

DEPARTMENT OF INSURANCE
18 Delaware Code, Sections 311 and 2503 (18 Del.C. §§311 and 2503)18 DE Admin. Code
607

FINAL

ORDER

607 Defensive Driving Course Discount (Automobiles and Motorcycles)

Public hearings were held on November 1, 2005 and January 5, 2006 to receive comments on proposed Regulation 607 relating to the Defensive Driving Course Discount for Automobiles and Motorcycles. Public notice of the two hearings and publication of the proposed Regulation 607 and subsequent amendments to the original proposal in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law. Twenty-four persons attended the November 1st public hearing and nine persons attended the January 5th public hearing. There were thirty-four written comments received by the Department.

Summary of the Evidence and Information Submitted

The main objectives of the proposed amendments to Regulation 607 are to update and streamline the course approval process and to clarify the complaint, hearing and adjudication process for alleged violations of the regulation. Additionally, with the improvements in technology, the proposed amendments are designed to accommodate the consumers' desires for an alternative to live classroom presentations, namely course availability on the internet.

The initial form of the proposed amendments was published on October 1, 2005 in the *Delaware Register of Regulations*. The initial proposal contained a requirement that drivers taking a course be required to pass an exam approved by the Department of Insurance ("the Department") with a score of at least 75%. The Department received seventeen written comments opposed to the testing requirement and a number of persons spoke against the proposed test requirement at the public hearing held on November 1, 2005.

A second major change proposed in the regulation was transferring responsibilities currently being administered by the Defensive Driving Credentials Committee to a more traditional administrative review process. The concerns raised by the public comment to this part of the proposed changes were less substantive and more oriented to a concern about whether there would be a reduction in public access under the Freedom of Information Act to the deliberative process of course approval or the complaint process. I have determined that the benefit to consumers of a faster, more efficient review process, combined with the availability under the Freedom of Information Act of most documents involved in an administrative review process, will allow the Department to provide consumers more affordable choices while still allowing for appropriate public review of the process.

At the conclusion of the first public hearing on November 1st, I informed the public that the proposed changes to the regulation would be revised based on the public comment received as of November 1st. The most significant change was to eliminate the proposed testing requirement. The other changes prompted by the public comment were (1) to revise the language of the proposed changes to clarify the requirement that online or CD-ROM courses be set up so that a student taking such a course would be required to commit the same time, five hours of instructional time, to complete an online course as would be required for a live classroom course; (2) clarify the requirements for live assistance for online course takers; and (3) clarification of the procedures governing the identification of students taking the online course and receiving a course completion certificate from the online provider.

The revisions to the proposed regulation were published in the *Delaware Register of Regulations* on December 1, 2005. A public hearing on the revisions was conducted on January 5, 2006. Two course providers submitted public comment prior to the public hearing on January 5th. They were concerned about the inconvenience to online students who would be required to appear in person at a particular place to prove their identity in order to obtain a course completion certificate. This requirement would present a hardship to students and members of the military serving outside the State of Delaware and was inconsistent with the option to take the course online as opposed to a scheduled classroom environment.

In both hearings, there were concerns raised about the possibility of persons other than a course registrant taking the course for someone else in order to get them credit under false pretenses. A classroom course provider stated that it was inconsistent to require classroom students to prove their identity prior to taking the course but not requiring the

same for online students. However, since the online course is not the same as a classroom environment, it is not inconsistent to allow for some procedural differences to accommodate the particular needs of each course method. The proposed changes in the regulation allow for the Department to assure that all providers have appropriate security in place as a condition of course approval to eliminate or at least minimize the potential for fraudulent conduct.

One course provider suggested that the letter required in section 6.10 need only be given once, with the registration or with the course completion certificate, but not twice as required by the proposed regulation.

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. 18 **Del.C.** §2503(6) and (7) provides that the Commissioner “shall require a reduction in rates for a 3-year period for any person who voluntarily attends and successfully completes” either a motor vehicles or motorcycles accident prevention course “which is approved by the Commissioner.” That statutory provision is silent as to the methods by which such approval is given however, 18 **Del.C.** §311(a) provides that the Commissioner may make reasonable rules and regulations necessary for the administration or effectuation of any provision of Title 18.

2. The continuation of course approval and complaint investigation and adjudication by the Defensive Driving Credentials Committee under current Regulation 607 is cumbersome, inefficient, and time consuming. In a time where technological advances occur at a rapid rate, it is in the public interest that the Department provides for a streamlined, efficient system for the review of applications for course certification as well as for the prompt review of questions or complaints from providers or the public at large. 3. The changes to the complaint filing, investigation and adjudication procedures modernize the regulation and bring it into conformity with the format used by most of the State’s licensing boards. *Compare* 29 **Del.C.** §8735(h).

