

## CHAPTER 194

## MOTOR VEHICLE TRANSPORTATION

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**Cross-reference:** See also chs. [Trans 177](#), [325](#), and [326](#), Wis. adm. code.

**194.01 Definitions.** In this chapter, unless the context otherwise requires:

(1) “Common motor carrier” means any person who holds himself or herself out to the public as willing to undertake for hire to transport passengers by motor vehicle between fixed end points or over a regular route upon the public highways or property over regular or irregular routes upon the public highways. The transportation of passengers in taxicab service or in commuter car pool or van pool vehicles with a passenger-carrying capacity of less than 16 persons or in a school bus under s. [120.13 \(27\)](#) shall not be construed as being that of a common motor carrier.

(2) “Contract motor carrier” means any person engaged in the transportation by motor vehicle over a regular or irregular route upon the public highways of property for hire, including the transportation of buildings, as defined in s. [348.27 \(12m\) \(a\) 1](#).

(3) “Department” means the department of transportation.

(3m) “Division of hearings and appeals” means the division of hearings and appeals in the department of administration.

(4) “For hire” means for compensation, and includes compensation obtained by a motor carrier indirectly, by subtraction from the purchase price or addition to the selling price of property transported, where the purchase or sale thereof is not a bona fide purchase or sale. Any person who pretends to purchase property to be transported by such person or who purchases property immediately prior to and sells it immediately after the transportation thereof shall be deemed to be transporting the property for hire and not a bona fide purchaser or seller thereof. The rental of a motor vehicle to a person for transportation of the person’s property which rental directly or indirectly includes the services of a driver shall be deemed to be transportation for hire and not private carriage. This subsection does not apply to motor vehicle operations which are conducted merely as an incident to or in furtherance of any business or industrial activity.

(5) “Gross weight”, when applied to a motor vehicle used for the transportation of passengers, shall mean the actual weight of the motor vehicle unloaded plus 150 pounds for each person capable of being seated in the motor vehicle.

(6) The term “gross weight” when applied to a motor vehicle used for the transportation of property shall mean the actual weight of such motor vehicle unloaded plus the licensed carrying capacity of such motor vehicle.

(7) “Motor vehicle” means any automobile, truck, trailer, semitrailer, tractor, motor bus or any self-propelled or motor

driven vehicle, except a motorcycle, moped, motor bicycle, electric personal assistive mobility device, or vehicle operated on rails.

(8) “Municipality” means a town, village, or city.

(10) “Person” means and includes any individual, firm, partnership, limited liability company, corporation, company, association, including express and forwarding companies or agencies and railroad companies, or their lessees, trustees or receivers.

(11) “Private motor carrier” means any person except a common or contract motor carrier engaged in the transportation of property by motor vehicle other than an automobile or trailer used therewith, upon the public highways.

(12) “Public highway” means every public street, alley, road, highway or thoroughfare of any kind, except waterways, in this state while open to public travel and use.

(13) “Secretary” means the secretary of transportation.

**History:** 1971 c. 164 s. 88; 1977 c. 29 ss. 1303, 1304, 1654 (9) (c), (f), (10) (a); 1979 c. 34, 110, 221, 355; 1981 c. 347; 1983 a. 189, 243; 1985 a. 29, 187; 1993 a. 16, 112, 490; 1997 a. 254; 2001 a. 90, 107; 2005 a. 250.

A buy-sell arrangement whereby the carrier “buys” property at the shipping point, immediately transports it to a delivery point, and there “sells” it to the real purchaser — with the carrier’s profit amounting only to the price of the transportation between the 2 points — raises a rebuttable presumption under sub. (15) [now sub. (4)], that the property is being transported “for hire.” *Gensler v. Dept. of Revenue*, 70 Wis. 2d 1108, 236 N.W.2d 648 (1975).

**194.02 Legislative intent.** It is the intent of the legislature to remove the economic regulations which limit motor carrier operations in the state. The legislature intends to let the market promote competitive and efficient transportation services, while maintaining the safety regulations necessary to protect the welfare of the traveling and shipping public. It is the intent of the legislature that this chapter be interpreted in a manner which gives the most liberal construction to achieve the aim of a safe, competitive transportation industry.

**History:** 1977 c. 29 s. 1654 (9) (c); 1981 c. 347.

This section’s statement of intent to let the market promote competitive and efficient transportation services is specific to motor carriers and does not apply to regulations regarding taxis. *County of Milwaukee v. Williams*, 2007 WI 69, 301 Wis. 2d 134, 732 N.W.2d 770, 05–2686.

