

REGULATION OF COMMERCIAL DRIVING SCHOOLS AND INSTRUCTORS

**Submitted by the
Colorado Department of Regulatory Agencies
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EXECUTIVE SUMMARY

This sunset report recommends allowing the provisions of article 15, title 12 to terminate. Adoption of this recommendation will leave in statute self-enforcing regulation of commercial driving schools. The statutory provisions not scheduled to repeal are:

1. **Subsection 101 - Definitions.** Defines terms including commercial driving instructor and commercial driving school;
2. **Subsection 114 - Equipment of vehicles.** Requires that all vehicles used for driver training meet certain requirements such as dual controls for brake and clutch;
3. **Subsection 116 - Rules and Regulations.** Authorizes the Department of Revenue to promulgate rules and regulations to carry out the provisions of the article. Specific authority is granted to prescribe the content of instruction, the form of contracts used by schools and records that must be maintained by schools; and,
4. **Subsection 120 - Violations - penalty.** Provides that violation of the article is a misdemeanor punishable by a fine of not more than \$500 or by imprisonment in county jail for not more than 30 days or both.

The Department of Regulatory Agencies (DORA) found insufficient public harm or potential for harm to justify the existing levels of regulation. There have been no disciplinary actions against licensees, insignificant failure rates on examinations, and no complaints from consumers against either commercial driving schools or their instructors.

The present level of regulation is extensive. It includes regulation of schools and their curricula, examination of school facilities and equipment, and licensing of instructors, including examinations.

In addition, the Department recommends that the Division repeal its rules and regulations promulgated pursuant to article 15 of title 12. The changes wrought by the sunset of most of the statute will render many of the rules obsolete, such as the requirements for an instructor's license and rules pertaining to inspection of commercial driving school facilities. In addition, some existing rules may be burdensome to businesses and should not be repromulgated in the new rules. Rule review by the Office of Regulatory Reform in the Department of Regulatory Agencies will aide in bringing these rules up to date and determining that Department of Revenue regulations are not burdensome to commercial driving schools. The Department of Revenue should promulgate new rules in light of its reduced mission.

I. THE SUNSET PROCESS

The regulation of Commercial Driving Schools will terminate on July 1, 1994 unless continued by the General Assembly pursuant to the Sunset Act, C.R.S. 24-34-104 (22). The purpose of this sunset report is to evaluate the performance of the Department of Revenue based on statutory evaluation criteria which are attached as an Appendix of this report. The central question this report seeks to answer is whether the continuation of this regulatory program is necessary and beneficial to the public health, safety and welfare of the people of Colorado, and whether, if the program is continued, significant changes are necessary to improve agency operations and thereby enhance the public interest.

This sunset review is unusual because the statutory repealer, section 12-15-121, C.R.S., specifically exempts from repeal four subsections of the statute. Subsections 101, 114, 116 and 120 are not subject to repeal, and, therefore, not subject to sunset review. The impact of the remaining regulatory language will, however, be evaluated as part of this review. (Please see the discussion on page 10 of this report).

The Department of Regulatory Agencies, in conducting this review, contacted the Department of Revenue (DOR), the Department of Education (DOE), owners of commercial driving schools in Colorado, federal officials and officials in other states.

II. THE COMMERCIAL DRIVING SCHOOL INDUSTRY

What are commercial driving schools?

A commercial driving school is defined by Colorado statute to be any business or person who provides instruction in motor vehicle operation for compensation. In general terms, an individual will contract with a commercial driving school to provide, for a fee, a combination of classroom instruction and behind the wheel instruction.

There are 16 commercial driving schools in Colorado at this time with an additional seven branch offices. The 16 schools employ about 85 instructors total. Staffing levels may fluctuate at any given time. The largest commercial driving school in Colorado currently is the American Automobile Association driving school. That association has four offices and employs about 40 instructors.

Commercial driving schools have been regulated for 22 years. Colorado began regulation of this industry in 1970 and it has been regulated continuously since that time. It is difficult to pinpoint precisely why regulation was initiated. Some sources interviewed for this report believe that there was a general, nationwide effort to improve the quality of instruction and the credentials of persons providing that instruction.

Related to that nationwide effort, driver education was included in the 1966 Federal Highway Safety Act, Public Law 89-564. The Act gives the Secretary of Transportation authority to improve highway safety based on the assumption, stated in the introduction of the standards, "that public and private driver education courses need to be more widely available." The federal standards speak to a variety of other driver safety issues including motorcycle safety, alcohol use, and motor vehicle inspection.

Regulation of driving schools is the responsibility of the Department of Revenue. Commercial driving schools and instructors in Colorado are regulated by the Motor Vehicle Division of the Department of Revenue. The Motor Vehicle Division's Driver License Administration Section is charged with enforcement of the regulatory program.

The Division also administers the Commercial Driver's License Program. Commercial driver's licenses are issued in accordance with the federal "Commercial Motor Vehicle Safety Act of 1986." Essentially, such a license is needed in order to operate a commercial motor vehicle designed to transport passengers or property.

The Division does not regulate schools that train drivers of these commercial trucks or other vehicles (a commercial driver's license is required to transport sixteen or more passengers). It is helpful to keep in mind that the regulatory program under review only regulates schools and instructors who teach operation of standard automobiles.

III. THE REGULATORY SCHEME

Commercial Driving Schools. In order to operate a commercial driving school in Colorado, one must provide certain proof and meet certain requirements. Among those requirements are: pay an appropriate fee; provide evidence of liability insurance on driver's education vehicles; pass an inspection of the classroom facilities and of the automobile(s) used in driver's education; and, applicants for a commercial driving school license must maintain a place of business in the state, and must be at least twenty-one years of age. Applicants must pay a \$100.00 fee.

At least one employee of the school must be a licensed commercial driving instructor. The school must have at least one vehicle registered to the school and insured for driver training purposes.

Insurance Requirements. Every commercial driving school must have insurance on all motor vehicles used in driving instruction. Insurance must cover the school, instructors, students, and any passengers.

Rules and regulations require that schools maintain coverage of not less than \$100,000 because of bodily injury or death of one person in any one accident and not less than \$300,000 because of bodily injury or death of two or more persons in any one accident.

If a policy of insurance is canceled, both the insurance company and the licensee are required to notify the Department of Revenue. The commercial driving school is required to cease using any vehicle used for driver training if the insurance for the vehicle is not in force.

Driver Training Vehicle Requirements. In addition to meeting all requirements of Article 4 of Title 42 (Regulation of Vehicles and Traffic), driver training vehicles must meet other, special requirements. Foremost among these special requirements is dual controls on the foot brake and the clutch, if the vehicle is equipped with a manual transmission. Other requirements include a "kill-switch" on the instructor's side of the vehicle which enables the instructor to shut the engine off and a requirement that the vehicle be equipped with an outside rear-view mirror on both sides.

Commercial Driving Instructors. In order to receive a license to teach driver's education, one must meet certain standards and minimum qualifications.

1. Be at least twenty-one years of age, of good moral character and hold a valid Colorado license.

2. An applicant must have completed certain educational requirements in driver's education:
 - a. At least eighty clock hours of formal classroom and laboratory preparation in order to teach both laboratory and classroom components of driver's education.
 - b. At least forty clock hours of formal classroom and laboratory preparation to teach the laboratory phase only.
3. Pass an examination administered by the Department of Revenue.

Statute requires that a commercial driving instructor license is valid only when the instructor is employed by a licensed commercial driving school. Division regulations require that an instructor who ceases to be employed by a licensed school must surrender his current license to the Department of Revenue. Regulations further require that no new license shall be issued unless an instructor has surrendered all current outstanding licenses issued in his name.

Regulation of School Facilities. The Division has promulgated rules and regulations that impose certain requirements on the facilities of commercial driving schools. A school must cover an area of 300 square feet. Other requirements include seating facilities for at least 12 students, adequate chalkboards that are visible from all seats, sound projector, screen, films, and a magnetic traffic board.

The Division inspects all schools and branch offices upon opening for business. If the school passes the inspection, the Division issues a license which the school or branch must display.

Regulation of Courses of Instruction. The Division has promulgated rules requiring minimum standards of instruction. There are three standards:

1. Thirty hours classroom instruction and six hours behind the wheel if a student does not hold a valid driver's license and is between the age of fifteen years and nine months and eighteen years of age.
2. Fifteen hours classroom and six hours behind the wheel instruction if the student does not have a valid driver's license and is over the age of eighteen but has not reached age twenty-one.
3. Ten hours classroom and six hours behind the wheel instruction if the student does not have a valid driver's license and is over the age of twenty-one.

Commercial driving schools may also offer review or retraining instruction to anyone who holds a valid driver's license. There are no minimum requirements for such courses.

The Division has promulgated specific course requirements for each of the above three curricula (thirty, fifteen, and ten hours). There are twenty-nine requirements for the longest of the courses; fewer requirements for each of the other two. Some examples of course requirements shared by all three programs include basic driving skills, Colorado traffic accident problems, the value of proper seeing habits, and alcohol, drugs and driving.

Other Regulated Aspects of the Driver Training Industry. The Division regulates two other areas regarding commercial driving schools: student records and commercial driving school contracts. Regulations require that certain information be maintained for a period of three years including the type and date of instruction given and whether classroom or behind the wheel instruction was given.

Division regulations also require that all contracts between commercial driving schools and students contain basic information such as contract price per hour, disclosure of additional fees for the use of the school's vehicle during state examination for a driver's license, and a statement whether or not behind the wheel instruction will be private or conducted in groups.

IV. THE FUNCTION OF THE REGULATORY PROGRAM

Regulation of the commercial driving schools and instructors is a function of the Driver's License Section of the Division of Motor Vehicles. Administration of the program is conducted by the Commercial Driver's License Coordinator.

Examinations. The Division examines applicants for an instructor license by use of a multiple-choice written test. One must score 85% on the test in order to pass, although this passing score has never been validated. According to regulation, an applicant may take the examination three times in one calendar year.

Research conducted for this review reveals that no one appears to fail the examination or be denied a license for any other reason. DORA requested information for the past ten years but the Division of Motor Vehicles was unable to provide such records. However, the Division did report that, based on four years' data, 100% of all applicants to become licensed driving instructors have been approved. The Division reported:

1. Approximately 15 tests per year are administered;
2. Approximately three out of the 15 applicants will fail the test the first time; and,
3. Applicants who initially fail the examination will re-test and pass thus leading to a 100% pass rate.

Complaints. Complaint data for the past ten years was requested for this sunset review. The Division reported only that it receives very few complaints. It appears that most complaints have come from driving schools, not from consumers. An example of one complaint received from a driving school is that a competitor used a student's car for training rather than a marked, approved, driver training vehicle.

Disciplinary Actions Against Schools and Instructors. Again, disciplinary data and records for the past ten years were requested for this sunset review. The Division reported that in one instance involving a complaint against the Colorado Department of Education for an advertisement, the Division resolved the problem through negotiating with both parties.

V. IS REGULATION OF COMMERCIAL DRIVING SCHOOLS AND DRIVING INSTRUCTORS NEEDED?

The most significant question asked by a Sunset Review is whether or not regulation should be continued. One approach to determining whether state regulation is needed is to ask if a consumer can distinguish between a qualified and unqualified practitioner.

Commercial driving schools. State licensing of these schools is, for the most part, simply a matter of meeting certain insurance requirements, passing an inspection of the classroom facilities and a safety check of the automobiles.

The inspection of classroom facilities is burdensome and provides little that a consumer cannot determine alone. Requirements that an office or school be inspected for telephones, blackboards, charts and restrooms may not be a good use of state resources. Some requirements may be outdated, such as a requirement that a school have sound projectors and film. What if the school uses video presentations? Finally, one element of state inspection is appearance of facilities, a completely subjective standard.

Inspection of Vehicles. State regulation also provides a safety inspection of vehicles used in driver training. This is a basic inspection of a vehicle such as some states require of all vehicles, with the exception of dual controls. The Department of Revenue's inspection checklist covers 21 safety items. Among them: brakes, rear view windows, dual controls, brakes/clutch, bumpers, tires, and seat belts.

Although this type of inspection makes more sense than the school inspection, this review concludes that consumers can make an effective decision regarding the school and its vehicles. While it may be unreasonable to expect a consumer to physically inspect the vehicles, there are other alternatives.

A consumer might inquire of the school's safety record, for instance. Also, recommendations from friends and acquaintances undoubtedly play a large role in selection of a driving school. Most students are teenagers learning to drive or wishing to take driver's education for the insurance discount. It is reasonable to assume that students and parents will share experiences with schools just as they do with insurance companies.

Perhaps the most compelling reason to rely on self-regulation is that commercial driving schools are businesses. If a school operates unsafe vehicles, the company exposes itself to enormous risk, and financial and criminal liability. Regulation and annual inspection only provide a sense of security for a point in time. Once an inspection has been completed, nothing prevents a school from using any car it chooses except the financial and legal risk that accompanies such a choice.

Enforcement Activities Do Not Justify Regulation.

Another approach to justifying regulation is to argue that the regulation keeps out incompetent practitioners (primarily instructors in the instant case) and provides relief to consumers who have been harmed. There is no foundation in either case for continuing the present level of regulation of the commercial driving school industry.

Licensing of Driving Instructors. Under the present regulatory scheme, the only oversight mechanism for driving instructors is the test administered by the Department of Revenue. Driving schools themselves prepare instructors to take the examination.

The Division reports that owners of the commercial driving schools check the driving history and police records before the individual completes training and before examination. It appears, then, that most of the oversight is performed by the schools in order to be sure that they get high quality instructors. Since the success of the school depends so strongly on the quality of its people, this works as a much stronger force than state oversight.

Complaint Data and Disciplinary Actions. Complaint data provided by DOR is very sketchy. However, the information that is available indicates that very few complaints are made against schools or instructors in this industry.

Some believe that lack of complaints proves that the regulatory inspection programs are doing their jobs. Without the regulatory program, it is argued, consumer harm would occur frequently.

This sunset review suggests that lack of any significant complaints shows that consumers are sophisticated enough to understand the services that are provided. Although it is reasonable to argue that driving instructors provide a service to some consumers, there is no evidence, in general terms, that any special knowledge or skills are required to teach others to drive a car. In fact, many parents teach their children to drive using the standard "family car." This report does not attempt to argue that driving instructors ought to be unqualified. It only argues that the service being provided is common and that persons of standard intelligence can understand the level and quality of service they are receiving.

If there were significant numbers of license revocations and probations or other actions, consideration would have to be given to the possibility of public harm in a deregulated market. However, there is no data to suggest that any problems have occurred.

Have Conditions That Brought About the Original Regulation Changed?

Several members of the driver training industry who were interviewed as part of the research for this report stated that the initial regulation of the industry resulted from federal legislation passed in 1966. From this legislation, the U.S. Department of Transportation (USDOT) promulgated the Highway Safety Program Standards in 1967.

Contact with regional USDOT officials revealed that driver education is no longer a priority program listing as it appears to have been in the latter 1960's. At first glance, this means that the US Department of Transportation views other elements of highway safety, such as abuse of alcohol, as more deserving of scarce resources.

Some industry members stated that failure to regulate driver education schools would result in federal sanctions or penalties imposed on transportation funds, but this is a mistaken belief. Contact with USDOT regional officials revealed that there would be no sanctions or penalties. Therefore, any argument that state regulation is needed to comply with federal mandates is not valid.

No Relationship Between Fees and Costs.

Most occupational licensing programs assess fees based on the direct costs of the function. In this way, a regulatory program pays for itself. However, there appears to be no relationship between fees and costs in the regulation of commercial driving schools and instructors.

One factor that contributes to this is that fees are set in statute. Therefore, it takes an act of the General Assembly to change the fees. The present fee structure has apparently been in effect since 1969.

In a 1990 audit, the State Auditor estimated that the Division could collect additional revenue of about \$22,000 per year if appropriate fees, determined by consideration of direct and indirect services, were charged. Of course, the Division provides other services, but licensing of commercial driving schools and instructors is part of the Division's duties and fees ought to reflect costs. Otherwise, the licensing of commercial driving schools may be subsidized by fees collected from some other source. The fact that fees are set in statute and that there is no clear relationship between fees and costs indicates that this is a low priority program.

VI. POLICY RECOMMENDATIONS

Sunset Would Leave in Statute Self-Enforcing Regulation.

Section 12-15-121, C.R.S., sunsets most of the statute creating the regulatory oversight of commercial driving schools. Four subsections of the article are not covered by the sunset repealer.

The four subsections and highlights of their contents are:

1. **Subsection 101 - Definitions.** Defines terms including commercial driving instructor and commercial driving school;
2. **Subsection 114 - Equipment of vehicles.** Requires that all vehicles used for driver training meet certain requirements such as dual controls for brake and clutch;
3. **Subsection 116 - Rules and Regulations.** Authorizes the Department of Revenue to promulgate rules and regulations to carry out the provisions of the article. Specific authority is granted to prescribe the content of instruction, the form of contracts used by schools and records that must be maintained by schools; and,
4. **Subsection 120 - Violations - penalty.** Provides that violation of the article is a misdemeanor punishable by a fine of not more than \$500 or by imprisonment in county jail for not more than 30 days or both.

The repeal of all of the statute with the exception of these subsections would create a self-enforcing regulatory statute. Substantial requirements of the article would remain in law without requiring the examining, licensing, and inspecting that is presently built into the regulatory program.

Enforcement would remain to protect consumers because all penalties for violation of the article would continue in the law. In many regulatory programs, administrative sanctions are important tools in enforcement. However, review of this program shows that administrative sanctions are not applied to licensees (nor, for that matter, are criminal sanctions applied).

If there is concern that reduced regulation would result in harm to consumers, then it is recommended that the four subsections under discussion be left in statute. This provides a more appropriate level of protection to consumers, at the least cost and with the least amount of intrusion by the government in the market, than the current program.

Conclusion

The state of Colorado has the benefit of over twenty years experience in regulating commercial driving schools and driving instructors. The record of action by the state in protecting consumers has been that there is no record. This is not because the state has been deficient in carrying out regulatory oversight. Rather, it is because there has been no harm to consumers and, therefore, nothing to oversee, save purely administrative licensing and inspection functions.

As part of this sunset review, most commercial driving schools in Colorado were contacted and interviewed regarding the need for regulation. Everyone contacted by this Department stated that regulation should continue. While there may have been a time when a program such as this was needed (although the record does not support even this charitable assumption), such time has clearly passed. The marketplace and consumers of the 1990's are adequate watchdogs of this industry. A representative of the Division that regulates the industry stated that these schools are professional organizations in a competitive business; they must endeavor to create satisfied customers if they are to succeed. All that must be added to that analysis is that these factors are more powerful motivators than state inspections, examinations, and licenses.

Recommendation 1: The General Assembly should allow the regulation of commercial driving schools and instructors to sunset on July 1, 1994.

RULES SHOULD BE REPEALED AND REPROMULGATED

The Division has promulgated numerous rules and regulations to augment the statutory provisions. Many of these regulations will be made obsolete if the recommendations of this report are adopted. In particular, rules pertaining to licensing instructors and inspection of facilities will no longer be needed.

In addition, some other rules may be burdensome to business and not needed to protect the public health, safety and welfare. For instance, rules that require chalkboards and seats for twelve students may be determined as unnecessary without jeopardizing the public safety.

Recommendation 2: Repeal all rules and regulations promulgated pursuant to article 15 of title 12.

APPENDIX

SUNSET STATUTORY EVALUATION CRITERIA

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices of the Department of Regulatory Agencies and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.