

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST SPECIAL SESSION
November 28, 1995 to December 1, 1995

SECOND REGULAR SESSION
January 3, 1996 to April 4, 1996

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 4, 1996

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1995

Maine Revised Statutes, Title 23, section 1974, subsection 6 governs rather than Title 23, section 1974, former subsection 4.

Effective March 1, 1996.

CHAPTER 505

S.P. 477 - L.D. 1301

An Act to Transfer Oversight of Commercial Driver Education Programs to the Secretary of State

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

Whereas, this legislation has an effective date of January 1, 1996; 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. 3 MRSA §927, sub-§6, ¶C, as enacted by PL 1993, c. 600, Pt. A, §4, is amended to read:

C. Independent agencies:

- (1) Saco River Corridor Commission;
- (2) Acupuncture Licensing Board;
- (3) Board of Licensing of Auctioneers;
- (4) Board of Licensing of Dietetic Practice;
- ~~(5) Board of Commercial Driver Education;~~
- (6) Advisory Board for the Licensing of Taxidermists;
- (7) Maine Turnpike Authority; and
- (8) State Board of Optometry.

Sec. 2. 5 MRSA §151, first ¶, as amended by PL 1993, c. 600, Pt. B, §§20 to 22, is further amended to read:

All money received by the Treasurer of State from the Board of Licensure in Medicine, the Board of Examiners in Physical Therapy, the Board of Examin-

ers of Psychologists, the State Board of Nursing, the Board of Accountancy, the Board of Veterinary Medicine, the Board of Osteopathic Licensure, the State Board of Funeral Service, the State Board of Optometry, the Board of Dental Examiners, the State Board of Registration for Professional Engineers, the State Board of Certification for Geologists and Soil Scientists, the Nursing Home Administrators Licensing Board, the State Board of Licensure for Architects and Landscape Architects, the Electricians' Examining Board, the Oil and Solid Fuel Board, Maine State Pilotage Commission, the State Board of Barbers, State Board of Cosmetology, State Board of Registration for Land Surveyors, State Board of Social Worker Registration, the ~~Examiners Board of Podiatrists Licensure of Podiatric Medicine,~~ the Board of Chiropractic Licensure, the Board of Examiners on Speech Pathology and Audiology, the Maine Real Estate Commission, ~~the Board of Commercial Driver Education,~~ the Board of Registration of Dietetic Practice, the State Board of Registration for Professional Foresters, the Board of Hearing Aid Dealers and Fitters, the Manufactured Housing Board, the Board of Occupational Therapists, Radiologic Technology Board of Examiners, Board of Registration of Substance Abuse Counselors, Maine Athletic Commission, Board of Underground Oil Storage Tank Installers and the Board of Commissioners of the Profession of Pharmacy ~~shall constitute~~ constitutes a fund, which ~~shall be~~ is a continuous carrying account for the payment of the compensation and expenses of the members, and the expenses of the board and for executing the law relating to each board respectively, and as much ~~thereof~~ of the fund as may be required is appropriated for these purposes. The secretary of each board ~~shall be reimbursed~~ is entitled to reimbursement for all expenditures for books, stationery, printing and other necessary expenses incurred in the discharge of ~~his~~ the secretary's duties. All ~~such~~ payments ~~shall~~ must be made from the respective funds held in the State Treasury, after the approval of the State Controller. In no event may these payments exceed the amounts received by the Treasurer of State from the treasurer of each respective board. Any balance remaining to the credit of any board at the end of any year ~~shall~~ must be carried forward to the next year.

Sec. 3. 5 MRSA §12004-A, sub-§12, as enacted by PL 1987, c. 786, §5, is repealed.

Sec. 4. 10 MRSA §8001, sub-§10, as repealed and replaced by PL 1991, c. 548, Pt. B, §1, is repealed.

Sec. 5. 20-A MRSA §8702, as amended by PL 1989, c. 721, §1, is repealed and the following enacted in its place:

§8702. Curriculum

A driver education course offered in accordance with section 8701 must meet the curriculum requirements prescribed by the Secretary of State, include both classroom instruction and practice driving and be approved by the Secretary of State. Any state subsidy, state reimbursement for expenditures on adult education programs or state reimbursement for adult applied technology education programs may not be paid with respect to any driver education course that has not been approved by the Secretary of State.

