

CHAPTER 110.

MOTOR VEHICLE DEPARTMENT.

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110.01 Motor vehicle department. (1) There is created a motor vehicle department in charge of a commissioner appointed by the governor with the advice and consent of the senate. On the effective date of this amendment (1951) the term of office of the incumbent commissioner shall expire and the office of commissioner shall be vacant. Thereupon appointment shall be made of a successor commissioner for a term commencing on the date of appointment and ending January 21, 1953. Thereafter successor commissioners shall be appointed for terms of 6 years. Each commissioner shall continue to hold office until his successor is appointed and qualified.

(2) There shall be within the motor vehicle department the following divisions:

- (a) Registration and licensing;
- (b) Inspection and enforcement;
- (c) Highway safety promotion.
- (d) Driver control.

(3) Each such division shall be in charge of a director who shall be paid the annual salary determined for such positions by the bureau of personnel.

(4) Except in those cases where powers, duties and functions are allocated by law, the commissioner shall allocate the powers, duties and functions transferred and vested in the motor vehicle department to the respective divisions as is appropriate and in the interest of highest efficiency and economy. The driver control division shall administer the operator's license law and the safety and financial responsibility law.

(5) The motor vehicle department shall have an official seal, with the words Motor Vehicle Department of Wisconsin engraved thereon, which shall be used to authenticate all papers requiring authentication.

(6) The commissioner of the motor vehicle department, and the directors of the divisions, shall each take and file the official oath and file a bond in such sum and with such sureties as the governor shall prescribe. The premiums on such bonds shall be paid out of the appropriation to the department.

(7) The commissioner and directors shall, in addition to their salary, be paid all amounts actually and necessarily incurred by them in the performance of their official duties.

(8) The commissioner and directors shall be appointed on the basis of recognized interest, training and experience and possess a knowledge and understanding of the powers, duties and functions of their respective offices.

(10) The motor vehicle department shall keep its office at the capitol, and shall be provided with suitable rooms, furniture, stationery, books, maps and supplies by the director of purchases.

History: 1951 c. 97 s. 38; 1951 c. 319 s. 231; 1955 c. 226.

Ch. 405, Laws 1949, in so far as it makes an allowance to the present commissioner of motor vehicles for performing additional duties imposed by ch. 85, Laws 1949 (passing upon applications of epileptics for drivers' licenses), is invalid because the new duties are germane to the office and the allowance would constitute an increase in compensation during his term of office. 38 Atty. Gen. 445.

110.02 Deputy commissioner. The commissioner shall appoint the director of the division of registration and licensing his deputy to act in his name, place and stead during his absence or disability.

110.035 Additional powers and duties. The commissioner of the motor vehicle department shall have the power and it shall be his duty to prescribe reasonable rules and regulations setting forth the conditions under which school busses may be operated; a "school bus" being defined to be any motor vehicle transporting, under written contract with any school or school district, children to and from school, or used in transporting school basketball, baseball or football teams and school bands to and from such school or district.

See note to 40.53, citing 41 Atty. Gen. 227.

110.036 Advisory safety committees. The commissioner of the motor vehicle department may appoint advisors who shall, without compensation other than the reimbursement of necessary expenses, advise the safety division of the motor vehicle department.

110.06 Rules and regulations. (1) The commissioner of the motor vehicle department shall have the power to make such reasonable and uniform orders, rules and regulations not inconsistent with law as he may deem necessary to the discharge of the powers, duties and functions vested in such department. He shall also have power and authority to prescribe forms for applications, notices and reports required by law to be made to the department or which may be deemed necessary to the efficient discharge of all such powers, duties and functions.

(3) All orders, determinations, rules and regulations made by the commissioner of the motor vehicle department under the powers and authority transferred to him by this chapter shall have the same force and effect as is provided for similar orders, determinations, rules and regulations of any department, made under the powers transferred hereby, and violations thereof pertaining to chapter 85 shall be punished as provided by section 85.01 (12), to chapter 194 as provided by section 194.17, and to section 110.10 as provided by section 110.10 (13).

(4) The orders and determinations, rules and regulations made by the commissioner shall be subject to review in the manner provided in chapter 227.

History: 1955 c. 10, 221.

110.07 Traffic officers; powers and duties. (1) The commissioner of motor vehicles shall, in the years 1955 and 1956, increase the number of traffic officers in the employ of the department at the rate of 90 men per year. Such traffic officers, in addition to the director of the enforcement division of the department and the traffic officers authorized by ch. 326, laws of 1953, shall constitute the state traffic patrol, to enforce and assist in the administration of the provisions of chs. 85, 110 and 194, or orders, rules or regulations issued pursuant thereto. Such traffic officers shall have the powers of sheriff in the enforcing of the above chapters and sections and orders, rules or regulations issued pursuant thereto. Such traffic officers shall have authority to enter any place where vehicles subject to the provisions of chs. 85, 110 and 194 are stored or parked at any time to examine such vehicles, or to stop such vehicles while en route at any time upon the public highways to examine the same and make arrests for all violations thereof. It shall be the duty of all justices of the peace, judges, district attorneys and law enforcement officers to assist in enforcing the provisions of chs. 85, 110 and 194, and orders, rules or regulations issued pursuant thereto, and law enforcement officers shall report to the motor vehicle department all arrests and disposition of court cases involving the aforementioned statutes.

(2) The traffic officers employed pursuant to the provisions of this section shall constitute a state traffic patrol to assist local enforcement officers wherever possible in the regulation of traffic and the prevention of accidents upon the public highways. No state traffic officer shall be used in or take part in any dispute or controversy between employer or employe concerning wages, hours, labor or working conditions; nor shall any such traffic officer be required to serve civil processes.

(4) Any of the 15 additional traffic officers provided for in sub. (3) of the statutes of 1949 for the biennium 1949-1951 and employed for the biennium 1951-1953 under proper budget authority but not classified as traffic officers and who, on July 1, 1953, are in the state service, shall receive all the benefits of the civil service classification of traffic officers for the biennium 1951-1953.

History: 1953 c. 326; 1955 c. 10, 397.

State traffic patrol has no authority to make complaints and testify in actions for violation of county or local traffic ordinances. 43 Atty. Gen. 36. Neither the commissioner nor the director of the division of inspection and enforcement of the motor vehicle department has the power of arrest conferred on the officers of the state traffic patrol by (1). 44 Atty. Gen. 53.

110.08 State operator's license examiner system. (1) The motor vehicle department shall employ not to exceed 85 persons whose duty it shall be to give operator's license examinations as prescribed by s. 85.08 (12). One of the persons so employed shall be the chief examiner. He shall have general supervisory powers over the other examiners and shall be responsible for the training of the other examiners and for assigning and co-ordinating their operations and functions. Not to exceed 5 of the persons employed shall be intermediate supervising examiners. The department may contract for specialists in driver's license examining to augment the department training program for examiners. The department shall train and assign sufficient examining personnel to carry out an intensive driver improvement program including re-examination and personal interview of problem drivers.

(2) State examiners in the employ of the state on July 1, 1955, shall become part of the state examiner system authorized by this section. Beginning July 1, 1955, additional examiners shall be employed at a rate calculated to bring the state examiner system up to or near its maximum authorized strength by July 1, 1956. After July 1, 1957, all examinations for operator's licenses and permits shall be given by state examiners.

(3) The director of the driver control division shall employ state examiners and clerical personnel at local examining centers, under ch. 16.

History: 1955 c. 226.

110.09 Mobile home dealers regulated. (1) No person shall manufacture, sell or distribute mobile homes in the state of Wisconsin unless first licensed to do so by the motor vehicle department as herein provided.

(2) Application for license and renewal license shall be made to the motor vehicle department on such forms as it shall prescribe and furnish and shall be accompanied by the annual license fee of \$50. License shall expire on December 31 of each year and applications for renewal licenses shall be made on or before December 15 next preceding expiration of the current license year.

(3) A license shall be issued only to persons whose character, fitness and financial ability, in the opinion of the licensing agency, is such as to justify the belief that they can and will deal with and serve the buying public fairly and honestly, will maintain a permanent office and place of business and an adequate service and parts department during the license year, and will abide by all the provisions of law and lawful orders of the department.

(4) Upon payment of a fee of \$2 the motor vehicle department shall register and issue dealer license plates for mobile homes owned by a licensee, and such mobile home bearing such license plates may be lawfully operated upon the public highways of the state. Such registration shall expire on December 31 of each year.

(5) A licensee shall conduct the licensed business continuously during the license year.

(5m) Any person who shall violate any provision of this section shall be fined not less than \$25 nor more than \$100 for each offense.

(6) The department may suspend or revoke a license for any failure of the licensee to comply with statutory law governing mobile home dealers or the rules and regulations of the department or to meet the standards set forth in sub. (3); but no order suspending or revoking a license shall be made before a hearing at which the licensee shall be given opportunity to be heard.

History: 1951 c. 529; 1953 c. 563.

110.095 Mobile home salesmen regulated. (1) No person shall engage in the business of selling mobile homes in this state without a license therefor from the state motor vehicle department. If a mobile home dealer acts as a mobile home salesman he shall secure a mobile home salesman's license in addition to the license for engaging as a mobile home dealer.

(2) Applications for mobile home salesman's license and renewals thereof shall be made to the motor vehicle department on such forms as it shall prescribe and furnish and shall be accompanied by the annual license fee of \$2. The application shall require such pertinent information as the motor vehicle department shall require. Licenses shall expire, unless sooner revoked or suspended, on December 31 of each year and application for renewal licenses shall be made by December 15 next preceding expiration of the current license year.

(3) Every licensee shall carry his license when engaged in his business and display the same upon request. The licensee shall name his employer, and in case of a change of employer, the salesman shall immediately mail his license to the licensor who shall indorse such change on the license without charge.

(5) The provision of s. 218.01 (3) relating to the denial, suspension and revocation of a motor vehicle salesman's license shall apply to the denial, suspension and revocation of a mobile home salesman's license so far as applicable.

(6) The provisions of s. 218.01 (3) (g) and (5) shall apply to this section, mobile home sales practices and the regulation of cabin trailer mobile home salesmen, as far as applicable.

History: 1951 c. 529; 1953 c. 61, 563.

110.10 Itinerant merchant trucker. (1) **DEFINITIONS.** In this section, unless context otherwise requires:

(a) "Person" means a natural person, firm, partnership, association, corporation, trust, lessee, trustee or receiver, as the context may require.

(b) The words "sales", "sell", "selling" or any grammatical forms thereof mean and include barter, trade or exchange in addition to the usual and ordinary meaning of said

words; and this definition shall not be construed to limit any meanings of said words but shall extend such meanings.

(c) "Department" means the motor vehicle department.

(d) "Itinerant merchant trucker" means any person who buys or offers to buy or sells or offers to sell, in this state, at wholesale or retail any personal property, and transports the same upon any highway by use of a motor truck or other vehicles, and who at any time transports in said motor truck or other vehicle a net load exceeding three thousand pounds, except as herein otherwise provided.

(e) "Established place of business" means any permanent warehouse, building or structure, at or from which a permanent business is carried on as such in good faith and not for the purpose of evading the provisions of this section, and at which stocks of the property being transported are produced, stored or kept in quantities reasonably adequate for, and usually carried for, the requirements of such business, and which business is carried on regularly during normal business hours throughout the year, and shall not mean residences, tents, temporary stands or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement.

(2) EXCEPTIONS. The term "itinerant merchant trucker" as used in this section shall not mean or include the following:

(a) A person using a motor truck or other vehicle owned by him, whether operated by him or his agent, for the transportation of milk, dairy products, grain, fruits, vegetables, live stock, poultry or other agricultural products, produced by him, whether his residence be within or without this state.

(b) A person transporting property owned by him in a motor truck or other vehicle owned or leased by him, his agent or employe, whether operated by him, his agent or employe, when such transportation is incident to a business conducted by him at or from an established place of business operated by him, either within or without this state, and when such property is being transported to or from such established place of business.

(c) A person transporting property for his own consumption or use.

(d) A person duly licensed under the provisions of sections 129.01 to 129.04.

(e) Any person to whom a license has been issued pursuant to s. 78.09 or 78.47.

(3) PROOF OF EXEMPTION. (a) No person shall be exempt from the requirements of this section, except a person duly licensed under the provisions of s. 78.09 or 78.47 or ss. 129.01 to 129.04, by reason of the provisions of sub. (2), of this section unless he or the driver of the motor vehicle upon which his property is being transported shall, upon the request of any person, officer or judge charged with the enforcement of any of the laws of this state, sign and swear to under oath before some person authorized by the laws of this state to swear persons under their oath, and deliver to such person, officer or judge a statement in writing clearly showing that the person claiming the exemption is entitled to one or more of the exemptions provided in this section.

(b) If the person claiming the exemption is not a natural person such statement shall be signed and sworn to by some natural person authorized to act for it or by the driver of the motor vehicle carrying the property. Such statement shall not be sufficient unless it shall contain in addition to any other necessary facts, the following of such facts as are material to the particular exemption claimed: The name of the person claiming the exemption and the name of the person signing such statement, and the business and residence addresses of both; where and when the products described in paragraph (a) of subsection (2) of this section were produced, and the place where they are to be delivered if known; the location of the established place of business, how long there established, and whether the premises where located are owned or leased by the person claiming the exemption; the kind of business there conducted; if the property has been sold prior to the commencement of the transportation, the name and address of the purchaser. The person, officer or judge receiving such statement shall promptly forward it to the department. Any person knowingly making any false, material statement shall be guilty of perjury and shall, upon conviction thereof be punished as provided by statute.

(c) A person licensed under s. 78.09 or 78.47 or ss. 129.01 to 129.04 and complying therewith, shall not be required to make the affidavit provided herein.

(4) LICENSE REQUIRED. No person shall engage in business or use any motor vehicle in this state as an itinerant merchant trucker, as defined in subsection (1) hereof without obtaining from the department the license required by this section.

(5) APPLICATION FOR LICENSE; FEES. An application for a license to engage in business as an itinerant merchant trucker shall be made to the department upon forms to be prepared by the department. A separate application and license shall be required for each motor vehicle to be operated. In addition to any other essential information required by the department, such application shall state the following: The name and legal status

of the applicant, his business address; if a natural person, his residence address; if not a natural person, the names and business and residence addresses of the principal and managing officers, agents or partners; a general description of the business to be conducted and the area in which it will be conducted; an exact description of the motor vehicle to be used including the make, type, manufacturer's rated loading capacity, motor number, serial number, place where registered, and registration or license number. The fee for each license shall be two hundred dollars annually for the fiscal year beginning with July first and ending on June thirtieth. The proper fee shall accompany the application. The application shall be signed and sworn to by the applicant if a natural person; if not a natural person, by some officer or partner authorized to act for him.

(6) INSURANCE POLICIES AND BONDS REQUIRED. No such license shall be issued by the department until the applicant shall have filed with each application, and the same shall have been approved by the department, the following insurance policies and bonds issued by an insurance company or bonding company authorized to do business within this state. Every insurance policy and bond filed with the department under the provision of this section shall contain an indorsement or provision that the same shall not be canceled by the obligor, shall not expire, and shall not become reduced in amount, until ten days after notice thereof by registered United States mail has been sent to the department. Upon receipt of such notice the department shall immediately send the itinerant merchant at his last known address by registered United States mail, return receipt requested, a notice advising him that unless a new insurance policy or bond is filed prior to the time of such cancellation, expiration or reduction becomes effective, the license of such itinerant merchant shall be revoked at the time such cancellation, expiration or reduction becomes effective. If a new policy or bond is not filed in accordance with such notice the department must revoke said license at said time.

(a) A good and sufficient bond, policy of insurance or other contract in writing in such form and containing such terms and conditions as may be approved by the department under which such indemnitor shall be directly liable for and shall pay all damages for injuries to or for the death of persons or for damages to or destruction of property for the negligent operation of such motor vehicle in an amount not less than \$10,000 to or for any one person and \$20,000 for one accident, and up to \$10,000 for damage to or destruction of property in any single accident.

(b) A bond in the penal sum of five hundred dollars in such form as may be prescribed by the department, conditioned to pay any taxes, and penalties and interest thereon, due to this state or any governmental subdivision thereof, by reason of the failure of the itinerant merchant trucker to pay any such taxes.

(c) A bond in the penal sum of one thousand dollars in such form as may be prescribed by the department, for the purpose of protecting the public against fraud, conditioned upon the delivery of honest weights, measures or grades, if the commodities handled by the itinerant merchant trucker are those customarily sold by weights, measures or grades, accurate representation as to quality or class of such commodities, the actual payment of checks, drafts or other obligations delivered by the itinerant merchant trucker in exchange for the purchase of commodities, and conditioned to pay any judgment that may be obtained against the itinerant merchant trucker for civil liability arising out of the conduct of such business.

(7) PROCEDURE. Any person having a cause of action against the itinerant trucker arising out of the matters described in paragraphs (a) and (b) of subsection (6) of this section may join such itinerant merchant and the surety on his bond in the same action, or may sue such surety without joining such itinerant merchant trucker in the action if the itinerant merchant trucker is deceased or if it is impossible to obtain jurisdiction of his person within the state where the cause of action arose.

(8) DEPARTMENT AGENT TO ACCEPT SERVICE. (a) Before a license shall issue the applicant shall sign and file with the department an irrevocable power of attorney appointing the department his agent to accept service of summons for all causes of action against him arising out of the conduct of his business as an itinerant merchant trucker and the operation of the motor vehicle described in the application.

(b) Service of summons in all causes of action described in this section may be made upon the itinerant merchant trucker and upon the bonding company or insurance company issuing his bonds and insurance policies by sending three copies of such summons to the department by registered United States mail; the department shall immediately upon receipt thereof indorse upon each copy the date and hour received and shall file one copy, whereupon service of said summons shall be deemed to be completed upon such itinerant merchant trucker and such bonding company and such insurance company as of the date of such filing. The department shall on the same day send to such itinerant merchant

trucker and such bonding or such insurance company the other copies of said summons so received by registered United States mail, return receipt requested. The venue of such action may be laid in any county of this state in which said action arose, or in any other place authorized by law.

(9) LICENSES; ISSUED; TRANSFER; REVOCATION. (a) Upon the approval and issuance of the application and upon compliance with the terms of this section, the department shall issue to the applicant a license as an itinerant merchant trucker. Such license shall be numbered, shall specifically describe the itinerant merchant trucker and the motor vehicle as they are described in the application, and shall at all times be carried in the cab of the motor vehicle described and shall at all times be subject to inspection by any person. The department shall also issue to the itinerant merchant trucker a license plate containing the same number as the license, of distinctive color and size, which shall be displayed on the rear of the motor vehicle described in the license.

(b) No license or license plate issued pursuant to this section may be sold or transferred, and no license or license plate may be transferred from one vehicle to another.

(c) Upon such notice and hearing as the department may deem proper, it may revoke any license issued under the provisions of this section for failure to comply with any of the laws of this state, or in case any judgment recovered against any itinerant merchant trucker remains unpaid for a period of sixty days and such judgment is not superseded as bond upon appeal from such judgment.

(10) DEPARTMENT RULES. The department shall make and enforce such rules for the administration of this section as may be necessary and proper.

(11) CUSTODY OF VEHICLES UNLAWFULLY USED. Any motor vehicle operated in violation of this section shall be kept in the custody of any person authorized to enforce any of the laws of this state, and shall not be operated except under his authority and solely for the purpose of taking it to the nearest convenient place of custody, until the provisions of this section have been complied with.

(12) POWERS OF LOCAL AUTHORITIES. Nothing in this section shall be construed to repeal or amend any statute delegating authority to any county or municipal corporation to license, tax or regulate itinerant merchant truckers.

(13) PENALTY. Any person violating any provisions of this section shall be guilty of a misdemeanor, except as herein otherwise provided, and shall upon conviction thereof be punished by a fine of not less than one hundred dollars and not more than five hundred dollars or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment.

(14) DUTIES OF DISTRICT ATTORNEY AND ATTORNEY-GENERAL. (a) The attorney-general, or any district attorney, may commence an action in any court of competent jurisdiction, in the name of the state as plaintiff on the relation of the attorney-general or such district attorney, to enjoin any person from violating any of the provisions of this section. Such action may be maintained upon due showing that the defendant has violated or is threatening to violate any of the provisions of such section.

(b) Upon being presented with the petition of any resident of this state, verified upon oath, stating facts showing that such resident has reasonable grounds to believe that some person has violated or is threatening to violate any of the provisions of this section, it shall be the duty of any district attorney of this state to commence such action for injunction within his county against the person complained of in such petition.

History: 1951 c. 261 s. 10; 1953 c. 631; 1955 c. 316.

A trucker who buys scrap iron or other so-called junk, then resells same to a junk dealer, and who himself has no junk yard, must have a license if he at any time carries a vehicle net load exceeding 3,000 pounds and has no established place of business (see 110.10 (2) (b)), and is not licensed as a peddler or a motor fuel wholesaler (see 110.10 (2) (d) and (e)). 41 Atty. Gen. 4.

110.16 Functions under chapter 129. (2) The motor vehicle department shall superintend and enforce the collection of all license fees required to be paid to the state under ch. 129, or under any act relating to truckers, hawkers, peddlers, transient merchants or showmen.

(3) (a) The department may deputize subordinates of the department to collect the license fees required by chapter 129.

(b) Such deputies may, when there is reasonable ground to suppose that license fees or forfeitures which are imposed by chapter 129 will become otherwise uncollectible, seize and detain any vehicle or any animals attached thereto, or any handcart, or any of the merchandise conveyed thereby, or any trunk, box or pack, or goods carried by peddlers, until the summons or other process provided by law can be served and the matter is disposed of in court. Such deputies may serve any writ or process necessary to enforce

the provisions of chapter 129, in the same manner and for the same compensation as constables and sheriffs.

(c) Every such deputy before entering upon the discharge of his duties shall file his official oath and, if required by the department, shall execute a bond, with sufficient sureties, in such sum as it shall fix, conditioned for the faithful performance of his duty.

(4) (a) The department or any of its authorized deputies may, in relation to any matter within the department's power under this section, conduct hearings, administer oaths, issue subpoenas and take testimony.

(b) The witnesses and officers who subpoena them shall be entitled to the fees allowed in courts of record. Such fees shall be audited and paid in the same manner as other expenses of the department are audited and paid. No witness subpoenaed or called at the instance of any party other than the department shall be entitled to payment of fees by the state, unless the department certifies that the testimony of such witness was material.

(c) A record of all hearings shall be kept in the office of the department. All hearings shall be public.

History: 1955 c. 10.