

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: HOME INSPECTOR LICENSURE BOARD

RULE CITATION: 11 NCAC 08 .1006

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:

G.S. 143-151.51(b)(2)(c) requires the Board to establish coverage parameters for errors and omissions insurance if used to meet licensure requirements. Apparently the Board has not done so and has thus not complied with the statute. It is therefore not clear what the coverage parameters are.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

§ 143-151.49. (Effective October 1, 2011) Powers and responsibilities of Board.

- (a) General. – The Board has the power to do all of the following:
 - (1) Examine and determine the qualifications and fitness of applicants for a new or renewed license.
 - (2) Adopt and publish a code of ethics and standard of practice for persons licensed under this Article.
 - (3) Issue, renew, deny, revoke, and suspend licenses under this Article.
 - (4) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.
 - (5) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article.
 - (6) Purchase or rent office space, equipment, and supplies necessary to carry out the provisions of this Article.
 - (7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.
 - (8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.
 - (9) Establish fees as allowed by this Article.
 - (10) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted by the Board.
 - (11) Request and receive the assistance of State educational institutions or other State agencies.
 - (11a) Establish education requirements for licensure.
 - (12) Establish continuing education requirements for persons licensed under this Article.
 - (13) Adopt rules necessary to implement this Article.
- (b) Education Requirements. – The education program adopted by the Board may not consist of more than 200 hours of instruction. The instruction may include field training, classroom instruction, distance learning, peer review, and any other educational format approved by the Board. (1993 (Reg. Sess., 1994), c. 724, s. 1; 2009-509, s. 2.1.)

§ 143-151.51. (Effective October 1, 2011) Requirements to be licensed as a home inspector.

(a) Licensure Eligibility. – To be eligible to be licensed as a home inspector, an applicant must do all of the following:

- (1) Submit a completed application to the Board upon a form provided by the Board.
- (2) Pass a licensing examination prescribed by the Board.
- (3) Repealed by Session Laws 2009-509, s. 2.2, effective October 1, 2011.
- (4) Pay the applicable fees.
- (5) Meet one of the following three conditions:
 - a. Have a high school diploma or its equivalent and satisfactorily complete an education program approved by the Board. The program must be completed within three years of the date the applicant submits an application for licensure under this section.
 - b. Have education and experience the Board considers to be equivalent to that required by sub-subdivision a. of this subdivision.
 - c. Be licensed for at least six months as a general contractor under Article 1 of Chapter 87 of the General Statutes, as an architect under Chapter 83A of the General Statutes, or as a professional engineer under Chapter 89C of the General Statutes. A person qualifying under this sub-subdivision on or after October 1, 2011, must remain in good standing with the person's respective licensing board.

(b) License. – Upon compliance with the conditions of licensure under subsection (a) of this section, to be eligible to be licensed as a home inspector, an applicant must meet all of the insurance requirements of this subsection.

- (1) General liability insurance in the amount of two hundred fifty thousand dollars (\$250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board.
- (2) One of the following:
 - a. Minimum net assets in an amount determined by the Board, which amount may not be less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000).
 - b. A bond in an amount determined by the Board, which amount may not be less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000).
 - c. Errors and omissions insurance in the amount of two hundred fifty thousand dollars (\$250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board. (1993 (Reg. Sess., 1994), c. 724, s. 1; 2009-509, s. 2.2.)

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AGENCY: PRIVATE PROTECTIVE SERVICES BOARD

RULE CITATION: 12 NCAC 07D .1303

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:

In (f), it is not clear what is meant by the requirement that a course be "appropriate to the licensee." It is not clear what the standards are for approving the courses "on a case-by-case basis." There is no authority cited to approve them based on standards not adopted as rules.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

§ 74C-2. Licenses required.

(a) No private person, firm, association, or corporation shall engage in, perform any services as, or in any way represent or hold itself out as engaging in a private protective services profession or activity in this State without having first complied with the provisions of this Chapter. Compliance with the licensing requirements of this Chapter shall not relieve any person, firm, association or corporation from compliance with any other licensing law.