Sec. 6. 20-A MRSA §8703, as corrected by RR 1991, c. 2, §65, is amended to read:

§8703. Driver education teachers

~~Instructors shall~~ A driver education teacher must hold certification a license to teach driver education.

1. Licensing. Only a person ~~certified~~ licensed by the ~~commissioner~~ Secretary of State as a driver education teacher may be employed by a public secondary school, approved private secondary school, an applied technology center, applied technology region or adult education program, conducted pursuant to chapter 315, to teach driver education. The ~~commissioner~~ Secretary of State shall establish instructor qualification requirements for ~~a person to obtain certification~~ persons licensed to teach courses in preparation for a Class 1 or Class 2 license driver education. Those requirements may be no less rigorous than any similar requirements prescribed by the Board of Commercial Driver Education.

2. Temporary license. If a ~~certified instructor licensed driver education teacher~~ is not available to teach driver education and the school board, cooperative board or private school requests, the ~~commissioner~~ Secretary of State shall grant a temporary ~~certificate~~ license to any person who holds a Class A instructor's license issued by the ~~Board of Commercial Driver Education pursuant to Title 32, section 9601, subsection 2 and section 9603~~ Secretary of State in accordance with Title 29-A, section 1354.

3. Contracts. A public secondary school, approved private secondary school, an applied technology center, applied technology region or adult education program conducted pursuant to chapter 315 may contract with a commercial driver education school to provide driver education as part of the secondary school curriculum ~~provided that an~~ if the instructor is properly certified licensed.

Sec. 7. 20-A MRSA §8705, as corrected by RR 1993, c. 1, §49, is amended to read:

§8705. Departmental personnel

The ~~commissioner~~ Secretary of State shall employ necessary personnel, subject to the terms of the Civil Service Law, to implement this chapter.

Sec. 8. 20-A MRSA §8706, as enacted by PL 1985, c. 797, §45, is amended to read:

§8706. Rules

The ~~commissioner~~ Secretary of State shall adopt rules to implement this chapter.

Sec. 9. 20-A MRSA §9501, sub-§2, as amended by PL 1983, c. 841, §2, is further amended to read:

2. Exemptions. Educational programs related to the real estate professions ~~which that~~ are subject to approval under Title 32, chapter 59, commercial driver ~~educational~~ education schools subject to approval by the ~~Board of Commercial Driver Education~~ Secretary of State under Title ~~32~~ 29-A, chapter ~~95~~ 11, subchapter ~~III~~, educational programs offered by any Maine nonprofit corporation, any educational programs offered by any professional or trade association primarily for the benefit of its own members and any educational institution authorized by the laws of this State to grant a degree are exempt from the requirements of this chapter.

Sec. 10. 23 MRSA §4208, 2nd ¶, as enacted by PL 1989, c. 721, §2, is amended to read:

The course must include ~~the instruction described in Title 32, section 9602, subsection 6~~ instruction in the existence and the practical purpose of parking laws and ordinances for persons with disabilities.

Sec. 11. 29-A MRSA §1304, sub-§1, ¶F, as enacted by PL 1993, c. 683, Pt. A, §2, and affected by Pt. B, §5, is amended to read:

F. The Secretary of State may issue a restricted instruction permit to an applicant who is enrolled in a driver education program that includes practice driving. That permit is valid:

(1) For a school year or other specified period; and

(2) Only when the permittee is accompanied by ~~an instructor approved by the Commissioner of Education or a commercial driver education instructor licensed by the Board of Commercial Driver Education~~ a driver education teacher or a commercial driver education instructor, licensed by the Secretary of State under subchapter III.