4. The regulation requires six hours of class time broken into fifty minutes of instruction and ten minutes of break time. An online course that provides five hours of actual instructional time meets the requirements of the regulation.

5. There was general agreement among the comments received that the current system needs improvement and there were no comments suggesting that the proposed regulation extends, modifies or conflicts with any Delaware law.

6. The suggestion that section 6.10 be amended to require only one delivery of the Department’s letter is valid. Amending the last sentence of section 6.10 to read as follows is merely technical and does not require republication as set forth in 29 **Del.C.** §10113(b): “On-line courses shall place the letter with registration on-line and/or shall provide a hard copy with the certificate of completion.”

Decision and Effective Date

Based on the provisions of 18 **Del.C.** §§311 and 2503 and 29 **Del.C.** §§ 10113-10118 and the record in this docket, I hereby adopt Regulation 607 as may more fully and at large appear in the version attached hereto to be effective on February 11, 2006.

Text and Citation

The text of the proposed amendments to Regulation 607 last appeared in the *Register of Regulations* Vol. 9, Issue 6, pages 944-49.

IT IS SO ORDERED this 5th day of January, 2006.

Matthew Denn, Insurance Commissioner

607 Defensive Driving Course Discount (Automobiles and Motorcycles)

1.0 Purpose and Authority

The purpose of this Regulation is to provide a discount applicable to total premiums for persons who voluntarily attend and complete a Defensive Driving Course and to provide criteria for Defensive Driving Courses, Providers and

Instructors. This Regulation is adopted pursuant to 18 Del.C. §314, and 18 Del.C. §2503 and promulgated in accordance with the procedures specified in the Administrative Procedures Act, 29 Del.C. Ch. 101.

2 DE Reg. 989 (12/1/98)

2.0 Definitions

“Classroom courses” for the purpose of this regulation means a defensive driving program conducted with students and instructors in a location common to all. These courses may include the use of audio or visual aides or materials.

~~“Committee” for the purpose of this regulation means the Defensive Driving Credentials Committee.~~

“Department” means the Delaware Insurance Department.

“On-line courses” for the purpose of this regulation means instruction provided online or offline through the use of a computer (or digital reader) including the use of CD ~~roms~~ ROMS or similar pre-recorded media or websites.

“Providers” means ~~c~~Corporate sponsor for any course as well as the individual who signs the application for the course.

3.0 Minimum Requirements

A Defensive Driving Course Discount shall be applied to the total premiums for bodily injury liability coverage, property damage liability coverage, and personal injury protection coverage provided:

3.1 The automobile or motorcycle is individually owned or jointly owned by husband and wife or by members of the same household and is classified and rated as a private passenger automobile or motorcycle; and

3.2 The driver who customarily operates the automobile or motorcycle has a certificate certifying voluntary attendance and successful completion within the last 36 months from the date of application of a motor vehicle accident prevention course or motorcycle rider course, as appropriate, which is approved by the ~~Insurance Commissioner~~ Department.

2 DE Reg. 989 (12/1/98)

4.0 Application

4.1 A 10% discount shall be applied with respect to the applicable premium(s) for each automobile or motorcycle insured under a policy if all operators named on the policy as insureds complete the course. If fewer than all the operators covered as principal or occasional drivers complete the course, then the discount shall be a fraction of 10%. The fraction shall be the number of operators completing the course, divided by the total number operators. The discount shall begin at the inception date of the policy or the first renewal date following application by the insured and shall terminate at the policy expiration date subsequent to the expiration of three years since completion of the course.

4.2 An insured who has received a defensive driving discount as outlined in section 4.1 above may take a refresher defensive driving course within the ninety days prior to the three year expiration date thereof or within two years thereof to receive a 15% discount for an additional three year period as outlined in section 4.1 above. Discounts shall not overlap. The discount may be applied as a multiplier or on an additive basis compatible with the rating system in use by the company.

2 DE Reg. 989 (12/1/98)

5.0 Implementation

5.1 ~~In the effective date of the Act, the discount shall be first applied to policies written to be effective on or after July 14, 1982 (automobile), or July 19, 1990 (motorcycle), or with renewal dates on or after July 14, 1982 (automobile), or July 19, 1990 (motorcycle), if applied for by the insured, and shall remain in effect for a 3 year period from the effective date of such policies.~~

~~5.2~~ The discount may be applied as a multiplier or on an additive basis compatible with the rating system in use by the company.

