

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 1111 (18 **Del.C.** §§314 and 1111)
18 **DE Admin. Code** 607

PROPOSED

PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt amendments to Department of Insurance Regulation 607 relating to Defensive Driving Courses. The docket number for this proposed amendment is 1145.

The purpose of the proposed amendment to regulation 607 is to update the existing regulation with respect course content, requirements for course and instructor certification, on-line course attendance verification, proof of course completion and notifications to the Division of Motor Vehicles. The text of the proposed amendment is reproduced in the August 2009 edition of the Delaware Register of Regulations. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Tuesday September 8, 2009, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

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.

“**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 or similar pre-recorded media or websites.

“**Providers**” means corporate sponsor for any course as well as the individual who signs the application for the course.

9 DE Reg. 1244 (2/1/06)

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, motor home, 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, motor home, or motorcycle; and
- 3.2 The driver who customarily operates the automobile, motor home, 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 Department.

2 DE Reg 989 (12/1/98)

9 DE Reg 1244 (2/1/06)

4.0 Application

- 4.1 A 10% discount shall be applied with respect to the applicable premium(s) for each automobile, motor home, 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~~ renewal 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, and must then complete, 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. An insured who completes a refresher course within the ninety days prior to the three year expiration date shall receive a 15% discount effective the next renewal date. An insured who completes the refresher course after the expiration of the three year period shall lose the 10% or 15% discount on the expiration date, but shall receive the 15% discount effective on the date of completion of the refresher course, if said completion is within two years of the expiration date.

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

5.0 Implementation

- 5.1 The discount may be applied as a multiplier or on an additive basis compatible with the rating system in use by the company.
- 5.2 All courses certified by this Department as of September 1, 2004~~9~~ shall apply for re-certification under the provisions of section ~~76~~ of this regulation on or before January 1, 2005~~11~~. ~~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.~~

9 DE Reg. 1244 (2/1/06)

6.0 Certification Criteria for Defensive Driving Programs and Providers

~~Each course provider shall:~~

- 6.1 Each provider of a defensive driving course that seeks certification by the Department shall submit to the Department for approval the following materials:
 - 6.1.1 All written instructor materials, testing materials and curricula utilized for classroom instruction.
 - 6.1.2 All written materials provided to students in connection with classroom instruction.
 - 6.1.3 Identity and qualifications of all instructors.
 - 6.1.4 All curricula and testing material used in connection with an on-line course.
 - 6.1.5 All materials available to students in connection with an on-line course.
 - 6.1.6 All testing and grading criteria used in an on-line course.

