

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 1661

H.P. 1136

House of Representatives, April 24, 1991

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 24.

Reference to the Committee on Business Legislation suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative AIKMAN of Poland.

Cosponsored by Senator BRAUN of Knox and Senator MATTHEWS of Kennebec.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

---

**An Act to Provide for Better Regulation of Commercial Driving  
Instruction Schools.**

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(EMERGENCY)

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, delay in the implementation of changes to the law will result in unnecessary burdens on the Board of Commercial Driver Education to function independently and financially; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA c. 95, as amended, is repealed.

Sec. 2. 32 MRSA c. 95-A is enacted to read:

CHAPTER 95-A

COMMERCIAL DRIVING INSTRUCTION

SUBCHAPTER I

GENERAL PROVISIONS

§9621. Short title

This chapter is known and may be cited as the "Licensure Act for Commercial Driving Instruction."

§9622. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Behind-the-wheel instruction. "Behind-the-wheel instruction" means that portion of instruction in commercial driver education during which a student is the operator of a motor vehicle under the direction and supervision of a licensed commercial driver education instructor.

2. Board. "Board" means the Board of Commercial Driver Education.

3. Classroom instruction. "Classroom instruction" means that portion of instruction in commercial driver education during which a student is participating in instruction in a classroom facility of a commercial driver education school.

2           4. Commercial driver education. "Commercial driver  
4           education" means any type of instruction or tutoring given any  
6           person in the driving of a commercial motor vehicle or in the  
8           preparing of any person for a driver examination in exchange for  
          remuneration, except instruction or tutoring in a public  
          secondary school, a private secondary school approved for  
          attendance by the Commissioner of Education, a vocational center,  
          a vocational region, an adult education program conducted  
          pursuant to Title 20-A, chapter 315 or a technical college.

10           5. Commercial driver education instructor. "Commercial  
12           driver education instructor" means a person or persons licensed  
14           by the board who are qualified to conduct commercial driver  
          education.

16           6. Commercial driver education school. "Commercial driver  
18           education school" means any person or persons engaged in teaching  
20           driver education for remuneration, except a public secondary  
22           school, a private secondary school approved for attendance by the  
          Commissioner of Education, a vocational center, a vocational  
          region, an adult education program conducted pursuant to Title  
          20-A, chapter 315 or a technical college.

24           7. Commercial driver's license. "Commercial driver's  
26           license" has the same meaning as in Title 29, section 1,  
          subsection 1-J.

28           8. Commercial motor vehicle. "Commercial motor vehicle"  
30           has the same meaning as in Title 29, section 1, subsection 1-K.

32           9. Commissioner. "Commissioner" means the Commissioner of  
34           Professional and Financial Regulation or the commissioner's  
          designee.

36           10. Course. "Course" means an instructional program of  
38           commercial driver education, approved by the board, that consists  
          of at least 30 hours of classroom instruction and 6 hours of  
          behind-the-wheel instruction.

40           11. License and licensing. "License and licensing" has the  
42           same meaning as in Title 5, chapter 375, subchapter I.

44           12. Licensee and applicant. "Licensee and applicant" as  
46           applied to a firm, partnership or association includes the  
          members of the firm, partnership or association and as applied to  
          a corporation includes the officers and directors of the  
          corporation.

48           13. Motor vehicle. "Motor vehicle" has the same meaning as  
50           in Title 29, chapter 1.

2           14. Operator. "Operator" has the same meaning as in Title  
29, chapter 1.

4           15. Person. "Person" means any individual, combination of  
6 individuals, firm, partnership, association or corporation. When  
8 used in any provision of this chapter that prescribes or imposes  
10 a fine or imprisonment, or both, "person" as applied to a firm,  
12 partnership or association includes the members of the firm,  
partnership or association and as applied to a corporation  
includes the officers of the corporation. A firm, partnership,  
association or corporation, as an entity, may be subjected to the  
payment of a fine.

14           16. Student. "Student" means a person who is at least 15  
16 years of age and who is either applying for or enrolled in  
commercial driver education.

