017

show the full name of the person and an identification number and shall be signed by the chair and one other officer of the Board.

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

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

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

Is the Board's interpretation that the highlighted sentences must be read together?

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: March 24, 2017

1 **21 NCAC 29 .0703 REINSTATEMENT OF EXPIRED LICENSE**

2 A former licensee may apply for reinstatement of an expired license only if he has completed at least eight contact hours
3 of continuing education within one year preceding the application. Applicants for reinstatement must pay the following
4 fees:

- 5 (1) License renewal fee as specified in .0404 of these Rules;
- 6 (2) Late fee as specified in .0702 of these Rules; and
- 7 (3) A reinstatement fee of one hundred fifty dollars (\$150.00).

8

9 *History Note:* *Authority G.S. 74F-6; 74F-9; 74F-10;*

10 *Eff. July 1, 2005.*

11

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0802

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a)(2)(A), (B), and (C), I take it you need to retain "at least" here?

In (a)(2)(D), it's fine that you have the full name of the Board. But throughout the Rules, you simply refer to it as "the Board" Do you want to do that here?

In (b), what are the "technical and professional subject" here?

Also on line 9, define "directly"

In (d), line 12, how is this verification done? What does a licensee have to submit to the Board?

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: March 24, 2017

1 **21 NCAC 29 .0802 REQUIREMENTS**

2 (a) Every licensee shall obtain 24 contact hours of continuing education during each 3-year renewal cycle, except:

3 (1) Persons exempted from eight contact hours in Rule .0805 of this Section; and

4 (2) Persons who:

5 (A) are at least 62 years of age;

6 (B) have at least 15 years of experience as locksmiths;

7 (C) have been North Carolina licensed locksmiths for at least nine years; and

8 (D) are not subject to an investigation by the Locksmith Licensing Board.

9 (b) The contact hours of continuing education shall be in technical and professional subjects directly related to the
10 practice of locksmithing.

11 (c) Licensees shall not carry forward any contact hours of continuing education into the subsequent renewal period.

12 (d) Licensees shall verify completion of the contact hours of continuing education for the previous license period with
13 their application for license renewal.

14

15 *History Note: Authority G.S. 74F-6;*

16 *Eff. February 1, 2005;*

17 *Amended Eff. April 1, 2012.*

18

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0803

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What is the purpose of (a)? Since G.S. 74F-6(6) makes it clear that the Board will establish and approving continuing education requirements, why do you need this?

In (b), are you saying that the Board will approve sponsors? Because while I believe that is the intent, you don't say it like that. Instead you refer to agreements with sponsors on lines 3 and 4, you then refer to "approved sponsors" on lines 8 and 11.

In (b), line 3, is this agreement the "sponsor agreement" on line 7? And are these written? I take it the content of the agreement is what is contained in Paragraph (b)?

On lines 4 and 5, what are "the subject matter requirements of this Section"? Where are those located?

On line 6, who will be a representative of a Board? A staff member, a Board member, a hired contractor?

On lines 8 and 12, what do you mean by "presumptively valid"? If it's that the Board shall presume the course to be valid, how will this presumption be overturned? By the monitoring or review by the Board representative?

In (d), lines 11-12, are "approved sponsors" those addressed by Paragraph (b)?

On lines 12 and 13, since you are saying the Board "may" audit compliance and require proof, you are saying sometimes the Board will not do that. Under what circumstances will the Board audit or require proof? Some guidance of this needs to be in Rule.

On line 13, to what Rules are you referring for content?

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: March 24, 2017

1 **21 NCAC 29 .0803 DETERMINATION OF CREDIT**

2 (a) The Board has final authority with respect to approval of course sponsors, courses, programs and contact hours.

3 (b) The Board shall not pre-approve individual courses or programs. The Board may enter into agreements with course
4 and program sponsors in which the sponsor agrees to offer courses and programs that comply with the subject matter
5 requirements of this Section and agrees to maintain for a period of four years the records of course content and
6 attendance, and agrees to permit a representative of the Board to monitor or review any course or program the sponsor
7 offers to North Carolina Licensed Locksmiths for credit. Provided the sponsor complies with the sponsor agreement, the
8 Board shall accept as presumptively valid contact hours earned by licensees from approved sponsors.

9 (c) Credit for teaching or instructing qualifying courses shall earn continuing education credit for the instructor at the
10 same rate as for participants.

11 (d) Licensees may claim credit for contact hours for courses or programs that have not been presented by approved
12 sponsors but only credit from approved sponsors shall be presumptively valid. The Board may audit the compliance of
13 individual licensees and may require proof of participation in courses or programs that conform with the content and
14 contact hour calculation contained in the rules of this Section. Such proof shall be in the form of records maintained
15 pursuant to Rule .0804 of this Section.