(b) An individual in possession of a valid private protective services license or private detective trainee permit issued prior to October 1, 1989, shall not be subject to forfeiture of such license by virtue of this Chapter. Such license shall, however, remain subject to suspension, denial, or revocation in the same manner in which all other licenses issued pursuant to this Chapter are subject to suspension, denial, or revocation.

(c) In its discretion, the Private Protective Services Board may issue a trainee permit in lieu of a private investigator license provided that the applicant works under the direct supervision of a licensee. (1973, c. 528, s. 1; 1979, c. 818, s. 1; 1989, c. 759, s. 2.)

§ 74C-4. Private Protective Services Board established; members; terms; vacancies; compensation; meetings.

(a) The Private Protective Services Board is hereby established in the Department of Justice to administer the licensing and set educational and training requirements for persons, firms, associations, and corporations engaged in a private protective services profession within this State.

(b) The Board shall consist of 14 members: the Attorney General or his designated representative, two persons appointed by the Attorney General, one person appointed by the Governor, five persons appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and five persons appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. All appointments by the General Assembly shall be subject to the provisions of G.S. 120-121, and vacancies in the positions filled by those appointments shall be filled pursuant to G.S. 120-122. One of those persons appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate and all five persons appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be licensees under this Chapter; all other appointees may not be licensees of the Board nor licensed by the Board while serving as Board members. All persons appointed shall serve terms of three years. With the exception of the Attorney General or his designated representative, no person shall serve more than eight consecutive years on the Board, including years of service prior and subsequent to July 1, 1983. Board members may continue to serve until their successors have been appointed.

(c) Vacancies on the Board occurring for any reason shall be filled by the authority making the original appointment of the person causing the vacancy.

(d) Each member of the Board, before assuming the duties of his office, shall take an oath for the faithful performance of his duties. A Board member may be removed at the pleasure of the authority making the original appointment or by the Board for misconduct, incompetence, or neglect of duty.

(e) Members of the Board who are State officers or employees shall receive no per diem compensation for serving on the Board, but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Board who are full-time salaried public officers or employees other than State officers or employees shall receive no per diem compensation for serving on the Board, but shall be reimbursed for their expenses in accordance with G.S. 138-6 in the same

manner as State officers or employees. All other Board members shall receive per diem compensation and reimbursement in accordance with G.S. 93B-5.

(f) The Board shall elect a chairman, vice-chairman, and other officers and committee chairmen from among its members as the Board deems necessary and desirable at the first meeting after July 1 of each year. The chairman and vice-chairman shall be selected by the members of the Board for a term of one year and shall be eligible for reelection. The Board shall meet at the call of the chairman or a majority of the members of the Board at such time, date, and location as may be decided upon by a majority of the Board.

(g) All decisions heretofore made by the Private Protective Services Board, established pursuant to Chapter 74B, shall remain in full force and effect unless and until repealed or suspended by action of the Private Protective Services Board established herein. (1973, c. 528, s. 1; 1975, c. 592, ss. 8, 9; 1977, c. 535; 1979, c. 818, s. 2; 1981, c. 148, s. 1; c. 807, s. 7; 1983, c. 794, s. 7; 1985, c. 597, s. 12; 1989, c. 759, s. 4; 1995, c. 490, s. 39; 2000-181, s. 2.3.)

§ 74C-5. Powers of the Board.

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

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

- (12) Approve a design for a badge or shield that indicates a person is licensed or registered to engage in private protective services. The badge or shield shall be approved by the North Carolina Sheriffs' Association and the North Carolina Association of Chiefs of Police. (1973, c. 528, s. 1; c. 1331, s. 3; 1979, c. 818, s. 2; 1981 (Reg. Sess., 1982), c. 1359, s. 3; 1983, c. 794, s. 2; c. 810; 1989, c. 759, s. 5; 1999-456, s. 19; 2007-511, s. 2.)

§ 74C-22. Continuing education.

The Board may require individuals holding a license, registration, certificate, or permit to complete continuing education courses approved by the Board before renewal. The Board shall establish, by rule, the number of hours of continuing education necessary for renewal and any other requirements for completion of continuing education courses. The Board shall have the authority to approve continuing education courses and shall consider the continuing education course criteria, including the course curriculum, the qualifications of the instructor, the potential benefit to the industry, and any other criteria the Board deems appropriate. (2007-511, s. 9.)