Sec. 12. 29-A MRSA §1351, sub-§2, ¶D, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

D. Person licensed by the ~~Board of Commercial Driver Education~~ Secretary of State.

Sec. 13. 29-A MRSA §1351, sub-§3, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

3. Certificate. A successful course completion certificate may be issued if the course meets the standards adopted by the ~~Commissioner of Education or the commercial driver education school licensing requirements under Title 32, chapter 95~~ Secretary of State. A certificate may not be issued to a person who was not at least 15 years of age when beginning the course.

Sec. 14. 29-A MRSA §1352, sub-§3, ¶C, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is repealed.

Sec. 15. 29-A MRSA §1354 is enacted to read:

§1354. Driver education programs

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Applicant," as 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.

B. "Commercial driver education school" means a person engaged in teaching driver education for remuneration. Commercial driver education school does not include a noncommercial driver education school as defined in paragraph G.

C. "Driver education" means any type of instruction or tutoring given to a person in the driving of a motor vehicle or in preparing for a driver examination in exchange for remuneration or course credit.

D. "Driver education school" means a commercial driver education school or a noncommercial driver education school.

E. "Driver education teacher" means a person certified as a teacher by the Commissioner of the Department of Education and employed by a public secondary school, approved private secondary school, applied technology center, applied technology region or adult education program, conducted pursuant to Title 20-A,

chapter 315 and licensed by the Secretary of State to teach driver education.

F. "Instructor" means a person engaged in teaching driver education in a commercial driver education school.

G. "Noncommercial driver education school" means a public secondary school, an approved private secondary school, applied technology center, applied technology region or adult education program conducted pursuant to Title 20-A, chapter 315 that offers driver education.

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

2. Licenses required. A person may not operate a driver education school, conduct driver education or act as an instructor or driver education teacher unless licensed by the Secretary of State.

A. A Class A driver education school license may be issued to a driver education school that employs Class A or Class B instructors or driver education teachers and that is authorized to teach both the classroom and behind-the-wheel phases of driver education.

B. A Class A instructor or driver education teacher license authorizes the holder to teach both the classroom and behind-the-wheel phases of driver education as an employee or affiliate of a licensed driver education school.

C. A Class B instructor or driver education teacher license authorizes the holder to teach only the behind-the-wheel phase of driver education as an employee or affiliate of a licensed driver education school.

3. Commercial driver education school license requirements. With assistance from the Technical Review Panel established in subsection 6, the Secretary of State shall adopt rules governing the curriculum, facilities, operations, including record-keeping requirements and issuance and renewal of licenses for noncommercial driver education schools and commercial driver education schools and for driver education teachers and instructors.

A. The Secretary of State may not issue a license for a driver education school until the applicant has filed with the Secretary of State a certificate showing that the applicant is covered

by an automobile bodily injury and property damage liability insurance policy insuring against any legal liability in accordance with the terms of the policy for personal injury or death of any one person in the sum of \$100,000 and for any number of persons in the sum of \$300,000 and against property damage in the sum of \$100,000 arising from the operation of any vehicle being used in a commercial driver education school. In lieu of that insurance, the applicant may file with the Secretary of State a bond or bonds issued by a surety company authorized to do business in the State in the amount of at least \$100,000 on account of injury to or death of one person and subject to such limits as respects injury to or death of one person, of at least \$300,000 on account of any one accident resulting in injury to or death of more than one person and of at least \$100,000 for damage to property of others. Failure to comply with this subsection is grounds for suspension or revocation of a driver education school license.

B. A vehicle used as a training vehicle must be maintained in safe mechanical condition at all times. Each vehicle must be equipped with dual-control foot brakes and, if the vehicle is not equipped with an automatic transmission, dual-control clutch pedals. While being used in actual instruction, a vehicle must be equipped with an identification sign listing the name of the school and a student driver sign.

The following vehicles are exempt from this subsection, if they are equipped with dual controls as required in this paragraph and comply with any other applicable requirements:

(1) A vehicle that is being used to instruct a person with a disability and is specially equipped for use by a person with a disability; and

(2) A vehicle that is being used to instruct a person in possession of a valid Maine driver's license or instruction permit not provided by the driver education school.

