

**DEPARTMENT OF INSURANCE**  
**18 DE Admin. Code 607**  
**Statutory Authority: 18 Delaware Code,**  
**Section 607 (18 Del.C. §607)**

**ORDER**

**607 Defensive Driving Course Discount (Automobiles and Motorcycles) [Formerly Regulation 37]**

**FINAL**

A public hearing was held on August 3, 2004 to receive comments on amendments to Regulation 607 relating to Delaware Defensive Driving Courses. By my order of June 21, Deputy Insurance Commissioner F.L. Peter Stone was appointed hearing officer to receive comments and testimony on the proposed amendments to the regulation. Public notice of the hearings and publication of proposed Regulation 607 in the Register of Regulations and two newspapers of general circulation was in conformity with Delaware law. Fourteen persons attended the public hearing. Fifteen written submissions were accepted into the record which was kept open until August 6, 2004.

**Summary Of The Evidence And Information Submitted**

Kathy S. Gravell, Esquire, a legal representative of the Department, presented oral testimony on behalf of the Department in support of the proposed changes to the regulation. The most significant change to the regulation relates to the Department's desire to authorize online courses in addition to the live classroom courses that are currently permitted under the regulation. Other changes relate to the certification process, some changes to the required materials to be covered, the student identification process, deletion of the instructor evaluation forms and the certification of providers.

Virtually all of the oral and written comments related to the issue of permitting online courses. The local direct contact classroom providers were generally opposed to the addition of online courses to those currently permitted under the regulation because of the lack of interaction between instructor and student. The classroom providers also focused on the opportunity a student would have to either cheat on the number of required hours to take the course or the ease one would have to have another complete the online course in his or her stead. The online providers testified that they conduct courses that qualify in many states and that they have developed protocols to reduce or eliminate fraud. For example, there are timers on the programs that do not allow a person to skip sections or go through sections too quickly, there are coded questions that pop up intermittently to test the taker to make sure someone else has not taken over for the student, and they have programs that force a student to repeat a section if a question is answered incorrectly or if there's a failure to respond correctly to a request to confirm the student's identify. One point of agreement for all providers was that they had a shared goal of teaching safe driving techniques and believed that it was important that there be more safe drivers on Delaware's roads.

On specific issues like student identification, it was agreed that a government issued identification card is desirable. The Department believes that a government issued photo identification card is sufficient to assure the identity of the person taking the course. Even though classroom instructors should check a photo ID at the start of the course, the Department felt some latitude for the online courses was better noting that the process for obtaining the ID could be tailored by each provider. In fact, one online provider does not give tests on the computer but contracts with a testing agency in the student's local area to administer the test upon completion of the course.

One classroom instructor, William Alexander, noted that only 43% of the students could learn by reading material only and felt that it was a disservice to the purposes of the course to deny the student the verbal and tactile experience of the classroom, especially the give and take of discussions. The online providers noted that their courses have audio and visual stimulators in addition to the text material. Mr. Alexander did suggest that persons who were taking the course because it was judicially required should not be permitted to take an online course. The online providers discussed their commitment to interactive instruction through chat or toll free calling as well as their commitment to security measures to limit the opportunity to cheat by using online instruction.

**Findings Of Fact**

The purpose for a public hearing on a proposed regulatory change is to determine the necessity for the change

and whether the language proposed to effect that change needs to be changed or modified for purposes of clarity or efficiency. Already extant in Regulation 607 is the authority of the Defensive Driving Committee to resolve the technical issues of compliance, assure the qualifications of the providers, reconcile and resolve technical issues relating to course materials and the like. To the extent the written submissions and the testimony at the public hearing on the proposed changes dealt with such issues, as opposed to the more general issue of whether the changes proposed should be made, those comments can be considered by the Committee as part of its duties instead of a hearing officer under the Administrative Procedures Act. The testimony for or against the approval of online courses reflected the interests of the advocates with the online providers and those who supplies course materials to them in favor of the change and the classroom course providers and their instructors opposed to the change. The Department, which has no basis to favor one type of instructional method over another supports the proposed changes to the regulation. The Department has provided an adequate basis for me to find that the proposed changes to the regulation should be approved without change. Based on the record, I find that changes in technology have reduced or eliminated many of the problems alleged by the opponents to the proposed changes. All of the online providers who testified or provided written submissions, have agreed to all of the same requirements that apply to classroom providers. They have agreed to assure that their courses will meet the time requirements of the regulation and that they will also be tailored to provide the written and Delaware specific information required by the regulation. They have agreed to have qualified staff available by phone or chat on a 24/7 basis to meet the regulatory requirements. I find merit in the testimony that some students learn better by reading and others learn better by lecture. Expanding the provider base to allow students to utilize the instructional method best for them serves the goal upon which all providers agree, namely to provide the best information to the student to make the student a better driver.

Questions relating to the details of how that is accomplished are appropriately left to the Committee. I find that the Department is exclusively charged with the authority to designate the classes and to determine the qualifications of the instructors. The proposed additions to the regulation are within the jurisdictional grant given to the Commissioner by the statute. There is no basis to find that the approval of online courses would violate the laws of this State or that students should be denied this viable alternative to satisfy any judicial requirements they may have to take such a course. As was noted in the testimony, the use of course credit to reduce one's premium has and continues to be within the discretion of the insurance company and its decision is independent of the determination of whether a student should be denied or allowed the opportunity to have the online option available.

