

NORTH CAROLINA GENERAL ASSEMBLY
1967 SESSION

CHAPTER 966
HOUSE BILL 1041

1 AN ACT TO AMEND G.S. 20-9 RELATING TO PERSONS WHO SHALL NOT BE
2 LICENSED TO OPERATE A MOTOR VEHICLE, ESTABLISHING REVIEW
3 PROCEDURE.
4

5 The General Assembly of North Carolina do enact:
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7 **Section 1.** G.S. 20-9, as the same appears in the 1965 Replacement Volume 1C of
8 the General Statutes, is hereby amended by adding a new subsection to be designated as
9 subsection "(g)", to read as follows:

10 "(g) The Department may issue an operator's or chauffeur's license to any applicant
11 covered by subsection (e) of this Section under the following conditions:

12 (1) The Department may issue a license to any person who is afflicted with or
13 suffering from physical or mental disability set out in subsection(e) of this
14 Section who is otherwise qualified to obtain a license, provided such person
15 submits to the Department a certificate in the form prescribed in subsection
16 (2). Unless sooner revoked, suspended or cancelled, such license continues
17 in force as long as the licensee presents to the Department one year from the
18 date of issuance of such license and at yearly intervals thereafter a certificate
19 in the form prescribed in subsection (2), provided the Commissioner may
20 require the submission of such certificate at six months intervals where in his
21 opinion public safety demands. In no event shall a license issued pursuant to
22 this Section be valid beyond the birthday of the licensee in the fourth year
23 following the year of issuance, at which time the license is subject to
24 renewal.

25 (2) The Department shall not issue a license pursuant to this Section unless the
26 applicant has submitted to a physical examination by a physician or surgeon
27 duly licensed to practice medicine in this State and unless such examining
28 physician or surgeon has completed and signed the certificate required by
29 subsection (1). Such certificate shall be devised by the Commissioner with
30 the advice of qualified experts in the field of diagnosing and treating
31 physical and mental disorders as he may select to assist him and shall be
32 designed to elicit the maximum medical information necessary to aid in
33 determining whether or not it would be a hazard to public safety to permit
34 the applicant to operate a motor vehicle, including, if such is the fact, the
35 examining physician's statement that the applicant is under medication and
36 treatment and that such person's physical or mental disability is controlled.
37 The certificate shall contain a waiver of privilege and the recommendation
38 of the examining physician to the Commissioner as to whether a license
39 should be issued to the applicant.

40 (3) The Commissioner is not bound by the recommendation of the examining
41 physician but shall give fair consideration to such recommendation in
42 exercising his discretion in acting upon the application, the criterion being
43 whether or not, upon all the evidence, it appears that it is safe to permit the

1 applicant to operate a motor vehicle. The burden of proof of such fact is
2 upon the applicant. In deciding whether to issue or deny a license, the
3 Commissioner may be guided by opinion of experts in the field of
4 diagnosing and treating the specific physical or mental disorder suffered by
5 an applicant and such experts may be compensated for their services on an
6 equitable basis. The Commissioner may also take into consideration any
7 other factors which bear on the issue of public safety.

8 (4) Whenever a license is denied by the Commissioner, such denial may be
9 reviewed by a reviewing board upon written request of the applicant filed
10 with the Department within 10 days after receipt of such denial. The
11 reviewing board shall consist of the Commissioner or his authorized
12 representative and four persons designated by the Chairman of the State
13 Board of Health. The persons designated by the Chairman of the State Board
14 of Health shall be either members of the State Board of Health or physicians
15 duly licensed to practice medicine in this State. The members so designated
16 by the Chairman of the State Board of Health shall receive the same per
17 diem and expenses as provided by law for members of the State Board of
18 Health, which per diem and expenses shall be charged to the same
19 appropriation as per diems and expenses for members of the State Board of
20 Health. The Commissioner or his authorized representative, plus any two of
21 the members designated by the Chairman of the State Board of Health,
22 constitute a quorum. The procedure for hearings authorized by this Act shall
23 be as follows:

24 (a) Applicants shall be afforded an opportunity for hearing, after
25 reasonable notice of not less than 10 days, before the review board
26 established by subsection (4) of this Act. The notice shall be in
27 writing and shall be delivered to the applicant in person or sent by
28 registered mail, with return receipt requested. The notice shall state
29 the time, place, and subject of the hearing.