4. Driver education teacher and instructor license requirements. With assistance from the Technical Review Panel established in subsection 6, the Secretary of State shall adopt rules governing the issuance and renewal of driver education teacher and instructor licenses. In addition to the requirements established by rule, each applicant must meet the following requirements:

A. The applicant must be at least 21 years of age and have a high school diploma or its equivalent;

B. The applicant must have at least 4 years of driver experience as a licensed operator;

C. The applicant may not have had a license revoked pursuant to chapter 23, subchapter V within the preceding 6-year period;

D. The applicant may not have had an OUI as defined in section 2401, subsection 8 within the preceding 6-year period;

E. The applicant must pass an examination consisting of a knowledge, vision and road test in the type of vehicle for which the license is to be used as prescribed by the Secretary of State; and

F. The applicant must complete an educational program prescribed by the Secretary of State.

5. License fees. Except as provided in section 1355, license fees must be paid to the Secretary of State and deposited to the Highway Fund. The following provisions and fees apply.

A. The fee for a commercial driver education school license is \$250.

B. The fee for an instructor license is \$125.

C. Each license issued pursuant to this section expires one year from the date of issuance. The fee for the renewal of a commercial driver education school license is \$250. The fee for the renewal of an instructor license is \$125.

D. A noncommercial driver education school is exempt from the license fees required in this subsection. A driver education teacher employed by and providing driver education only in a school exempt from license fees in accordance with this paragraph is also exempt from license fees required in this subsection.

This subsection is repealed December 31, 1996.

5-A. License fees. Except as provided in section 1355, license fees must be paid to the Secretary of State and deposited into the Highway Fund. The following fees apply.

A. The fee for a driver education school license is \$125.

B. The fee for a driver education teacher or instructor license is \$80.

C. Each license issued pursuant to this section expires one year from the date of issuance. The fee for the renewal of a driver education school license is \$125. The fee for the renewal of a driver education teacher or instructor license is \$80.

D. A noncommercial driver education school that offers driver education for course credit and does not charge a fee for driver education is exempt from the license fees required in this subsection. A driver education teacher employed by and providing driver education only in a school exempt from license fees in accordance with this paragraph is also exempt from license fees required in this subsection.

This subsection takes effect January 1, 1997.

6. Secretary of State duties. The Secretary of State has the following duties.

A. The Secretary of State shall establish the Technical Review Panel that includes representatives from the Department of Education, the Department of Public Safety, the American Automobile Association, the Maine Highway Safety Commission, law enforcement agencies, the insurance industry and a driver education teacher and instructor. The Technical Review Panel shall assist the Secretary of State in developing curriculum and teacher and instructor training and certification.

B. The Secretary of State shall develop and implement a standardized driver education curriculum that establishes minimum standards for instructional goals and learning objectives.

C. The Secretary of State shall develop and implement training programs for the licensing and relicensing of driver education teachers and instructors.

D. The Secretary of State shall monitor classroom and behind-the-wheel instruction for compliance with statutory and regulatory requirements.

E. The Secretary of State shall develop and implement a system to monitor the driving records of individuals who complete a driver education program to assist in the evaluation of the effectiveness of driver education instruction and curriculum.

F. The Secretary of State shall inspect driver education schools to review records, facilities, operating procedures, quality of instruction and compliance with statutory and regulatory requirements.

G. The Secretary of State shall investigate written complaints regarding the activities of driver education schools and driver education teachers and instructors.

7. Penalties. A person who conducts driver education, operates a driver education school or acts as a driver education teacher or instructor without a license is guilty of a Class E crime. The State may bring an action in Superior Court to enjoin any person from violating this chapter, regardless of whether proceedings have been or may be instituted in the Administrative Court or whether criminal proceedings have been or may be instituted.

8. Suspension or revocation of license; hearings. The Secretary of State may suspend, revoke or refuse to issue or renew a driver education school or driver education teacher or instructor license for noncompliance with statutory and regulatory requirements. A person refused a license or whose license is suspended or revoked may request a hearing with the Secretary of State. A requested hearing must be conducted pursuant to chapter 23, subchapter II, article 3.