There were some comments and submissions that recommended changes to the proposed wording of the changes. However, those changes are a matter of style and do not warrant a finding that the proposed changes should be altered from the form published on July 1, 2004.

### **Decision**

Based on the provisions of 18 **Del.C.** §§311 and 2503, and the record in this docket, I adopt the FINAL REPORT AND RECOMMENDATION OF THE HEARING OFFICER dated August 9, 2004 and order that Regulation 607 be amended as provided for in the notice published in the Delaware Register of Regulations 8 **DE Reg.** 62 (7/1/04).

I order that the proposed change shall become effective on September 15, 2004.

Donna Lee H. Williams  
Insurance Commissioner

**\* PLEASE NOTE: THE JULY 1, 2004 PUBLISHED VERSION OF THIS REGULATION AS A PROPOSED REGULATION APPEARING AT 8 DE REG. 62 (7/1/04) DID NOT REFLECT THE VERSION AS SUBMITTED FOR PUBLICATION WHICH IS THE OFFICIAL VERSION OF THE PROPOSED REGULATION. THE FINAL VERSION PRINTED BELOW IS IDENTICAL TO THE PROPOSED VERSION AS SUBMITTED TO THE REGISTRAR AS REQUIRED BY LAW. THE REGISTRAR OF REGULATIONS REGRETS THE ERROR. THE VERSION BELOW REPRESENTS THE FINAL VERSION OF THE REGULATION AS DULY AMENDED.**

### **607 Defensive Driving Course Discount (Automobiles and Motorcycles) [Formerly Regulation 37]**

#### **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, ~~Sponsors~~

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 Authority

~~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 through the use of a computer including the use of CD roms or websites.

“Providers” – 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.

**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.

5.3 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; and

6.1.4 ~~To recommend approval of a course or applicant, the Committee shall require the course contains the following: any other relevant characteristics or experience.~~

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 ~~sponsor~~ 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 ~~Choose~~ Elect its Chairman~~person~~ and shall make recommendations to the Commissioner concerning the duties set forth herein;

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

6.3.3 Review and examine defensive driving courses and shall provide further 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 ~~sponsors~~ 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.

## **7.0 Certification Criteria for Defensive Driving Programs ~~And~~ Sponsors Providers**

Each course ~~sponsor~~ provider shall:

7.1 Submit for approval written ~~course description~~ instructor and student materials for any defensive driving course to be offered that minimally includes the ~~following~~ elements listed in this section. On-line courses shall provide free site access to a Committee member for purposes of verification of compliance.

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

7.1.2 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;

7.1.3 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;

7.1.4 A discussion of the ~~five~~ factors affecting driving driving defensively, being: the condition of the driver, the vehicle, the road, weather and lighting as they pertain to; and how they pertain to driving defensively, including, but not limited to:

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

7.1.4.2 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;

7.1.5 A discussion, including specific requirements of Delaware law where applicable, of ~~specific~~ 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

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

7.1.7 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.

7.2 Require ~~its~~ instructors in classroom courses to present ~~courses~~ information in a manner consistent with the

approved curriculum and otherwise in accordance with the standards set forth herein.

7.3 Require on-line courses to provide toll free telephone lines staffed by knowledgeable customer service personnel who can assist with content based questions.

7.3.7.4 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.

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

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

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

7.8 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.

7.6.7.9 Supply students who complete a defensive driving course and who have presented a 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.

~~7.7 Require that each of its instructors request his or her students complete a standardized Course/Instructor Evaluation Form for not less than one-third of the courses provided by each instructor and retain completed evaluation forms until the expiration of the certification period during which they are completed. The Course/Instructor Evaluation Form shall be in the manner and form prescribed by the Committee.~~

7.10 All courses shall provide all students with a copy of a letter provided by the Committee 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 shall provide a hard copy with the certificate of completion.

7.8.7.11 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.

8.18.2 Course sponsors 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.

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

8.38.4 A course sponsor 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.

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

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

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

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

8.4.48.5.4 Failure to comply with any other standard set forth section in 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 sponsor provider or instructor 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.

## **10.0 Certification Process for Defensive Driving Instructors**

10.1 Basic Requirements. Each instructor shall:

10.1.1 Be at least 18 years of age;

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

10.1.3 Provide a certified copy of his or her driving record showing he or she holds a valid driver's license with no more than ~~64~~ four (4) points, no suspensions or revocations in the past two years; and

10.1.4 Have no felony convictions during the past four years and no criminal convictions evidencing moral turpitude. The Committee reserves the right to 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.

10.3 Re-certification. Every two years each instructor shall:

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

10.3.2 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

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

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

~~10.3.4~~10.3.5 The above-described submissions shall be filed not later than January 31st of the year in which re-certification is desired. The Committee 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.

## **11.0 ~~Effective date~~ Meetings**

~~11.1 This act shall become effective on January 1 of 1999. The committee shall set a day and time for quarterly meetings. Other meetings may be set as needed.~~

## **12.0 Effective Date**

12.1 This act shall become effective on September 14, 2004.

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

**8 DE Reg. 460 (9/01/04)**