## 18   SUBCHAPTER II

### 20   BOARD OF COMMERCIAL DRIVER EDUCATION

#### 22           §9631. Membership

24           The Board of Commercial Driver Education, as established by  
26 Title 5, section 12004-A, subsection 12, is composed of the  
28 following 5 members:

30           1. Members appointed by Governor. The Governor shall  
appoint the following members:

32           A. One commercial driver education instructor with a Class  
34 A or Class B license;

36           B. One commercial driver education instructor with a Class  
38 A license who holds a Class A commercial driver education  
40 school license;

42           C. One commercial driver education instructor with a Class  
44 A license and any truck training endorsement; and

46           D. One public representative; and

48           2. Secretary of State. The Secretary of State or the  
Secretary of State's designee.

#### 50           §9632. Term of office

A term of office on the board is for 3 years. Appointments  
for terms of less than 3 years may be made.

2        Upon expiration of a member's term, the member shall serve  
4        until a successor is appointed by the Governor. The successor's  
6        term is 3 years from the date of expiration of the predecessor's  
8        term regardless of the date of appointment. A period actually  
      served that exceeds 1/2 of the 3-year term is deemed a full term  
      of office. A board member who is appointed by the Governor is  
      not eligible to serve more than 3 full consecutive terms of  
      office.

10       Any vacancy on the board must be filled by the appointment  
12       of a person who has the same membership status as the board  
14       member being replaced. That board member shall serve the  
      predecessor's unexpired term of office.

16       A board member may be removed by the Governor for cause.

18       **§9633. Duties**

20       The board shall administer this chapter and has the  
      following duties and powers.

22       1. Meetings. The board shall meet at least once a year to  
24       conduct business and elect officers. Additional meetings may be  
26       held as necessary to conduct the business of the board and may be  
28       convened at the call of the chair or a majority of the board  
      members. Three members of the board constitute a quorum for all  
      purposes. The board shall keep necessary records and minutes.

30       2. Licensing. The board shall evaluate and supervise the  
      licensing of applicants pursuant to this chapter.

32       3. Enforcement. The board may investigate all complaints  
34       made to it and all cases of noncompliance with this chapter.

36       4. Rules. The board, in accordance with the procedures  
38       established by the Maine Administrative Procedure Act, Title 5,  
40       chapter 375, subchapter II, may adopt rules necessary for the  
42       proper performance of duties of the board and the administration  
      of this chapter, including, but not limited to, rules governing  
      continuing education, licensing requirements, fees, instructional  
      programs and disciplinary actions.

44       5. Hearings. The board may conduct hearings to assist with  
46       investigations; determine whether grounds exist for suspension,  
      revocation or denial of a license; or as otherwise necessary.

48       6. Contracts. The board may enter into contracts and  
50       consent agreements to carry out its responsibilities under this  
      chapter.

52       7. Inspections. The board may inspect at any reasonable  
      time all commercial driver education schools and commercial

2 driver education instructor records as required by this chapter  
3 and board rules.

4 **§9634. Compensation and expenses of board members**

6 Members of the board are entitled to compensation according  
7 to Title 5, chapter 379.

8 **§9635. Disciplinary actions**

10 The board may not refuse to renew a license for any reason  
12 other than failure to pay a required fee unless the board has  
14 afforded the licensee an opportunity for an adjudicatory hearing  
16 at the written request of any person who is denied a renewal  
18 license without a hearing for any reason other than failure to  
20 pay a required fee. The request for a hearing must be received  
22 by the board within 30 days of the applicant's receipt of written  
24 notice of the denial of the application for renewal of a license,  
the reasons for the denial of the renewal and the applicant's  
right to request a hearing. Hearings must be conducted in  
accordance with the Maine Administrative Procedure Act, Title 5,  
chapter 375, subchapter IV. The board may subpoena witnesses,  
records and documents in any hearing the board conducts.

