

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 1098*

Short Title: DMV DL Medical Review Program Changes. (Public)

Sponsors: Representative Torbett (Primary Sponsor).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Transportation.

May 19, 2014

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE DIVISION OF MOTOR VEHICLES DRIVERS
3 LICENSE MEDICAL REVIEW PROGRAM, AS RECOMMENDED BY THE JOINT
4 LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 20-9 reads as rewritten:

7 "§ 20-9. What persons shall not be licensed.

8 ...

9 (e) The Division shall not issue a driver's license to any person when in the opinion of
10 the Division such person is afflicted with or suffering from such physical or mental disability or
11 disease as will serve to prevent such person from exercising reasonable and ordinary control
12 over a motor vehicle while operating the same upon the highways, nor shall a license be issued
13 to any person who is unable to understand highway warnings or direction signs.

14 ...

15 (g) The Division may issue a driver's license to any applicant covered by subsection (e)
16 of this section under the following conditions:

17 (1) The Division may issue a license to any person who is afflicted with or
18 suffering from a physical or mental disability set out in subsection (e) of this
19 section who is otherwise qualified to obtain a license, provided such person
20 submits to the Division a certificate in the form prescribed in subdivision
21 (2). Until a license issued under this subdivision expires or is revoked, the
22 license continues in force as long as the licensee presents to the Division a
23 certificate in the form prescribed in subdivision (2) of this subsection at the
24 intervals determined by the Division to be in the best interests of public
25 safety.

26 (2) The Division shall not issue a license pursuant to this section unless the
27 applicant has submitted to a physical examination by a physician or surgeon
28 duly licensed to practice medicine in this State or in any other state of the
29 United States and unless such examining physician or surgeon has
30 completed and signed the certificate required by subdivision (1). Such
31 certificate shall be devised by the Commissioner with the advice of qualified
32 experts in the field of diagnosing and treating physical and mental disorders
33 as he may select to assist him and shall be designed to elicit the maximum
34 medical information necessary to aid in determining whether or not it would
35 be a hazard to public safety to permit the applicant to operate a motor



1 vehicle, including, if such is the fact, the examining physician's statement
2 that the applicant is under medication and treatment and that such person's
3 physical or mental disability is controlled. The certificate shall contain a
4 waiver of privilege and the recommendation of the examining physician to
5 the Commissioner as to whether a license should be issued to the applicant.

6 (3) The Commissioner is not bound by the recommendation of the examining
7 physician but shall give fair consideration to such recommendation in
8 exercising his discretion in acting upon the application, the criterion being
9 whether or not, upon all the evidence, it appears that it is safe to permit the
10 applicant to operate a motor vehicle. The burden of proof of such fact is
11 upon the applicant. In deciding whether to issue or deny a license, the
12 Commissioner may be guided by opinion of experts in the field of
13 diagnosing and treating the specific physical or mental disorder suffered by
14 an applicant and such experts may be compensated for their services on an
15 equitable basis. The Commissioner may also take into consideration any
16 other factors which bear on the issue of public safety.

17 (4) Whenever a license is ~~denied~~ denied, cancelled, or restricted by the
18 ~~Commissioner,~~ Commissioner based upon information received and
19 reviewed in accordance with subdivisions (2) and (3) of this subsection, such
20 ~~denial~~ the adverse action may be reviewed by a reviewing board upon
21 written request of the applicant filed with the Division within 10 days after
22 receipt of such denial. ~~notice of the adverse action.~~ The reviewing board
23 shall consist of the Commissioner or his authorized representative and ~~four~~
24 ~~persons designated by the chairman of the Commission for Public Health.~~
25 two medical professionals, duly licensed to practice medicine in the State,
26 selected by the Commissioner. The medical professionals selected by the
27 Commissioner may be compensated for their services on an equitable basis,
28 including reimbursement for ordinary and necessary travel expenses. ~~The~~
29 ~~persons designated by the chairman of the Commission for Public Health~~
30 ~~shall be either members of the Commission for Public Health or physicians~~
31 ~~duly licensed to practice medicine in this State. The members so designated~~
32 ~~by the chairman of the Commission for Public Health shall receive the same~~
33 ~~per diem and expenses as provided by law for members of the Commission~~
34 ~~for Public Health, which per diem and expenses shall be charged to the same~~
35 ~~appropriation as per diems and expenses for members of the Commission for~~
36 ~~Public Health.~~ The Commissioner or his authorized representative, plus ~~any~~
37 ~~two of the members designated by the chairman of the Commission for~~
38 ~~Public Health,~~ one of the medical professionals selected by the
39 Commissioner, constitute a quorum. The procedure for hearings authorized
40 by this section shall be as follows:

41 a. Applicants shall be afforded an opportunity for hearing, after
42 reasonable notice of not less than 10 days, before the review board
43 established by subdivision (4). The notice shall be in writing and
44 shall be delivered to the applicant in person or sent by certified mail,
45 with return receipt requested. The notice shall state the time, place,
46 and subject of the hearing. A request for a hearing shall not stay any
47 adverse action affecting the applicant following the review specified
48 in subdivisions (2) and (3) of the subsection that the Division took in
49 accordance with this subsection.

50 b. The review board may compel the attendance of witnesses and the
51 production of such books, records and papers as it desires at a

1 hearing authorized by the section. Upon request of an applicant, a
2 subpoena to compel the attendance of any witness or a subpoena
3 duces tecum to compel the production of any books, records, or
4 papers shall be issued by the board. Subpoenas shall be directed to
5 the sheriff of the county where the witness resides or is found and
6 shall be served and returned in the same manner as a subpoena in a
7 criminal case. Fees of the sheriff and witnesses shall be the same as
8 that allowed in the district court in cases before that court and shall
9 be paid in the same manner as other expenses of the Division of
10 Motor Vehicles are paid. In any case of disobedience or neglect of
11 any subpoena served on any person, or the refusal of any witness to
12 testify to any matters regarding which he may be lawfully
13 interrogated, the district court or superior court where such
14 disobedience, neglect or refusal occurs, or any judge thereof, on
15 application by the board, shall compel obedience or punish as for
16 contempt.

17 c. A hearing may be continued upon motion of the applicant for good
18 cause shown with approval of the board or upon order of the board.

19 d. The board shall pass upon the admissibility of evidence at a hearing
20 but the applicant affected may at the time object to the board's ruling,
21 and, if evidence offered by an applicant is rejected the party may
22 proffer the evidence, and such proffer shall be made a part of the
23 record. The board shall not be bound by common law or statutory
24 rules of evidence which prevail in courts of law or equity and may
25 admit and give probative value to evidence which possesses
26 probative value commonly accepted by reasonably prudent men in
27 the conduct of their affairs. They may exclude incompetent,
28 immaterial, irrelevant and unduly repetitious evidence. Uncontested
29 facts may be stipulated by agreement between an applicant and the
30 board and evidence relating thereto may be excluded. All evidence,
31 including records and documents in the possession of the Division of
32 Motor Vehicles or the board, of which the board desires to avail itself
33 shall be made a part of the record. Documentary evidence may be
34 received in the form of copies or excerpts, or by incorporation by
35 reference. The board shall prepare an official record, which shall
36 include testimony and exhibits. A record of the testimony and other
37 evidence submitted shall be taken, but it shall not be necessary to
38 transcribe shorthand notes or electronic recordings unless requested
39 for purposes of court review.

40 e. Every decision and order adverse to an applicant shall be in writing
41 or stated in the record and shall be accompanied by findings of fact
42 and conclusions of law. The findings of fact shall consist of a concise
43 statement of the board's conclusions on each contested issue of fact.
44 Counsel for applicant, or applicant, if he has no counsel, shall be
45 notified of the board's decision in person or by ~~registered~~ certified
46 mail with return receipt requested. ~~In all other cases, a copy~~ A copy
47 of the board's decision with accompanying findings and conclusions
48 shall be delivered or mailed upon request to applicant's attorney of
49 record or to applicant, if he has no attorney.

50 f. Actions of the reviewing board are subject to judicial review as
51 provided under Chapter 150B of the General Statutes.

- 1 g. Repealed by Session Laws 1977, c. 840.
- 2 h. All records and evidence collected and compiled by the Division and
- 3 the reviewing board shall not be considered public records within the
- 4 meaning of Chapter ~~[section] 132-1, and following, 132~~ of the
- 5 General Statutes of North Carolina and may be made available to the
- 6 public only upon an order of a court of competent jurisdiction. All
- 7 information furnished by or on behalf of an applicant under this
- 8 section shall be without prejudice and shall be for the use of the
- 9 Division, the reviewing board or the court in administering this
- 10 section and shall not be used in any manner as evidence, or for any
- 11 other purposes in any trial, civil or criminal."

12 **SECTION 2.** This act becomes effective October 1, 2014.