5.32 All courses certified by this Department as of September 1, 2004 shall apply for re-certification under the provisions of section 7 of this regulation on or before January 1, 2005. All courses not certified by this Department prior to September 1, 2004 shall apply for certification under the provisions of section 7 of this regulation.

~~6.0 Defensive Driving Course Credential Committee~~

~~6.1 The Commissioner hereby forms an entity known as the Defensive Driving Course Credential Committee (“Committee”). In appointing Committee members, the Commissioner shall consider the following characteristics:~~

- 6.1.1 Knowledge of principles of teaching and learning;
- 6.1.2 Knowledge of safe driving principles; and
- 6.1.3 Knowledge of Delaware Motor Vehicle laws.

6.2 The Committee shall be composed of five citizens of this State who are not employed by or have any financial interest in any course provider and who meet the standards set forth in sections 10.1.1 through 10.1.4.

6.3 Duties. The Committee shall:

6.3.1 Elect its Chairperson and shall make recommendations to the Commissioner concerning the duties set forth herein;

6.3.2 Review and examine defensive driving course provider, instructors and prospective providers and instructors to its satisfaction. Recommend certification, denial of certification or de-certification of a course provider or prospective provider and applicants.

6.3.3 Review and examine defensive driving courses and shall provide occasional monitoring of courses to ensure each course continues to meet the Committee's minimum requirements, as outlined in this Regulation. The Committee may from time to time recommend amendments to course requirements.

6.3.4 Certify approved course providers and individual instructors for a two year period so long as the course sponsor/instructor continues to meet the requirements of this Regulation; and

6.3.5 Conduct any other such activity reasonably related to the furtherance of its duties.

76.0 Certification Criteria for Defensive Driving Programs and Providers

Each course provider shall:

76.1 Submit to the Department for approval written instructor and student materials for any defensive driving course to be offered that minimally includes the elements listed in this section. On-line courses shall provide free site access to the Department a Committee member for purposes of verification of compliance. The course materials for each defensive driving course shall include, at a minimum, the following:

76.1.1 The definition of defensive driving and the collision prevention theory serving as the basis for the course;

76.1.2 A discussion of vehicle safety devices, including the use of seat belts, child restraint devices and their proper use and relationship to a child's age and size, including the correct placement of a child in a vehicle. Vehicle air bag systems shall be explained in detail with special attention to proper passenger seating and proper use of anti-lock braking systems and how they compare to standard braking systems;

76.1.3 A discussion of driving situations as they relate to the condition of the driver, driver characteristics, use of alcohol and legal/illegal drugs, including a discussion of Delaware law on drinking and driving and the use of drugs;

76.1.4 A discussion of the factors affecting driving and how they pertain to driving defensively, including, but not limited to:

76.1.4.1 The condition of the driver, the vehicle, the road, sun glare, weather and lighting;

76.1.4.2 Distractions such as use of cellular telephones while driving, adjusting radios, audio and video tapes and compact discs, talking with a passenger, reading and eating;

76.1.5 A discussion, including specific requirements of Delaware law where applicable, of pertinent driving situations, including stopping distances, proper following distances, proper intersection driving, stopping at railroad crossings, right-of-way and traffic devices as well as situations involving passing and being passed and how to protect against head-on collisions; and

76.1.6 Consideration of the hazards and techniques of various driving situations such, as but not limited to, city, highway, expressway and rural driving, proper use of exit and entrance ramps, driving in parking lots and a discussion of Delaware law concerning school buses.

76.1.7 A discussion of aggressive driving including but not limited to identifying an aggressive driver and providing appropriate defensive driving techniques. Discussion shall also include identifying oneself as an aggressive driver and the appropriate manner to respond.

76.2 Require instructors in classroom courses to present information in a manner consistent with the approved curriculum and otherwise in accordance with the standards set forth herein.

76.3 Require on-line courses to provide toll free telephone lines staffed by knowledgeable customer service personnel who can assist with content based questions at all times during which the course is accessible online. For

courses which are accessible offline, the provider must provide toll free telephone access at such times and for such hours as shall be approved by the Department.

76.4 Require that each student receives a minimum of six hours of classroom or on-line time for the initial course and three hours of classroom or on-line time for the refresher advanced (renewal) course. Each classroom hour shall consist of not less than 50 minutes of instructional time devoted to the presentation of course curriculum. Online courses shall be structured to provide the same learning time as required for the classroom and shall submit to the Department any materials necessary to demonstrate their ability to comply with the minimum time requirement set forth in this section.

76.5 Require that registration shall be completed prior to the beginning of any type of instruction and shall not be counted as instructional time.

76.6 Require its instructors in classroom courses to be in the classroom with the students during any and all periods of instructional time.