**194.025 Discrimination prohibited.** No motor carrier may engage in any practice, act or omission which results in discrimination on the basis of race, creed, sex or national origin.

**History:** 1981 c. 347.

**194.03 Interstate and foreign commerce.** (1) This chapter shall apply to motor carriers engaged in interstate and foreign commerce upon the public highways of this state, in all particulars and provisions lawful under the constitution of the United States.

(2) Fees and taxes provided in this chapter shall be assessed against operations in interstate and foreign commerce and collected from the carriers performing such operations, as partial compensation for the use of the highways and policing of the same.

(5) No certificate or license hereafter issued shall contain authority to engage both in operations requiring a certificate under the Federal Motor Carrier Act, 1935, and in operations which do not require a certificate.

(5m) In a case involving a claim by a common motor carrier in interstate commerce for freight charges:

(a) A person may assert as a defense to the claim the existence of a freight charge agreement between the person and the motor carrier which applies to the carriage of the freight at issue and which has not been filed as a tariff with the interstate commerce commission.

(b) A court shall request the interstate commerce commission or other appropriate federal agency to issue an advisory opinion on any issue which the court determines is within the primary jurisdiction of that agency.

(6) Whenever the term “interstate commerce” is used in this chapter it shall be interpreted as including foreign commerce.

**History:** 1977 c. 29 s. 1654 (7) (a); 1987 a. 27; 1993 a. 16.

**194.04 Certificates; licenses; permits.** (1) **AUTHORITY TO OPERATE.** (b) Every applicant for a certificate shall pay a fee of \$500 for a common motor carrier of property certificate or \$50 for a common motor carrier of passengers certificate, except that an applicant for a certificate under the federal motor carrier act of 1935 or for authority to transport in interstate commerce commodities which are exempt from regulation by the interstate commerce commission shall pay a fee of \$25.

(c) Every applicant for a license shall pay a fee of \$500, except that an applicant for a license under the federal motor carrier act of 1935 or for authority to transport in interstate commerce commodities which are exempt from regulation by the interstate commerce commission shall pay a fee of \$25.

(2) **PERMITS; APPLICATION, EXPIRATION.** Every permit for the operation of a motor vehicle expires on December 31 of each year. Application for permits shall be made annually and shall be accompanied by the annual fee. No permit shall be issued or renewed for any motor vehicle unless the registration required by ch. 341 is paid in this state.

(3) **PERMITS; RESTRICTION OF USE.** (a) No motor vehicle permit issued under this chapter shall be transferable from one motor vehicle to another except as provided in this subsection. Common motor carrier vehicles, except truck tractors or road tractors, upon which the common motor carrier permit fee has been paid may be used or operated in intrastate commerce by other common motor carriers without the payment of an additional permit fee. Contract motor carrier vehicles upon which the contract motor carrier permit fee has been paid may be used or operated in intrastate commerce by other contract motor carriers without the payment of an additional permit fee and, if operated exclusively in the metropolitan area of any city within a county having a population of 500,000 or more, may be used or operated in the hauling of common motor carrier trailers within the metropolitan area. When used in railroad trailer–on–flat–car service, and when interchanged between contract and common motor carriers, contract or common motor carrier trailers upon which the contract or common motor carrier permit fee has been paid may be used or operated by other contract or common motor carriers without an additional permit. Private motor carrier trailers may be used or operated both by private motor carriers and by common and contract motor carriers upon the payment of the appropriate common or contract motor carrier permit fee.

(am) No additional permit or payment of fees is required by the lessee of a contract motor carrier vehicle licensed in this state if the lessor is a Wisconsin resident and the lessee has a contract car-

rier license or common carrier certificate of authority issued by the department and insurance on file with the department as prescribed in s. 194.41.

(b) When a motor truck, motor bus, tractor or trailer having a permit is sold or otherwise disposed of, and its permit canceled and such vehicle is replaced by another such motor vehicle, a permit of the same class shall be issued by the department for the same year to such replacement vehicle without charge.

(c) 1. Any individual, partnership, limited liability company or corporation whose principal business is leasing, for compensation, motor vehicles may, upon payment of an annual permit fee as provided in sub. (4) for each leased motor vehicle for which a permit is required, lease the same to common and contract motor carriers. The lessor shall not be considered to obtain the privileges or be subject to the obligations of s. 194.23 or 194.34 nor shall s. 194.23 or 194.34 apply to the lessor.