30 (b) The review board may compel the attendance of witnesses and the
31 production of such books, records and papers as it desires at a
32 hearing authorized by the Act. Upon request of an applicant, a
33 subpoena to compel the attendance of any witness or a subpoena
34 duces tecum to compel the production of any books, records, or
35 papers shall be issued by the board. Subpoenas shall be directed to
36 the sheriff of the county where the witness resides or is found and
37 shall be served and returned in the same manner as a subpoena in a
38 criminal case. Fees of the sheriff and witnesses shall be the same as
39 that allowed in the County Recorder's Court or District Court in cases
40 before that Court and shall be paid in the same manner as other
41 expenses of the Department of Motor Vehicles are paid. In any case
42 of disobedience or neglect of any subpoena served on any person, or
43 the refusal of any witness to testify to any matters regarding which he
44 may be lawfully interrogated, the District Court or Superior Court
45 where such disobedience, neglect or refusal occurs, or any judge
46 thereof, on application by the board, shall compel obedience or
47 punish as for contempt.

48 (c) A hearing may be continued upon motion of the applicant for good
49 cause shown with approval of the board or upon order of the board.

50 (d) The board shall pass upon the admissibility of evidence at a hearing
51 but the applicant affected may at the time object to the board's ruling,

1 and, if evidence offered by an applicant is rejected the party may
2 proffer the evidence, and such proffer shall be made a part of the
3 record. The board shall not be bound by common law or statutory
4 rules of evidence which prevail in courts of law or equity and may
5 admit and give probative value to evidence which possesses
6 probative value commonly accepted by reasonably prudent men in
7 the conduct of their affairs. They may exclude incompetent,
8 immaterial, irrelevant and unduly repetitious evidence. Uncontested
9 facts may be stipulated by agreement between an applicant and the
10 board and evidence relating thereto may be excluded. All evidence,
11 including records and documents in the possession of the Department
12 of Motor Vehicles or the board, of which the board desires to avail
13 itself shall be made a part of the record. Documentary evidence may
14 be received in the form of copies or excerpts, or by incorporation by
15 reference. The board shall prepare an official record, which shall
16 include testimony and exhibits. A record of the testimony and other
17 evidence submitted shall be taken, but it shall not be necessary to
18 transcribe shorthand notes or electronic recordings unless requested
19 for purposes of court review.

- 20 (e) Every decision and order adverse to an applicant shall be in writing
21 or stated in the record and shall be accompanied by findings of fact
22 and conclusions of law. The findings of fact shall consist of a concise
23 statement of the board's conclusions on each contested issue of fact.
24 Counsel for applicant, or applicant, if he has no counsel, shall be
25 notified of the board's decision in person or by registered mail with
26 return receipt requested. A copy of the board's decision with
27 accompanying findings and conclusions shall be delivered or mailed
28 upon request to applicant's attorney of record or to applicant, if he
29 has no attorney.
- 30 (f) Actions of the reviewing board are subject to judicial review as
31 provided under Article 33 of Chapter 143 of the General Statutes.
- 32 (g) An applicant or licensee who has been denied a license pursuant to a
33 hearing before the board may not file a new application until the
34 expiration of two years after the date of such denial by the board.
- 35 (h) All records and evidence collected and compiled by the Department
36 and the reviewing board shall not be considered public records within
37 the meaning of Chapter 132-1, and following, of the General Statutes
38 of North Carolina and may be made available to the public only upon
39 an order of a court of competent jurisdiction. All information
40 furnished by or on behalf of an applicant under this Section shall be
41 without prejudice and shall be for the use of the Department, the
42 reviewing board or the court in administering this Act and shall not
43 be used in any manner as evidence, or for any other purposes in any
44 trial, civil or criminal."

45 **Sec. 3.** All laws and clauses of laws in conflict with this Act are hereby repealed.

46 **Sec. 4.** This Act shall be in full force and effect from and after ratification.

47 In the General Assembly read three times and ratified, this the 27th day of June,

48 1967.