76.7 Require instructors in classroom courses to maintain an atmosphere appropriate for class-work.

76.8 Material required to be covered by this Regulation shall be discussed by the instructor in a classroom situation and be included as on screen information in an on-line course.

76.9 Supply students who complete a defensive driving course and who have presented a valid Delaware driver's license and/or government issued photo identification with a certification of completion that includes, at a minimum, the name of the student, the date of the class, the name of the defensive driving course and the course sponsor's authorized signature.

6.9.1 All online courses shall be required to obtain the student's driver's license number as part of the student identification information prior to permitting the student access to the course materials.

6.9.2 No online course provider shall issue a certificate of completion online or offline. All such providers shall appoint an agent or agents in Delaware with an address and telephone number easily accessible by all students who shall personally compare the online identification information with the information on the student's Delaware driver's license and/or government-issued photo identification prior to the hand delivery of a certification of completion as described in section 6.9.

76.10 All courses shall provide all students with a copy of a letter provided by the ~~Committee~~ Department informing the student how to provide comment or file a complaint regarding a defensive driving course. This letter shall be in hard copy form for classroom courses. On-line courses shall place the letter with registration on-line and/
or] shall provide a hard copy with the certificate of completion.

76.11 Notify the Division of Motor Vehicles of each student's successful completion of the course in the manner and form required by the Division.

8.0 Complaints, ~~De-certification, Suspension and Probationary Status~~

8.1 ~~Complaints received by the Department of Insurance against course providers and/or instructors shall be directed to the Chairperson for the Committee. The Chairperson shall forward the complaint, in writing or by electronic mail, to the provider and shall request a response. The provider shall respond in writing or by electronic mail within fifteen working days. At the next meeting, the Committee shall determine whether the complaint is in an area over which it has the authority to take action or to make a recommendation. The results shall be reported to the course provider in writing as soon as reasonably possible.~~

8.2 ~~Course providers and instructors may be de-certified, placed on probation for not more than 90 calendar days, or have certification suspended indefinitely upon a finding of the Committee that the course presented does not meet the criteria set forth in this Regulation. Investigations relating to issues of compliance shall be directed by the Committee.~~

8.3 ~~Prior to de-certification, placement on probation or suspension of certification, the course provider or instructor or both shall be notified, in writing, by the Committee. The course provider or instructor or both shall be given a reasonable opportunity to submit evidence of compliance in his or her defense.~~

8.4 ~~A course provider or instructor who is placed on probationary status and does not show proof of compliance with the standards set forth herein within 90 calendar days shall be subject to de-certification at the end of the probationary period.~~

8.5 ~~A course provider or instructor or both may be de-certified, suspended or placed on probation for the following:~~

8.5.1 ~~Falsification of information on, or accompanying, the Application for Certification/Re-certification;~~

8.5.2 ~~Falsification of, or failure to keep and provide adequate student records and information as required herein;~~

8.5.3 ~~Falsification of, or failure to keep and provide adequate financial records and documents as required; and-~~

~~8.5.4 Failure to comply with any section of this Regulation.~~

9.0 Appeal Procedures

9.1 ~~Within 10 business days after the date of written notification of certification denial, suspension, probation or de-certification, the course provider or instructor or both may file an appeal requesting review of the action taken.~~

9.2 ~~The appeal shall be addressed to the Committee, citing the reasons for the request, and accompanied by any other relevant substantiating information.~~

9.3 ~~The Committee shall conduct all hearings pursuant to 29 Del.C. Ch.101 of the Delaware Code Annotated.~~

7.0 Complaints, Hearings, De-certification, Suspension and Probationary Status

7.1 The following procedure shall be followed for the investigation of complaints against course providers and/or instructors certified under section 6.0 of this Regulation (the term "course provider" as used in section 7.0 of this Regulation shall include individual instructors as may be appropriate in the context of this section):

7.1.1 Any person who desires to file a complaint against any course provider must do so in writing.

7.1.2 The complaint shall state the name of the course provider and the facts that allegedly constitute the basis for the complaint. If either of these elements is missing from the complaint, the Department may, in its discretion, dismiss the complaint without further notice or a hearing.

7.1.3 The Department, upon determining that the complaint is complete as provided in section 7.1.2 above, shall, within 15 days of the receipt of the complaint, assign a docket number to the complaint and shall transmit a copy of the complaint by certified mail, receipted email or other receipted delivery service to the course provider named in the complaint at the course provider's address of record in the Department's files. The named course provider may file an answer to the complaint within 20 calendar days with the Department.