2. An authorized common or contract carrier, when leasing a motor vehicle for which a permit is required from a person engaged in the business of leasing under this section, shall not be required to procure a permit as prescribed in s. 194.23 or 194.34 if the motor vehicle leased carries the permit required under this section.

**Cross-reference:** See also ch. [Trans 175](#), Wis. adm. code.

(4) **ANNUAL PERMIT FEES.** The annual permit fees required for motor vehicles operated under this chapter solely in intrastate commerce and used for hire shall be as follows:

(a) Motor vehicles operated solely in intrastate commerce by common motor carriers of passengers, \$5.

(b) Motor vehicles, except semitrailers, operated solely in intrastate commerce by common motor carriers of property, \$5.

(c) Motor vehicles, except semitrailers, operated solely in intrastate commerce by contract carriers, \$5.

(5a) **COLLECTION OF FEES.** The department shall collect all fees prescribed by this section.

(6) **DISPOSITION OF FEES COLLECTED.** All moneys received under this section shall be paid into the transportation fund.

**History:** 1975 c. 143; 1977 c. 29 ss. 1304m, 1305, 1654 (1), (7) (a); 1979 c. 221; 1981 c. 20; 1981 c. 347 ss. 38, 39, 80 (1), (5); 1985 a. 208, 277; 1987 a. 369; 1993 a. 16, 112, 490.

A vehicle exempted under s. 341.405 from state registration requirements is not exempted under sub. (2) from state permit requirements. *State v. Yellow Freight System, Inc.* 101 Wis. 2d 142, 303 N.W.2d 834 (1981).

Motor carrier permit fees required by sub. (4) (a), (b), and (c) are not in conflict with interstate commerce commission regulations and may be collected. The permit fee required by sub. (4) (d), 1977 stats., is in conflict with such regulations and may not be collected. 63 Atty. Gen. 206.

**194.05 Exemption.** (1) This chapter shall not apply to motor vehicles owned by the United States, any state, or any political subdivision thereof, except in the case of transportation systems acquired and operated between counties under s. 59.58 (3) (d) but in such a case the political subdivision is exempt from the annual permit fee under s. 194.04 (4) (a).

(2) The provisions of this chapter shall not authorize the fixing of any rates, charges or regulations respecting the transportation of United States mails.

(3) This chapter shall not apply to transportation of newspapers by motor vehicles having a gross weight of less than 8,000 pounds when any transportation for hire provided by the person who owns or operates the motor vehicle is confined exclusively to the transportation or distribution of newspapers within a radius of 50 miles of the point where the person or motor carrier receives the newspapers from the newspaper publisher or the publisher’s drop-off agent or carrier.

(4) This chapter shall not apply to any farm truck or dual purpose farm truck combined with any semitrailer or farm trailer, or any vehicle combined with a horse trailer, if the vehicle combination’s gross combination weight rating, registered weight, and actual gross weight do not exceed 26,000 pounds, the vehicle combination does not include a commercial motor vehicle

described in s. 340.01 (8) (c) or (d), and the vehicle combination is operated solely in intrastate commerce.

**History:** 1973 c. 63, 259; 1977 c. 234, 447; 1993 a. 482; 1995 a. 201; 2005 a. 65.

**194.06 Public interest.** The business of all common motor carriers of property or of passengers and of contract motor carriers is hereby declared to be affected with a public interest.

**194.07 Operations subject to law.** No common motor carrier of property or of passengers or contract motor carrier or private motor carrier shall operate any motor vehicle for the transportation of either persons or property on any public highway in this state except in accordance with the provisions of this chapter.

**194.08 Effect of this chapter on powers of department and municipalities.** None of the provisions of this chapter shall be deemed to deprive the department or any municipality of any jurisdiction they now have or which may be conferred upon them over the public highways of the state, nor prevent the department or any municipality from suspending at any time the right of common motor carriers of property or of passengers, contract motor carriers or private motor carriers to operate motor vehicles over any public highway when necessary for the proper preservation or policing of the public highway.

**History:** 1977 c. 29 s. 1654 (8) (a); 1993 a. 246.

**194.09 Marking carrier vehicles.** Each motor vehicle operated by a common motor carrier of property or of passengers, a contract motor carrier or a private motor carrier shall be plainly marked in such manner as the department may prescribe, so as to identify such motor vehicle as being operated pursuant to this chapter. This section does not apply to any farm truck or dual purpose farm truck combined with any semitrailer or farm trailer, or any vehicle combined with a horse trailer, if the vehicle combination's gross combination weight rating, registered weight, and actual gross weight do not exceed 26,000 pounds, the vehicle combination does not include a commercial motor vehicle described in s. 340.01 (8) (c) or (d), and the vehicle combination is operated solely in intrastate commerce.

