

On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency. Upon request, an agency shall also issue a declaratory ruling to resolve a conflict or inconsistency within the agency regarding an interpretation of the law or a rule adopted by the agency.

N.G. Gen. Stat. § 150B-4.

The APA further instructs that an agency “shall prescribe in its rules the procedure for requesting a declaratory ruling and the circumstances in which rulings shall or shall not be issued.” N.C. Gen. Stat. §150B-4. Pursuant to this directive, the Agency has adopted the following rules:

21 NCAC 29 .0602 DECLARATORY RULINGS

(a) A person seeking a declaratory ruling from the Board under G.S. 150B-4 shall file a petition for a declaratory ruling that meets the requirements of this Rule.

(b) All petitions for declaratory rulings shall be in writing and shall be sent to the Chair at the Board’s address. Each petition shall be entitled A Petition for Declaratory Ruling@ and shall include the following information:

- (1) the name and address of the petitioner;
- (2) the statute or rule to which the petition relates;
- (3) a statement of the manner in which the petitioner has been or may be aggrieved by the statute or rule; and
- (4) if the petitioner wishes to make an oral presentation to the Board on the petition, a statement requesting an opportunity to appear and be heard.

(c) The Board may refuse to issue a declaratory ruling when:

- (1) the petition does not comply with this Rule;
- (2) the petitioner is not a *Aperson@* or a *Aperson aggrieved@* as defined in G.S. 150B-2;
- (3) the Board has previously issued a declaratory ruling on similar facts;
- (4) the Board has previously issued a final agency decision in a contested case on similar facts;
- (5) the subject matter of the petition is involved in pending litigation; or

History Note: Authority G.S. 74F-6; 150B-4; Temporary Adoption Eff. March 26, 2003; Eff. March 1, 2004.

Based upon Ms. Castro’s written request, the Board has agreed to provide a declaratory ruling, having considered that request as meeting the material requirements set forth in the rule.

§ 74F-3. Licenses required; violation.

(a) No person shall perform or offer to perform locksmith services in this State unless the person has been licensed under the provisions of this Chapter. Every person providing locksmith services as defined under G.S. 74F-4(5) to buildings containing medical records, pharmaceutical records, educational records, criminal records, voting records, tax records, legal records, or personnel records, including any person providing locksmith services who is employed by or working for a school, college, university, hospital, company, institution, or government facility shall be licensed in accordance with the provisions of this Chapter.

(b) Unless the conduct is covered under some other provision of law providing greater punishment, a violation of this section is a Class 1 misdemeanor for the first offense. A second or subsequent offense is a Class I felony. (2001-369, s. 1; 2013-370, ss. 1, 2.)

§ 74F-4. Definitions. The following definitions apply in this Chapter:

(5) Locksmith services. - Services that include repairing, rebuilding, rekeying, repinning, servicing, adjusting, or installing locks, mechanical or electronic locking devices, access control devices, egress control devices, safes, vaults, and safe-deposit boxes for compensation or other consideration, including services performed by safe technicians. **The definition also includes any method of bypassing a locking mechanism of any kind, whether in a commercial, residential, or automotive setting, for compensation.**

(2001-369, s. 1; 2003-350, ss. 1, 2; 2013-370, s. 3.)

§ 74F-16. Exemptions.

The provisions of this Chapter do not apply to:

- (1) An employee of a licensed locksmith when acting under the direct control and supervision of the licensed locksmith. For purposes of this subdivision, "direct control and supervision" means that a licensed locksmith is required to physically accompany the employee to the premises where locksmith services are to be performed.
- (2) A person working as an apprentice pursuant to G.S. 74F-7.1.
- (4) A person or business providing any of the following services so long as the person or business does not represent himself, herself, or itself as a locksmith:
 - a. A towing service, or its employee, when providing services in the normal course of its business.
 - b. An automotive repair business, or its employee, when opening a vehicle to perform service on the vehicle.
 - c. A repossessing company, or its employee, while repossessing a vehicle.

d. A motor vehicle dealer as defined in G.S. 20-286(11), or a motor club as defined in G.S. 58-69-1 when opening automotive locks in the normal course of the dealer or club's business duties.

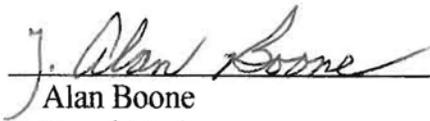
A) Does the law permit "consideration or exemption" from licensing requirements for locksmith employees who serve as "CDU technicians" providing car door unlocking services?

No; the Act provides for specific exemptions from all of the requirements contained within the Act. It contains no specific exemptions of the kind mentioned in this request. Further, the Act grants the Board no explicit authority to adopt a rule exempting CDU technicians or other employees who perform limited services from licensing or apprenticeship requirements.

It is readily apparent that providing automobile lockout services falls within the definition of locksmith services. Thus a locksmith license is required for an individual to lawfully provide that service except where the individual clearly is covered by one of the statutory exceptions. Pop-A-Lock may provide that service using its licensees, properly registered apprentices, or, through a separate business that provides only towing services, repossession, and/or automotive repairs.

This the 12 day of June, 2014

THE NORTH CAROLINA LOCKSMITH LICENSING BOARD

By: 
Alan Boone
Board Chair