16

17 *History Note: Authority G.S. 74F-6;*

18 *Eff. February 1, 2005.*

19

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0804

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 2, under what circumstances will the Board make this request?

In Item (1), will the log be created entirely by the licensee?

On line 5, I suggest inserting a comma after "speaker"

Also on line 5, delete the "or" at the end of the line.

In Item (2), what will suffice as "other evidence of participation"?

In Item (3), is the "approved sponsor" one approved pursuant to Rule .0803(b)?

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: March 24, 2017

1 **21 NCAC 29 .0804 RECORD KEEPING**

2 The licensee shall maintain records to support credits claimed and supply such records to the Board upon request. The

3 Board requires:

- 4 (1) A log showing the type of activity claimed, sponsoring organization, location, duration, the name of
5 the instructor or speaker and the contact hours earned; or
- 6 (2) Attendance certificates or other evidence of participation; or
- 7 (3) A transcript from an approved sponsor detailing the licensee's attendance.

8

9 *History Note:* *Authority G.S. 74F-6;*

10 *Eff. February 1, 2005.*

11

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0805

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

So that I'm clear – while the entire term is three years, the Board will grant an exemption for one year? So if an exemption is granted, the licensee will only need 16 contact hours for the three-year period?

Please confirm that Item (1) complies with G.S. 93B-15. And please insert that citation into your History Note.

In Item (2), line 6, upon what basis will the Board approve or disapprove the documentation? And will it be at a meeting?

On line 7, delete the comma after "physician"

Consider making the language on lines 8 -10 into a list. For example:

- “... that show that the disability or illness prevented the licensee’s participation in:*
- (a) a course...enrolled; or*
 - (b) a continuing education program... year.*
 - (c) On line 8, replace “which” with “that” before show.*

On line 8, replace “which” with “that” before show.

On line 8, should it state “in which”?

In (3), so that I'm clear – the locksmith will not need continuing education if his or her apprentice becomes licensed?

Also for (3), is this year long exemption for the year of the apprentice passing the exam or the year of licensure? Or as a practical matter, will this always happen in the same calendar year?

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: March 24, 2017

1 **21 NCAC 29 .0805 EXCEPTIONS**

2 A licensee shall be exempt from the continuing education requirement for one calendar year per renewal cycle for any of
3 the following reasons:

4 (1) A licensee serving on temporary active duty in the armed forces of the United States for a period
5 exceeding 120 consecutive days within the year.

6 (2) A licensee experiencing physical disability or illness if supporting documentation is approved by the
7 Board. Such documentation shall be in the form of a statement from a physician, or medical records
8 which show that the disability or illness prevented the licensee's participation in a course which the
9 licensee had enrolled, or prevented the licensee's participation in the continuing education program for
10 at least 120 consecutive days in a year.

11 (3) A licensee whose licensed apprentice passes the North Carolina Locksmith Licensing Exam and
12 receives a North Carolina Locksmith License.

13

14 *History Note: Authority G.S. 74F-6;*
15 *Eff. February 1, 2005;*
16 *Amended Eff. November 1, 2007.*

17

REQUEST FOR TECHNICAL CHANGE

AGENCY: Locksmith Licensing Board

RULE CITATION: 21 NCAC 29 .0806

DEADLINE FOR RECEIPT: Monday April 10, 2017

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 2, do you mean “does not approve” rather than “disallows”? I think you do, since there is no pre-approval (as set forth in Rule .0803) and the terms used throughout Section .0800 is “approval”

On line 2, how is this notification sent? And is it from the date sent or received by the licensee?

On line 3, what do you mean by “substantiate”? Is this what is contemplated by Rule .0804? If so, you may want to include a cross-reference here.

Also on line 3, are the “minimum requirements” those in Rule .0802?

On lines 3 – 4, I suggest writing in the active voice. “If the licensee fails to meet this requirement...”

Also on line 4, do you need to retain the first reference to “the 90 days”? It is stated on lines 2 and again on line 4. If you do want to retain some reference, consider stating “within this deadline, the applicant...”

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: March 24, 2017

1 **21 NCAC 29 .0806 NON COMPLIANCE**

2 If the Board disallows any credits claimed by an applicant, then the licensee shall have 90 calendar days after notification
3 to substantiate the original claim or obtain other contact hours to meet the minimum requirements. Upon failure to meet
4 this requirement within the 90 days, the applicant's license shall expire at the end of the 90 days.

5

6 *History Note: Authority G.S. 74F-6;*

7 *Eff. February 1, 2005.*