26 1. Violations. The board, in accordance with Title 10,  
28 section 8003, subsection 5, may take disciplinary action against  
a licensee for the following violations:

30 A. Failure to comply with insurance requirements pursuant  
32 to section 9642, subsection 1;

34 B. Failure to pay a required fee pursuant to this chapter;

36 C. Permitting an unlawful or fraudulent use of a license  
38 pursuant to section 9641;

40 D. Using unlawful or fraudulent means to obtain a license;

42 E. Failure to complete, maintain or retain any required  
44 records;

46 F. Engaging in negligence, misconduct or unprofessional  
48 behavior;

50 G. Engaging in behavior that illustrates incompetence in  
52 the practice for which the licensee is licensed. A licensee  
is considered incompetent if the licensee has:

(1) Engaged in conduct that evidences a lack of  
ability or fitness to discharge the duty owed by the  
licensee to a client, student or the general public; or

2           (2) Engaged in conduct that evidences a lack of  
4           knowledge or inability to apply principles or skills to  
          carry out the practice for which the licensee is  
          licensed;

6           H. Conviction of or plea to a felony subject to Title 5,  
          sections 5301 to 5304;

8           I. Designation as an accident-prone driver as defined in  
10          Title 29, section 581-B;

12          J. Making a false or fraudulent statement in any forms  
14          required to be filed with the board; or

16          K. Otherwise failing to comply with any provision of this  
          chapter or rule adopted by the board.

18                                   SUBCHAPTER III

20                                   LICENSES

22           §9641. License required

24           A person may not conduct commercial driver education unless  
26           that person is licensed by the board as a commercial driver  
28           education instructor. Each classroom location must be licensed  
30           by the board as a commercial driver education school before a  
          commercial driver education instructor may conduct commercial  
32           driver education in association with that school. A license may  
          not be issued to a person unless the board is satisfied that the  
34           person has met the qualifications and requirements necessary to  
          receive the license. A license issued by mistake is void upon  
          notice to the licensee. A license issued under this chapter is  
          nontransferable.

36           1. Commercial driver education school license. The board  
38           may issue the following types of licenses that entitle the holder  
40           to operate a commercial driver education school.

42           A. The Class A commercial driver education school license  
          grants the holder permission to employ Class A and Class B  
44           commercial driver education instructors licensed under  
          subsection 2, paragraphs A and B and to offer a curriculum  
46           approved by the board for a commercial driver education  
          course for the operation of a motor vehicle requiring a  
48           Class C operator's license in accordance with Title 29,  
          section 530, subsection 2, paragraph B, subparagraph (3).

50           B. The Class B commercial driver education school license  
          grants the holder permission to employ Class A and Class B  
52           commercial driver education instructors licensed under



2 subsection 2 and to offer only a curriculum approved by the  
3 board for behind-the-wheel instruction for the operation of  
4 a motor vehicle requiring a Class C operator's license in  
5 accordance with Title 29, section 530, subsection 2,  
6 paragraph B, subparagraph (3).

7 C. The truck training license is provided by special  
8 endorsement on the school's Class A license issued under  
9 this subsection. A truck training endorsement on a Class A  
10 commercial driver education school license permits the  
11 school to provide a truck training curriculum approved by  
12 the board for the operation of a commercial motor vehicle  
13 requiring a Class A, Class B or Class C commercial driver's  
14 license in accordance with Title 29, section 530, subsection  
15 2, paragraph B. A Class A school employing a Class A  
16 instructor holding a truck training endorsement on the  
17 instructor's license may not permit the instructor to  
18 instruct beyond the scope of that instructor's truck  
19 training endorsement.

20 2. Commercial driver education instructor's license. The  
21 board may issue the following classes of license that grant the  
22 holder permission to conduct commercial driver education to  
23 applicants for commercial driver education instructor licensure.

24 A. The Class A commercial driver education instructor's  
25 license grants the holder permission to conduct both  
26 classroom and behind-the-wheel commercial driver education  
27 instruction for the operation of a motor vehicle requiring a  
28 Class C operator's license in accordance with Title 29,  
29 section 530, subsection 2, paragraph B, subparagraph (3).

30 B. The Class B commercial driver education instructor's  
31 license grants the holder permission to conduct only  
32 behind-the-wheel instruction.

33 C. Instruction in the operation of a Class A, Class B or  
34 Class C commercial vehicle as defined in Title 29, section  
35 530, subsection 2 must be by an instructor who holds a  
36 special truck training endorsement on the instructor's Class  
37 A or Class B commercial instructor license. An instructor  
38 may not offer instruction in the operation of any type of  
39 class of commercial vehicle for which the instructor is not  
40 licensed or endorsed in accordance with Title 29, section  
41 530, subsection 2.