- 6.1.7 Identity and qualifications of persons available to answer student questions respecting content and technical support for an on-line course.
- ~~6.42~~ Submit to the Department for approval written instructor and student materials for any defensive driving course to be offered. On-line courses shall provide free site access to the Department for purposes of verification of compliance. Department Defensive Driving personnel shall have access to audit classroom courses at no cost, but with no credit. The course materials for each defensive driving course shall include, at a minimum, the following:
- 6.42.1 ~~The definition of Information provided within the course will include, at a minimum, State of Delaware traffic laws, defensive driving and the collision prevention techniques/theory serving as the basis for the course;~~
- 6.42.2 A discussion of vehicle safety devices, including the requirement for and 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;
- 6.42.3 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, as well as Delaware "Zero Tolerance" for drivers under 21;
- 6.42.4 A discussion of the factors affecting driving and how they pertain to driving defensively, including, but not limited to:
- 6.42.4.1 The condition of the driver, the vehicle, the road, sun glare, weather, such as rain, fog, sleet, hail and snow, and lighting;
- 6.42.4.2 Distractions such as use of cellular telephones while driving, adjusting radios, audio and video tapes and compact discs, and DVDs, talking with a passenger, reading, and eating, billboards, and other roadside distractions;
- 6.42.5 A discussion, including specific requirements of Delaware law where applicable, of pertinent driving situations, including stopping distances, proper following distances, proper intersection driving, roundabouts, stopping at railroad crossings, right-of-way and traffic devices, pavement line markings, blind spots, as well as situations involving passing and being passed and ~~how to protect against~~ head-on collisions; and
- 6.42.6 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.~~
- 6.42.7 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 how to identify~~ oneself as an aggressive driver and the appropriate manner to respond.
- 6.2.8 Speed limits
- 6.2.9 School buses
- 6.2.10 Emergency vehicle right of way
- 6.2.11 Turn signals
- 6.2.12 Headlight usage
- 6.2.13 A discussion of the 10% and 15% premium discounts as well as the 3 point DMV credit.
- 6.2.14 A discussion of how and when the insured will receive the course completion certificate and how the 3 point credit is provided to the DMV.
- ~~6.23~~ 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.
- ~~6.34~~ Require on-line courses, as well as other courses available other than in a classroom, to provide toll free telephone lines staffed by knowledgeable customer service personnel who can assist with content based questions during normal business hours which shall appear in bold large lettering on the website prior to the course sign up page 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~~ The set hours must shall be approved submitted to the Department for prior approval by the Department.
- 6.45 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) courses. Each classroom hour shall consist of not less than an average of 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 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. A minimum of three hours must be devoted to the requirements in 6.1 through 6.2.14.
- 6.56 Require that registration shall be completed prior to the beginning of any type of instruction and shall not be counted as instructional time.
- 6.67 Require its instructors in classroom courses to be in the classroom with the students during any and all periods of instructional time.
- 6.78 Require instructors in classroom courses to maintain an atmosphere appropriate for class-work.
- 6.89 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. Changes in such material shall be submitted to the Department for pre-approval before utilization in the classroom.
- 6.910 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 certificate of completion that includes, at a minimum, the name of the student, the date of the class, the name of the defensive driving course provider, with contact information and the course sponsor's authorized signature.
- 6.910.1 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 and have each student complete an online affidavit with a verification that they are the person who took the course and who is receiving the completion certificate and credit and that they understand that making a false unsworn falsification is a violation of 11 Del.C. §1233 of the Delaware Crimes Code, subjecting a violator to fine, imprisonment, or both.
- 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.~~
- 6.101 All courses shall provide all students with a copy of a letter provided by the 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.
- 6.142 Notify the Division of Motor Vehicles of each student's successful completion of the course in the manner and form required by the Division. Said notification shall be made within fourteen days of the student's course completion.
- 6.13 Each provider of a defensive driving course shall utilize and maintain either its own proprietary teaching or testing materials, or teaching and testing material properly obtained by a third party under a written license agreement. An on-line course provider may not submit an original course application for a course previously approved by the Department and owned or licensed to another course provider. This section shall not limit the ability of an approved on-line course provider to have independent licensing agreements with other entities.
- 6.14 Each provider of a defensive driving course shall maintain requisite staffing, facilities, and resources necessary to process student payments, provide competent instruction, administer effective testing, issue timely completion certificates and provide proper notice to the Division of Motor Vehicles regarding credit earned from successful completion of the course.

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~~ the Commissioner's 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~~ shall 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.

7.7.4 Failure to comply with the course content requirements set forth in 6.0 above.

9 DE Reg. 1244 (2/1/06)

8.0 Certification Process for Defensive Driving Instructors

8.1 Basic Requirements. Each instructor shall:

8.1.1 Be at least 18 years of age a licensed driver for a minimum of thirty-six months;

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

8.1.3 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

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

8.1.5 Submit the Application for Certification with documentation showing that the applicant has:

8.1.5.1 a minimum of 9 hours of inservice training classes taught by a certified instructor;

8.1.5.2 a maximum of 3 of those 9 hours may be satisfied by observing a certified instructor teaching an actual class;

8.1.5.3 a minimum of 6 hours of trainee instructor class presentations observed by a provider-certified instructor.

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

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

8.2.2 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

8.2.3 Submit a form as prescribed by the Department certifying that he or she continues to meet the requirements of an instructor as outlined in this Regulation.

8.2.4 Submit a certified copy of his or her driving record.

8.3 ~~The above-described submissions shall be filed not later than January 31st of the year in which re-certification is desired. The 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 three months prior to the expiration date of the then-current certification. Instructors whose certification have expired shall not instruct any courses until they have been recertified.~~

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.

9.0 Course Recertification

9.1 Course certifications shall expire three years after approval or of the effective date of this Regulation, whichever date occurs later. Course providers shall submit applications for recertification no earlier than 6 months prior to expiration. Course providers that submit recertification applications no later than ninety days prior to the expiration date shall be deemed approved until the Department has acted on the application. In all other cases course certification shall expire on the three year anniversary date and those courses shall be decertified until such time as approval is granted.

910.0 Effective Date

This regulation shall become effective on February 11, 2006 January 1, 2010 for providers approved prior to September 1, 2009. All courses applying for approval after September 1, 2009 shall meet the requirements of this regulation prior to approval. 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 (2/1/06)

13 DE Reg. 158 (08/01/09) (Prop.)