9. Insurance for graduates. Rating bureaus or independent insurers as recognized by the Superintendent of Insurance may grant an automobile insurance discount for driver education school graduates.

Sec. 16. 29-A MRSA §1355 is enacted to read:

§1355. Collection of license fees

All fees collected for the 1996 license year must be deposited in the Highway Fund except \$2,413 that is allocated to the Department of Professional and Financial Regulation for the purpose of administering the driver education program established in section 1354 until May 1, 1996.

Sec. 17. 32 MRSA c. 95, as amended, is repealed.

Sec. 18. Driver education programs; impact on licenses; certifications in effect. All licenses or certifications issued pursuant to the authority in the Maine Revised Statutes, Title 20-A, chapter 316 or Title 32, chapter 95 that are in effect on the effective date of this Act continue to be valid under the terms of issuance until the licenses or certifications expire or are rescinded, amended, revised or revoked by the proper authority.

Sec. 19. Driver education programs; transition provisions. All existing rules, regulations and procedures in effect, in operation or promulgated by the Department of Education regarding the administration of driver education programs in public secondary schools, approved private secondary schools, applied technology centers, applied technology regions and adult education programs conducted pursuant to the Maine Revised

Statutes, Title 20-A, chapter 316 are in effect and continue in effect until rescinded, revised or amended by the proper authority.

All existing contracts, agreements, compacts, leases, authorizations, notes or bonds that had been in effect on the effective date of this Act continue to be valid under the terms of issuance until they expire or are rescinded, amended, revised or revoked by the proper authority.

All records or copies of records regarding the administration and operation of driver education programs in public secondary schools, approved private secondary schools, applied technology centers, applied technology regions and adult education programs conducted pursuant to the Maine Revised Statutes, Title 20-A, chapter 316 within the jurisdiction of the Department of Education must be transferred to the Secretary of State on or before the effective date of this Act.

The Secretary of State is the successor in every way to the powers, duties and functions of the former Board of Commercial Driver Education within the Department of Professional and Financial Regulation.

All existing rules, regulations and procedures in effect, in operation or adopted in or by the Board of Commercial Driver Education within the Department of Professional and Financial Regulation or any of its administrative units or officers, remain in effect and continue in effect until rescinded, revised or amended by the Secretary of State.

All existing contracts, agreements and compacts in effect on the effective date of this Act in the Board of Commercial Driver Education within the Department of Professional and Financial Regulation continue to be valid under the terms of issuance until those existing contracts, agreements and compacts expire or are rescinded, amended, revised or revoked by the proper authority.

All records, property and equipment previously belonging to or allocated for the use of the former Board of Commercial Driver Education within the Department of Professional and Financial Regulation become on the effective date of this Act part of the property of the Secretary of State.

All accrued expenditures, assets, liabilities, balances of funds, transfers, revenues or other available funds of the former Board of Commercial Driver Education must be reallocated to the Secretary of State.

Sec. 20. Allocation. The following funds are allocated from the Highway Fund to carry out the purposes of this Act.

	1995-96	1996-97
SECRETARY OF STATE, DEPARTMENT OF THE		
Administration - Motor Vehicles		
Positions - Legislative Count	(2.0)	(2.0)
Personal Services	\$11,790	\$63,580
All Other	5,198	10,397
Capital Expenditures	9,500	
Provides funds for one Driver License Examiner position, one Clerk IV position and general operating expenses required to administer the driver education programs.		
DEPARTMENT OF THE SECRETARY OF STATE TOTAL		
	\$26,488	\$73,977

Sec. 21. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

	1995-96	1996-97
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF		
Board of Commercial Driver Education		
Personal Services	(\$349)	(\$420)
All Other	(6,061)	(7,490)
Deallocates funds to reflect the transfer of regulatory responsibility for commercial driver education to the Secretary of State.		
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION TOTAL		
	(\$6,410)	(\$7,910)

Sec. 22. Effective date. This Act takes effect January 1, 1996, except that the transfer of driver education programs to the Secretary of State takes effect May 1, 1996.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective December 7, 1995, unless otherwise indicated.