42 3. Exclusion. A certified teacher conducting a driver  
43 education course in a public secondary school, a private  
44 secondary school approved for attendance by the Commissioner of  
45 Education, a vocational center or a vocational region is not  
46 required to have a commercial driver education school license.

2 §9642. Commercial driver education school licensing requirements

4 A person making application for or operating under a  
6 commercial driver education school license issued under section  
8 9641, subsection 1 must meet the following licensing requirements.

10 1. Certificate of insurance. The board may not issue a  
12 license to a person or a school unless that person or school has  
14 procured and filed with the commissioner:

16 A. The certificate of an insurance company authorized to  
18 transact business as specified in Title 24-A, section 404  
20 that states that the insurance company has issued, to or for  
22 the benefit of the person or the school, a motor vehicle  
24 liability policy covering each motor vehicle, trailer or  
26 semitrailer used for behind-the-wheel instruction as  
28 prescribed by the board; or

30 B. The certificate of a surety company authorized to  
32 transact business under Title 24-A, section 404 that states  
34 that the surety company has issued, to or for the benefit of  
36 the person or the school, a motor vehicle liability bond  
38 covering each motor vehicle, trailer or semitrailer used for  
40 behind-the-wheel instruction as prescribed by the board.

42 2. Facilities, motor vehicles and equipment. In order to  
44 conduct commercial driver education, a person or school is  
46 required to provide adequate facilities, motor vehicles and  
48 equipment that meets inspection requirements as prescribed by the  
50 board.

52 3. Curriculum. Every person or school is required to  
submit a commercial driver education curriculum that is  
appropriate to the type of license applied for by a student, as  
prescribed by the board. The Class A school curriculum must  
consist of at least 30 hours of actual classroom instruction and  
6 hours of actual behind-the-wheel instruction before a student  
may be issued a course completion certificate as required by  
Title 29, section 583. Classroom instruction must be limited to  
not more than 4 hours in any 24-hour period. The Class B school  
curriculum must consist of at least 6 hours of behind-the-wheel  
instruction.

4. School contracts. A commercial driver education school  
remains subject to the requirements of this chapter while  
providing driver education services pursuant to Title 20-A,  
chapter 316 on a contract basis to a public secondary school, a  
private secondary school approved for attendance by the  
Commissioner of Education, a vocational center, a vocational  
region, an adult education program conducted pursuant to Title  
20-A, chapter 315 or a technical college.

2           §9643. Commercial driver education instructor licensing  
3                           requirements

4           1. Licensing requirements. A person who applies for or  
5           operates under a commercial driver education instructor's license  
6           under section 9641, subsection 2 must:

8           A. Be at least 21 years of age;

10          B. Have a high school diploma or its equivalent as  
11          determined by the board;

12          C. Possess a valid operator's license with all necessary  
13          and appropriate endorsements as set forth in Title 29,  
14          section 530 in the class for which the instructor's license  
15          is being requested;

16          D. Have at least 4 years of driving experience as a  
17          licensed motor vehicle operator in this State or some other  
18          jurisdiction defined by the board;

19          E. Have no convictions for a one-year period prior to the  
20          date of initial application determined by that person's  
21          conviction record as described in Title 29, section 2304;

22          F. Have no more than 2 convictions or a single conviction  
23          resulting in an operator's license suspension during the  
24          year prior to the renewal determined by that person's  
25          conviction record as described in Title 29, section 2304;

26          G. Not have physical or mental disabilities that may  
27          interfere with the licensee's duties as a commercial driver  
28          education instructor as determined by the board. A person  
29          is required to report to the board the existence of those  
30          medical conditions for which a person is required to submit  
31          a medical report as set forth in 29-250A Code of Maine Rules  
32          3;

33          H. Successfully complete a commercial driver education  
34          instructor's examination as prescribed by the board; and

35          I. Satisfactorily complete an educational program as  
36          prescribed by the board qualifying that person to conduct  
37          commercial driver education.