7.1.4. The Department shall assign a staff member to investigate the complaint and the course provider's response.

7.1.5 The staff member, as part of the investigation, shall provide a report of the staff member's findings and recommendations to the Commissioner or his designee for further action as may be appropriate under this section. The report shall list the evidence reviewed, the witnesses interviewed and cite the law or regulation alleged to have been violated and the facts to support such finding. The report shall contain a written recommendation either to take such action as may be authorized by this section or to dismiss the complaint.

7.1.6 A dismissal of the complaint shall be without prejudice and no further action shall be taken by the Department. The Department shall provide a written notification of the Department's action and the basic reason(s) therefor to the complainant and to the course provider.

7.2 Upon a recommendation for further action under section 7.1 of this Regulation, the Commissioner shall determine whether the course provider should be warned (with or without conditions), placed on probation (with or without conditions) for not more than 90 days, suspended for a period not to exceed 6 months, or to be permanently decertified for one or more violations of this Regulation. For purposes of the enforcement of this Regulation and the protection of the public, progressive discipline is not required.

7.3 Upon making a determination as provided for in section 7.2 of this Regulation, the Department shall provide written notice to the course provider by certified mail, receipted email or other receipted delivery service. A copy of the notice shall be provided to the complainant. The notice shall include the following:

7.3.1 a summary of the complaint;

7.3.2 a summary of the information obtained in the investigation;

7.3.3 findings of fact and/or law; and

7.3.4 the sanction to be imposed by the Department.

7.4 Upon receipt of the notice provided for in section 7.3 of this Regulation, the course provider shall have the rights to a hearing and appeal as provided for in 18 Del.C. §§323-28.

7.5 Nothing in section 7.0 of this Regulation shall preclude the course provider from entering into a consent agreement with the Department.

7.6 A course provider or instructor who receives a warning or is placed on probation and does not show proof of compliance with the conditions of the warning or probation within the time set forth in the consent agreement or order may be subject to suspension or decertification.

7.7 In addition to the other provisions of this Regulation, a course provider may be placed on probation, suspended or decertified for any one or more of the following:

7.7.1 Falsification of information on, or accompanying, the Application for Certification/Re-certification;

7.7.2 Falsification of, or failure to keep and provide, adequate student records and information as required herein; or

7.7.3 Falsification of, or failure to keep and provide, adequate financial records and documents as required.

~~108.0~~ Certification Process for Defensive Driving Instructors

~~108.1~~ Basic Requirements. Each instructor shall:

~~108.1.1~~ Be at least 18 years of age;

~~108.1.2~~ Be a high school graduate or have a G.E.D.;

~~108.1.3~~ Provide a certified copy of his or her driving record showing he or she holds a valid driver's license with no more than four (4) points, no suspensions or revocations in the past two years; and

~~108.1.4~~ Have no felony convictions during the past four years and no criminal convictions evidencing moral turpitude. ~~The Committee reserves the right to~~Department may require a criminal history background check of all applicants for an instructor's certification.

~~10.2 The Committee may recommend that Basic Requirements sections 10.1.2 through 10.1.4 hereof be waived upon a finding that an instructor is qualified and fit to act as an instructor.~~

~~10.38.2~~ Re-certification. Every two years each instructor shall:

~~10.38.2.1~~ Submit evidence that he or she has taught the certified course a minimum of 12 hours the previous calendar year;

~~10.38.2.2~~ Submit evidence that he or she attended an in-service update training seminar, or other training session, as provided by, or specified by, a certified defensive driving course sponsor; and

~~10.38.2.3~~ Submit a form as prescribed by the ~~Committee~~Department certifying that he or she continues to meet the requirements of an instructor as outlined in this Regulation; ~~and;~~

~~10.38.2.4~~ Submit a certified copy of his or her driving record.

~~10.3.58.3~~ The above-described submissions shall be filed not later than January 31st of the year in which re-certification is desired. ~~The Committee~~ Department shall accept requests for re-certification not earlier than November 15th of the preceding year and make reasonable efforts to act on such requests within 30 days of receipt thereof.

8.4 The Department may provide procedural guidelines and directives through the use of bulletins and/or circular letters through the Commissioner's website from time to time as may be appropriate.

~~11.0~~ Meetings

~~The committee shall set a day and time for quarterly meetings. Other meetings may be set as needed.~~

~~12~~ 2.0 Effective Date

~~12.1~~ This ~~act~~regulation shall become effective on ~~September~~ February 11, 20046. The procedural guidelines set forth in this regulation shall govern the disposition of any matter pending before the Defensive Driving Credentials Committee as of the effective date of this regulation.

2 DE Reg. 989 (12/01/98)

9 DE Reg. 1244 (02/01/06) (Final)