

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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SENATE BILL 825*

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

Sponsors: Senators Meredith, Rabon, and Daniel (Primary Sponsors).

Referred to: Transportation.

May 22, 2014

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE DIVISION OF MOTOR VEHICLES DRIVERS
LICENSE MEDICAL REVIEW PROGRAM, AS RECOMMENDED BY THE JOINT
LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

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

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

...

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

...

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

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

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



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

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

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

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

49 b. The review board may compel the attendance of witnesses and the
50 production of such books, records and papers as it desires at a
51 hearing authorized by the section. Upon request of an applicant, a

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

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

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

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

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

51 g. Repealed by Session Laws 1977, c. 840.

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

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