38           §9644. Display of license

39           A person to whom a commercial driver education instructor's  
40           license has been issued under section 9641, subsection 2 shall  
41           have the license in that person's immediate possession and on  
42           display at the commercial driver education school location at all  
43           times while conducting commercial driver education.

2       **§9645. Expiration**

4           A new or renewal license issued under section 9641 expires  
6       at such time as the commissioner establishes and is subject to  
      section 9646.

8       **§9646. Renewal; late fee**

10           A person licensed under section 9641, on or before the  
12       annual expiration day, shall submit a renewal application and the  
14       prescribed renewal fee. A license may be renewed up to 90 days  
16       after the date of expiration upon payment of a late fee of \$10 in  
18       addition to the renewal fee. Any person who submits an  
20       application for renewal more than 90 days after the license  
22       renewal date is subject to all requirements governing new  
      applicants under this chapter and the \$10 late fee. The board  
      may waive the requirements for any person seeking renewal up to 2  
      years beyond the expiration date giving due consideration to the  
      safety and protection of the public. The board may assess a  
      penalty for a late renewal that is more than 90 days after a  
      license expiration.

24       **§9647. Fees**

26           1. Examination fee. The board may establish an examination  
28       fee in an amount that is reasonable and necessary to prepare and  
30       administer the examination required in section 9643, subsection  
      1, paragraph H.

32           2. Commercial driver education school licensing fee. An  
34       application for a commercial driver education school license, as  
36       described in section 9641, subsection 1, must be accompanied by  
38       an application fee established by the board in an amount that is  
40       reasonable. The fee may not be refunded. On approval of the  
      application and payment of a license fee, the board shall issue  
      the applicant a commercial driver education school license. The  
      board may establish by rule a fee for license renewal that may  
      not exceed \$250 a year.

42           3. Commercial driver education instructor licensing fees.  
44       An application for a commercial driver education instructor's  
46       license, as described in section 9641, subsection 2, must be  
48       accompanied by an application fee established by the board in an  
50       amount that is reasonable. The fee may not be refunded. On  
      approval of the application and payment of the license fee, the  
      board shall issue the applicant a commercial driver education  
      instructor's license. The board may establish by rule a fee for  
      license renewal that may not exceed \$125 a year.

2  
3 §9648. Disposition of fees

4 All fees received by the board must be used to carry out the  
5 purposes of this chapter. Any balance of revenues from the  
6 collection of fees may not lapse but must be carried forward.

7 §9649. Examination, investigation and inspection duties and  
8 expenses

9  
10 The holder of a commercial driver education school license  
11 or a commercial driver education instructor license may be  
12 assessed for the actual expenses incurred by the board or its  
13 agents for examination, special investigations or enforcement  
14 duties performed under this chapter.

15  
16 1. Inspections. Inspection duties include an on-site  
17 inspection of each commercial driver education school licensed  
18 under this chapter not less than every 3 years to review records,  
19 facilities and operating procedures. The cost of one on-site  
20 inspection is covered by the school's annual license fee. The  
21 fee of a subsequent inspection approved by the board must be paid  
22 by the commercial driver education school.

23  
24 2. Agents. The board may contract with the Department of  
25 the Secretary of State, Division of Motor Vehicles, to serve as  
26 an agent under this section.

27  
28 3. Assessment and payment procedures. The board may  
29 establish assessment and payment procedures by rule pursuant to  
30 Title 5, sections 8051 to 8059.

31  
32 §9650. Penalties; injunction

33  
34 A person operating a commercial driver education school or  
35 acting as a commercial driver education instructor without a  
36 license is guilty of a Class E crime.

37  
38 The State may bring an action in Superior Court to enjoin a  
39 person from violating this chapter, regardless of whether  
40 proceedings have been or may be instituted in the Administrative  
41 Court or whether criminal proceedings have been or may be  
42 instituted.

43  
44 §9651. Insurance for graduates

45  
46 Rating bureaus or independent insurers recognized by the  
47 Superintendent of Insurance may grant an automobile insurance  
48 discount for commercial driver education school graduates on the  
49 same basis as for public school driver education graduates, if  
50 the graduate is certified by a commercial driver education school  
51 and the school is approved in accordance with this chapter.  
52