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AGENCY: WILDLIFE RESOURCES COMMISSION

RULE CITATION: 15A NCAC 10G .0403

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:

There is no authority cited for the agency to require Wildlife Services Agents to comply with administrative requirements that have not been adopted as rules.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

§ 113-134. Rules.

The Marine Fisheries Commission and the Wildlife Resources Commission may, within their jurisdictional limitations imposed by this Article, adopt rules implementing this Subchapter. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C.S., 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1251; 1963, c. 1097, s. 1; 1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1987, c. 827, s. 97.)

Article 21.

Licenses and Permits Issued by the Wildlife Resources Commission.

§ 113-270.1. License agents.

(a) The Wildlife Resources Commission may by rule provide for the appointment of persons as license agents to sell licenses and permits that the Commission is authorized to issue by this Subchapter or by any other provisions of law. To facilitate the convenience of the public, the efficiency of administration, the need to keep statistics and records affecting the conservation of wildlife resources, boating, water safety, and other matters within the jurisdiction of the Wildlife Resources Commission, and the need to issue licenses and permits containing special restrictions, the Wildlife Resources Commission may issue licenses and permits in any particular category through:

- (1) License agents.
- (2) The Wildlife Resources Commission's headquarters.
- (3) Employees of the Wildlife Resources Commission.
- (4) Two or more such sources simultaneously.

(a1) When there are substantial reasons for differing treatment, the Wildlife Resources Commission may issue a type of license or permit by one method in one locality and by another method in another locality.

(b) License agents may deduct from the amount collected for each license or permit a fee of six percent (6%).

(b1) When licenses or permits are to be issued by license agents as provided by subsection (a) of this section, the Wildlife Resources Commission may adopt rules to provide for any of the following:

- (1) Qualifications of the license agents.
- (2) Duties of the license agents.
- (3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.
- (4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.
- (5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

(b2) The Wildlife Resources Commission may adopt rules to authorize the Executive Director to take any of the following actions related to license agents:

- (1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.
- (2) Limit the number of license agents in an area if necessary for efficiency of operation.

- (3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.
- (4) Conduct periodic and special audits of accounts.
- (5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.
- (6) Require the immediate surrender of all equipment, forms, licenses, permits, records, and State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

(b3) The Wildlife Resources Commission is exempt from the contested case provisions of Chapter 150B of the General Statutes with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission.

(b4) If any check or bank account draft of any license agent for the issuance of licenses or permits shall be returned by the banking facility upon which the same is drawn for lack of funds, the license agent shall be liable to the Commission for a penalty of five percent (5%) of the amount of the check or bank account draft, but in no event shall the penalty be less than five dollars (\$5.00) or more than two hundred dollars (\$200.00). License agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.

(c) Repealed by Session Laws 2005-455, s. 3.2. See notes for contingent effective date.

(d) It is a Class 1 misdemeanor for a license agent to do any of the following:

- (1) Withhold or misappropriate funds from the sale of licenses or permits.
- (2) Falsify records of licenses or permits sold.
- (3) Willfully and knowingly assist or allow a person to obtain a license or permit for which the person is ineligible.
- (4) Willfully issue a backdated license or permit.
- (5) Willfully include false information or omit material information on records, licenses, or permits regarding either:
 - a. A person's entitlement to a particular license or permit.
 - b. The applicability or term of a particular license or permit.
- (6) Charge or accept any additional fee, remuneration, or other item of value in association with any activity set out in subdivisions (1) through (5) of this subsection.

(e) through (j) Repealed by Session Laws 2005-455, s. 3.2. See notes for contingent effective date. (1961, c. 352, ss. 4, 9; 1979, c. 830, s. 1; 1985, c. 791, s. 34; 1987, c. 827, s. 98; 1993, c. 539, ss. 852, 853; 1994, Ex. Sess., c. 24, s. 14(c); 2005-455, s. 3.2.)

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AGENCY: WILDLIFE RESOURCES COMMISSION

RULE CITATION: 15A NCAC 10G .0405

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:

In this Rule, it is not clear what standards the Commission uses in determining whether to temporarily suspend or to terminate an agent's appointment. Most of the items listed in (7) and (8) would result in either and it is not clear what the distinction is.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL