

**217.05 History:** 1967 c. 283, 288; Stats. 1967 s. 217.05; 1969 c. 276 s. 592 (6); 1969 c. 323.

**217.06 History:** 1967 c. 283, 288; Stats. 1967 s. 217.06; 1969 c. 276 ss. 585 (5), 592 (6); 1969 c. 323; 1969 c. 392 s. 65c.

**217.07 History:** 1967 c. 288; Stats. 1967 s. 217.07; 1969 c. 276 s. 592 (6).

**217.08 History:** 1967 c. 283, 288; Stats. 1967 s. 217.08; 1969 c. 276 s. 592 (6); 1969 c. 323; 1969 c. 392 s. 65g.

**217.09 History:** 1967 c. 288; Stats. 1967 s. 217.09; 1969 c. 276 s. 592 (6).

**217.10 History:** 1967 c. 288; Stats. 1967 s. 217.10; 1969 c. 276 s. 592 (6); 1969 c. 323.

**217.11 History:** 1967 c. 283, 288; Stats. 1967 s. 217.11; 1969 c. 323.

**217.12 History:** 1967 c. 288; Stats. 1967 s. 217.12.

**217.13 History:** 1967 c. 288; Stats. 1967 s. 217.13.

**217.14 History:** 1967 c. 288; Stats. 1967 s. 217.14.

**217.15 History:** 1967 c. 288; Stats. 1967 s. 217.15; 1969 c. 276 s. 592 (7).

**217.16 History:** 1967 c. 288; Stats. 1967 s. 217.16.

#### CHAPTER 218.

##### Finance Companies, Auto Dealers, Adjustment Companies and Collection Agencies.

**218.01 (1) History:** 1935 c. 474; Stats. 1935 s. 218.01 (1); 1937 c. 417; 1943 c. 20 s. 1; 1943 c. 219; 1945 c. 171; 1947 c. 411 s. 11 (220.02 (5)); 1947 c. 605; 1949 c. 262; 1953 c. 302; 1955 c. 594; 1957 c. 260; 1961 c. 560 ss. 2, 3; 1963 c. 387; 1969 c. 276 s. 592 (4); 1969 c. 500 s. 30 (3) (b), (i).

**218.01 (1a) History:** 1943 c. 219; Stats. 1943 s. 218.01 (1a); 1947 c. 411 s. 11 (220.02 (5)); 1969 c. 500 s. 30 (3) (i).

On exercises of police power see notes to sec. 1, art. I; and on delegation of power see notes to sec. 1, art. IV.

Under 218.01 (1a), Stats. 1947, approval of an application for a motor vehicle dealer's license by the commissioner of banks is required only when the applicant will operate both as a motor vehicle dealer and as a sales finance company during the license year. Where a dealer sells for cash only, the banking commissioner's approval is not required. 37 Atty. Gen. 486.

**218.01 (1b) History:** 1961 c. 560 s. 2m; Stats. 1961 s. 218.01 (1b).

**218.01 (2) History:** 1935 c. 474; Stats. 1935 s. 218.01 (2); 1937 c. 377, 417; 1939 c. 489; 1943 c. 20 s. 1; 1943 c. 219 ss. 6, 8; 1945 c. 171; 1947 c. 411 s. 11 (220.02 (5)); 1957 c. 260 ss. 1, 38; 1957 c. 307, 477, 554; 1957 c. 672 s. 81; Stats. 1957 s. 218.01 (2), 341.49 (2), (3); 1959 c. 220

ss. 2, 3; 1959 c. 664 s. 17; 1961 c. 560 ss. 2r, 4, 12; Stats. 1961 s. 218.01 (2); 1963 c. 209, 387; 1969 c. 159; 1969 c. 500 s. 30 (3) (d), (f), (g), (h), (i).

218.01, Stats. 1951, applies to a Wisconsin resident selling and negotiating for the sale of motor vehicles at Kenosha to other Kenosha residents, although most of the transactions are on behalf of an out-of-state seller and involve interstate commerce. *State v. Helwig*, 262 W 299, 54 NW (2d) 907.

Under a bond issued to a licensed used-car dealer pursuant to 218.01 (2) (h), Stats. 1953, the owner of a used car, who had left it with the dealer to be sold by the latter at an agreed minimum net price, suffered a "loss" when the dealer wrongfully mortgaged the car to an innocent third party as security for money borrowed, within the bond period, so as to warrant recovery on the bond, although the dealer did not sell the mortgaged car to an innocent purchaser until after the expiration of the bond period. *State ex rel. MacNaughton v. New Amsterdam Cas. Co.* 1 W (2d) 494, 85 NW (2d) 337.

A person, firm, or corporation previously licensed as a "sales finance company" under 218.01, Stats. 1941, having no activity other than liquidation of contracts previously acquired and not acquiring any new contracts, is not required to be licensed under that section. 32 Atty. Gen. 1.

The provisions of 218.01, Stats. 1945, prohibiting sales finance companies from engaging in the business of acquiring retail installment contracts on motor vehicles by purchase or discount unless they have obtained a license as provided in said section are not applicable to national banks engaged in such business in this state, but are applicable to state banks engaged in such business in this state. 33 Atty. Gen. 264.

Under the facts stated the purchase of motor vehicles constitutes the purchaser a motor vehicle dealer within 218.01, Stats. 1947, and accordingly subject to the licensing provisions of the section. 36 Atty. Gen. 256.

The motor vehicle commissioner may require an applicant for a salesman's license to furnish a bond under 218.01 (2) (h), Stats. 1955. 45 Atty. Gen. 150.

Any person, firm, or corporation which is in the business of leasing motor vehicles to the public is a "motor vehicle dealer" within the meaning of 218.01 (1) (a), Stats. 1957, and must have an automobile dealer's license. 47 Atty. Gen. 23.

Certain licensing provisions of 218.01 (2) (d), Stats. 1957, are applicable to mobile home time-sales transactions. 47 Atty. Gen. 274.

**218.01 (2a) History:** 1957 c. 260; Stats. 1957 s. 341.54; 1961 c. 560 s. 14; 1961 c. 622; Stats. 1961 s. 218.01 (2a); 1969 c. 500 s. 30 (3) (i).

**218.01 (3) History:** 1935 c. 474; Stats. 1935 s. 218.01 (3); 1937 c. 378, 417; 1943 c. 20 s. 1; 1943 c. 375, 515; 1945 c. 171; 1947 c. 411 s. 11 (220.02 (5)); 1953 c. 302; 1955 c. 364; 1957 c. 260, 477, 554, 674; Stats. 1957 s. 218.01 (3), 341.50; 1959 c. 220, 236, 660; 1961 c. 560 ss. 5, 6, 13; Stats. 1961 s. 218.01 (3); 1963 c. 343;

1969 c. 159; 1969 c. 276 s. 590 (1); 1969 c. 500 s. 30 (3) (i).

218.01 (3) (a), Stats. 1953, providing that an automobile manufacturer's license to transact business in this state may be denied, suspended, or revoked where such manufacturer "has unfairly, without due regard to the equities of said dealer and without just provocation, canceled the franchise of any motor vehicle dealer," and 218.01 (8) (d), providing that in addition thereto the manufacturer may "be subject to a fine of not more than \$5,000," make it clear that the unfair cancellation of a dealer's franchise without provocation and without considering the dealer's equities is against the public policy of the state. *Kuhl Motor Co. v. Ford Motor Co.* 270 W 488, 71 NW (2d) 420.

In an action against a used car dealer for fraud and theft, the trial court had no jurisdiction to render a determination that the acts of the dealer constituted grounds for the revocation or suspension of the dealer's license under 218.01 (3), Stats. 1953, so as to entitle the plaintiff to invoke the penalty of the surety bond which may have been furnished under 218.01 (2) (b). *MacNaughton v. United Motor Sales, Inc.* 272 W 473, 76 NW (2d) 378.

Where a manufacturer owned 75% of a dealer-applicant (a corporation) the application must be denied under 218.01 (3) (f), Stats. 1963, even though there is no showing of intent to treat other dealers unfairly, where the application is for a new dealership, not a replacement. *Forest Home Dodge, Inc. v. Karns*, 29 W (2d) 78, 138 NW (2d) 214.

Where the district court on the record could not make a finding that the dealer would probably prevail because the dealer failed to introduce evidence to show that the franchise contract was unfair within the meaning of the statute, and there was uncertainty as to how the language of the statute would be interpreted by the Wisconsin courts, a temporary restraining order should be dissolved. *A.F.L. Motors, Inc. v. Chrysler Motors Corp.* 183 F Supp. 56.

Wilful failure by an automobile dealer to perform a contract with a retail buyer is ground for revocation of the dealer's license under 218.01 (3) (a), Stats. 1941, but does not constitute a criminal offense. 31 Atty. Gen. 216.

There being no statute authorizing the same, the motor vehicle department may not charge the expense incurred for a court reporter's services, in connection with a license suspension or revocation hearing, to the party who does not prevail. 33 Atty. Gen. 272.

The fact that one licensed under 218.01 as a motor vehicle dealer and sales finance company sells retail instalment contracts on motor vehicles at a discount to a national bank not licensed as a sales finance company under that section does not constitute a ground for a suspension or revocation of the license. 34 Atty. Gen. 301.

The commissioner of the motor vehicle department has a duty to investigate complaints and to hold hearings to determine if a motor vehicle distributor has unfairly and without just provocation canceled the franchise of a

motor vehicle dealer within the meaning of 218.01 (3) (a), Stats. 1957. 47 Atty. Gen. 102.

Wisconsin's anti-bushing law (218.01 (3) (a) 18). 42 MLR 142.

Automobile dealer franchises. *Macaulay*, 1965 WLR 483 and 740.

**218.01 (3a) History:** 1957 c. 260; Stats. 1957 s. 341.56; 1961 c. 560 s. 15; Stats. 1961 s. 218.01 (3a); 1969 c. 500 s. 30 (3) (i).

**Revisor's Note, 1959:** To supply missing references so as to make the section apply equally in all situations. Requested by motor vehicle commissioner and approved by attorney general's office. [Bill 719-S]

**Legislative Council Note, 1957:** This is a revision of the law pertaining to revocation of the registration of a dealer, distributor, manufacturer or transporter. The present law, stated in s. 85.02 (11) and 85.025 (6), provides that registration is to be revoked for any violation of the law pertaining to registration of dealers, distributors, manufacturers or transporters and that registration is not to be renewed during the current registration year. This law is so severe that district attorneys are reluctant to prosecute and courts are reluctant to convict a dealer, distributor, manufacturer or transporter for violations of the registration law. The revised section provides for revocation only after the second or subsequent conviction within a registration year and limits the offenses which may form the basis of revocation to what might be termed misuse of plates. The department is given discretion as to the length of the revocation period. It is not required to revoke for the remainder of the registration year as provided in the present law. Such a requirement is unfair to the person who is convicted near the beginning of the registration year as compared to the person who is convicted near the end of the registration year. By virtue of the definitions in s. 340.01, the section will apply to dealers, distributors, manufacturers and transporters of mobile homes. [Bill 99-S]

Cancellation under 85.02 (11), Stats. 1935, of a license issued to a partnership or corporation on conviction of its agent, employe or member, applies to the partnership or corporation and not to the person convicted only. 24 Atty. Gen. 706.

**218.01 (4) History:** 1935 c. 474; Stats. 1935 s. 218.01 (4); 1937 c. 417; 1943 c. 20 s. 1.

**218.01 (5) History:** 1935 c. 474; Stats. 1935 s. 218.01 (5); 1937 c. 417; 1943 c. 20 s. 1; 1943 c. 219, 552; 1953 c. 302; 1955 c. 221.

**218.01 (5m) History:** 1963 c. 282; Stats. 1963 s. 218.01 (5m).

**218.01 (6) History:** 1935 c. 474; Stats. 1935 s. 218.01 (6); 1937 c. 417; 1943 c. 20 s. 1; 1945 c. 171; 1947 c. 411 s. 11 (220.02 (5)); 1953 c. 302, 441; 1961 c. 549, 652; 1963 c. 158; 1969 c. 144 s. 27.

Under an installment sale contract, the amount credited must be a fixed amount and cannot be conditional. 50 Atty. Gen. 214.

**218.01 (6m) History:** 1953 c. 302 s. 5; Stats. 1953 s. 85.09 (5) (e); 1957 c. 260 s. 16; Stats. 1957 s. 218.01 (6m).

The notice and receipt required by 85.09 (5) (e), Stats. 1953, may be combined with a conditional sales contract form and need not be a separate instrument. 42 Atty. Gen. 208.

**218.01 (7) History:** 1935 c. 474; Stats. 1935 s. 218.01 (7); 1939 c. 273; 1943 c. 219.

Cars for sale: wholesale financing of automobiles. Skilton, 1957 WLR 352.

**218.01 (7a) History:** 1935 c. 474; Stats. 1935 s. 218.01 (7) (g), (h); 1939 c. 273; 1943 c. 219 s. 10; Stats. 1943 s. 218.01 (7a); 1953 c. 115.

218.01 (7a) (a), Stats. 1953, did not render wholly illegal and unenforceable as against the buyer a contract whereby a dealer sold a used car on which he had changed the speedometer reading to 21,000 miles before the sale when in fact the car had traveled about 60,000 miles. The statute was not intended to enlarge the consequences of a violation thereof by enlarging the remedies long afforded to a buyer by 12L.69 in case of breach of warranty and by the common law in case of a fraudulent misrepresentation. Chapman v. Zakzaska, 273 W 64, 76 NW (2d) 537.

**218.01 (7b) History:** 1959 c. 223, 660; Stats. 1959 s. 218.01 (7b); 1969 c. 500 s. 30 (3) (i).

**218.01 (8) History:** 1935 c. 474; Stats. 1935 s. 218.01 (8); 1943 c. 219; 1945 c. 171; 1957 c. 260; 1961 c. 560 s. 6; 1969 c. 500 s. 30 (3) (i).

**218.01 (9) History:** 1969 c. 159; Stats. 1969 s. 218.01 (9).

**218.02 History:** 1935 c. 515; Stats. 1935 s. 218.02; 1943 c. 375 s. 90; 1947 c. 411 s. 11 (220.02 (5)); 1955 c. 10; 1963 c. 343; 1969 c. 276 s. 592 (7).

The commissioner of banking may properly refuse a debt adjustment company license to a collection agency or to the wife of the operator of a collection agency. 44 Atty. Gen. 164.

Preparation and presentation of petitions and orders in circuit court proceedings for voluntary amortization of debts of wage earners under 128.21, Stats. 1955, constitutes the practice of law, and such services may not be lawfully performed by a corporation licensed to adjust debts under 218.02 and such activity constitutes grounds for license revocation under 218.02 (6) (d). 44 Atty. Gen. 236.

**218.04 History:** 1937 c. 358; Stats. 1937 s. 218.04; 1943 c. 370; 1943 c. 375 s. 92; 1947 c. 411 s. 6 (215.30 (5)) and s. 11 (220.02 (5)); 1947 c. 612 s. 1; 1949 c. 503; 1951 c. 261 s. 10; 1953 c. 61; 1965 c. 252; 1969 c. 55; 1969 c. 276 s. 592 (4).

See note to 294.04, citing State ex rel. Fairchild v. Wisconsin Auto. Trades Asso. 254 W 398, 37 NW (2d) 98.

An assignment of life insurance policies by the insured, operator of a collection agency, and his wife, to the commissioner of banks as liquidator of the agency for the benefit of the creditors of the agency, created an assignment to the commissioner in trust for the benefit of creditors, including the operator's sureties paying claims against the agency, and parol evidence was not admissible to show that the assignment was made in reliance on representations of an authorized representative of the

commissioner that the proceeds of the policies would be used for the payment of creditors only after the proceeds of the surety bonds and other assets of the agency had been exhausted. In re Bratt, 257 W 447, 43 NW (2d) 817.

A foreign collection agency, which uses Wisconsin residents to solicit creditors in this state to offer to assign accounts to it for collection, such offers being subject to acceptance at an office in another state, and thereafter attempts to collect the accounts by mail, is engaged in interstate commerce and not subject to regulation by this state, so long as their solicitors are independent contractors. Metropolitan Finance Corp. v. Matthews, 265 W 275, 61 NW (2d) 502.

The fees imposed by 218.04 (3), Stats. 1953, are not "taxes", nor exorbitant nor prohibitive fees, nor is the bond which the commissioner may require a "tax." Meyers v. Matthews, 270 W 453, 71 NW (2d) 368.

In an action against the commissioner of banks to test the validity of this section, as applied to the nonresident plaintiffs' proposed operations in personally soliciting offers of assignments of collection accounts in Wisconsin, for transmittal to and further action by an out-of-state collection agency by mail, the evidence as to the manner in which the solicitors operate pursuant to written contract with and instructions issued by the collection agency established that the relationship between the collection agency and the solicitors would be that of principal and agent, and that the collection agency, by its solicitors present in Wisconsin, would be present and doing business in Wisconsin, so that both would be subject to the licensing and regulatory provisions. (Metropolitan Finance Corp. v. Matthews, 265 W 275, distinguished.) Meyers v. Matthews, 270 W 453, 71 NW (2d) 368.

Where analysis of a plan developed by an instalment finance company disclosed that (a) the company took irrevocable assignments of delinquent accounts receivable from businesses, hospitals, and professional people at a price equal to the face amount of the accounts less an agreed discount, (b) advanced 50% of the price after verifying the accounts but withheld making payment of the balance until it actually recovered full payment of the account, (c) the discount was not earned unless the account was paid in full, and (d) the company could require the assignor at any time to repurchase any account which had not been fully paid, at the net price less amounts collected from the account debtor, the company was not a collection agency engaged in the collection and receiving of payments on delinquent accounts of others within the purview of 218.04, Stats. 1967. Wisconsin Coll. Asso., Inc. v. Thorp Finance Corp. 43 W (2d) 229, 168 NW (2d) 565.

A person engaged in the collection business on the effective date of 218.04 (July 1, 1937) is subject to the provisions thereof regardless of the fact that certain assigned claims have been reduced to judgment. 27 Atty. Gen. 797.

Exemption of attorneys from the licensing provisions of 218.04, Stats. 1941, does not extend to a lay bill collector who is operating

what is virtually an independent collection agency business in a lawyer's office. While lawyers may make use of lay employes in handling collections, the relationship of attorney and client exists between the attorney and the claimant and the attorney must assume full responsibility for activities of such lay employe and see that work is handled in accordance with canons of ethics and statutes applicable to attorneys. 31 Atty. Gen. 374.

Persons holding themselves out as able to effect the collection of accounts through the use of demands made under their trade names are engaged in the business of collecting accounts and are subject to license. 39 Atty. Gen. 425.

**218.05 History:** 1945 c. 240, 506; Stats. 1945 s. 218.05; 1947 c. 411 s. 11 (220.02 (5)); 1963 c. 343; 1967 c. 288; 1969 c. 276 s. 592 (4); 1969 c. 392 s. 87 (10).

A credit union has no power to engage in the business included within the term "community currency exchange" as defined by 218.05 (1) (b), Stats. 1945, and the banking commission has no power to issue a certificate of authority permitting a credit union to engage in such business. 34 Atty. Gen. 242.

A corporation which engages in the business of transporting for hire large sums of money for various business organizations and others and which is also engaged in the business of cashing checks for a flat fee through use of an armored motor vehicle equipped with bullet proof glass, which vehicle is driven to and parked at various places of employment on pay day, need not be licensed as a community currency exchange as provided in 218.05 (2), Stats. 1945, if its business of cashing checks is an incident to its business of transporting money for hire. It must be licensed as provided in said subsection if the business of cashing checks is not an incident to its business of transporting money for hire. The question whether the business of cashing checks is or is not incidental to the business of transporting money for hire as provided in 218.05 (1) (b) is one of fact which cannot be determined by the attorney general. 36 Atty. Gen. 169.

A Wisconsin corporation proposing to sell to the public at established fees, through agents appointed by it, money orders and post card checks is under the facts presented required to be licensed as a community currency exchange. A separate license is required for each agent appointed. The community currency exchange business operated by the agent cannot be conducted as a department of another business. 38 Atty. Gen. 288.

Retail department stores cashing checks for a fee are probably not community currency exchanges. 39 Atty. Gen. 557.

**218.10 History:** 1951 c. 529; Stats. 1951 s. 110.09; 1953 c. 563 s. 10 to 12; 1957 c. 260 s. 27; 1961 c. 451; 1961 c. 560 ss. 1, 7a; Stats. 1961 s. 218.10; 1969 c. 276 s. 590 (1); 1969 c. 500 s. 30 (3) (g), (h), (i).

**218.11 History:** 1951 c. 529; Stats. 1951 s. 110.095; 1953 c. 61, 563; 1961 c. 451; 1961 c. 560 s. 1; Stats. 1961 s. 218.11; 1963 c. 6; 1969 c. 500 s. 30 (3) (b), (g).

**218.12 History:** 1969 c. 474; Stats. 1969 s. 218.12.

**218.20 History:** 1957 c. 260; Stats. 1957 s. 342.35; 1959 c. 485; 1961 c. 249; 1961 c. 560 s. 17; Stats. 1961 s. 218.20; 1969 c. 500 s. 30 (3) (i).

An automobile dealer who removes parts from a car cannot sell them to the public in the same manner as a salvage dealer does. He can only add them to his stock for the purpose of carrying on his business as a dealer. 48 Atty. Gen. 277.

**218.21 History:** 1957 c. 260; Stats. 1957 s. 342.36; 1961 c. 560 s. 17; Stats. 1961 s. 218.21; 1969 c. 500 s. 30 (3) (i).

**218.22 History:** 1957 c. 260; Stats. 1957 s. 342.37; 1959 c. 485, 625; 1961 c. 560 ss. 8a, 17, 20; Stats. 1961 s. 218.22; 1963 c. 6; 1969 c. 276 s. 590 (1); 1969 c. 500 s. 30 (3) (h), (i).

**218.23 History:** 1957 c. 260; Stats. 1957 s. 342.38; 1961 c. 560 s. 17; Stats. 1961 s. 218.23; 1969 c. 500 s. 30 (3) (i).

**218.30 History:** 1957 c. 674; Stats. 1957 s. 342.40; 1961 c. 560 s. 18; Stats. 1961 s. 218.30; 1969 c. 500 s. 30 (3) (i).

**218.31 History:** 1957 c. 674; Stats. 1957 s. 342.41; 1961 c. 560 s. 18; Stats. 1961 s. 218.31; 1969 c. 500 s. 30 (3) (i).

**218.32 History:** 1957 c. 674; Stats. 1957 s. 342.42; 1961 c. 560 ss. 9a, 18, 21; Stats. 1961 s. 218.32; 1969 c. 276 s. 590 (1); 1969 c. 500 s. 30 (3) (h), (i).

**218.33 History:** 1957 c. 674; Stats. 1957 s. 342.43; 1961 c. 560 s. 18; Stats. 1961 s. 218.33; 1969 c. 500 s. 30 (3) (i).

## CHAPTER 219.

### Investments.

**219.01 History:** 1935 c. 45; Stats. 1935 s. 219.01; 1937 c. 151; 1945 c. 455; 1947 c. 411 s. 6 (215.30 (5)); 1947 c. 612 s. 1; 1949 c. 26.

State banks, savings banks and trust company banks may invest in FHA insured real estate mortgage loans on property no matter where located. 26 Atty. Gen. 481.

While a domestic insurance company may invest its surplus funds in real estate mortgages under 201.25 and 219.01, Stats. 1937, it may not use its surplus funds as capital for conducting what is essentially real estate mortgage brokerage business. 28 Atty. Gen. 49.

Notwithstanding 221.32, Stats. 1947, state banks are authorized by 219.01 to invest in a combination loan on real estate located outside of Wisconsin and adjoining states, where one part of such loan consists of an FHA insured mortgage and the other part consists of a second mortgage on the same real estate which is fully guaranteed under the servicemen's readjustment act of 1944. Such banks are also authorized by the latter section to invest in a mortgage on such real estate where the mortgage is not insured by FHA in full or in part, but is partially guaranteed or secured