**History:** 1977 c. 29 s. 1654 (7) (a); 1993 a. 16; 2005 a. 65.

**194.10 Service of process on nonresident carriers.** Section 345.09 applies to any common, contract or private motor carrier that is a nonresident of this state.

**History:** 1981 c. 347.

**194.11 Inspection of premises or vehicles.** The department or its duly authorized agents may at any time enter upon any premises within this state occupied by any common motor carrier of property or passengers, any contract motor carrier or any private motor carriers, or any motor vehicle of a common motor carrier, contract motor carrier or a private motor carrier for the purpose of exercising any power provided for in this chapter. Duly authorized agents of the department may stop a motor vehicle under this section upon the public highways for the purpose of exercising any power provided for in this chapter.

**History:** 1977 c. 29 s. 1654 (7) (a); 1985 a. 29, 332; 1993 a. 16.

**194.145 Hearing; decision.** (1) Any person adversely affected by a determination of the department under this chapter may petition the division of hearings and appeals for review. The division of hearings and appeals shall set a time for a hearing on the matter, and notice of the hearing shall be given to the petitioner and the department at least 10 days prior to the hearing. The hearing shall be conducted as are hearings for contested cases under ch. 227.

(2) In its decision the division of hearings and appeals may confirm or reverse or may modify, with or without conditions, the determination of the department. Where appropriate, the division of hearings and appeals may by order direct the department to implement the decision of the division.

(3) Review of department determinations made under this chapter is a condition precedent to judicial review under ch. 227. Decisions of the division of hearings and appeals are subject to judicial review under ch. 227.

**History:** 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16.

**194.16 Operation while delinquent unlawful.** No motor carrier of property or of passengers shall operate any motor vehicle pursuant to this chapter while delinquent in the payment of any part of the fees provided under ch. 341.

**History:** 1993 a. 16.

**194.17 Penalties.** Every common motor carrier of property or of passengers, every contract motor carrier and every private motor carrier to which this chapter applies and every person who operates without obtaining a certificate under s. 194.23 or license under s. 194.34, except a license for transporting exempt commodities, or without meeting the insurance requirements under s. 194.41, shall forfeit not less than \$500 nor more than \$5,000. Any person who violates any other provisions of this chapter including the requirement to obtain a license to transport exempt commodities or the requirement to obtain a permit or who violates orders issued by the division of hearings and appeals or orders or rules issued by the secretary shall forfeit not less than \$50 nor more than \$100. Each violation constitutes a separate offense. In construing and enforcing the provisions of this section, the act, omission or failure of any officer, agent or servant or other person acting for or employed by any common motor carrier of property or of passengers, any contract motor carrier or any private motor carrier, done within the scope of employment is deemed to be the act, omission, or failure of the common motor carrier of property or of passengers, contract motor carrier or private motor carrier.

**History:** 1977 c. 29 ss. 1307m, 1654 (7) (a); 1977 c. 273, 447; 1979 c. 34; 1981 c. 347; 1983 a. 27; 1989 a. 359; 1993 a. 16; 1999 a. 139; 2011 a. 262.

**194.178 Uniform traffic citation.** Service of a uniform traffic citation on the operator of a vehicle shall be deemed sufficient process to give the appropriate court jurisdiction over the person having or required to have a certificate of authority, permit or license under this chapter or the person required to meet other responsibilities under this chapter upon the filing with or transmitting to the court of the uniform traffic citation.

**History:** 1979 c. 34; 1993 a. 437.

**194.20 Certificates and licenses for carriers in interstate and foreign commerce.** (1) Motor carriers operating in interstate and foreign commerce shall obtain certificates and licenses as provided in ss. 194.23 and 194.34. Certificates and licenses which involve operations in interstate and foreign commerce may be denied by the department if it finds that the record and experience of the applicant evinces a disposition to violate or evade the laws or regulations of the state applicable to the operations proposed by the applicant.

(2) Notwithstanding sub. (1) the department is empowered to act under the provisions of section 206 (a) of the interstate commerce act, as amended by P.L. 87–805, 76 Stat. 911, by making any finding, determination and otherwise doing any other thing necessary to proceed under that statute.

**History:** 1981 c. 347 ss. 47, 80 (1); 1993 a. 16.

**194.23 Certificate required.** (1) No person may operate any motor vehicle as a common motor carrier unless the person first obtains a certificate and, if required under this chapter, a permit issued by the department, or unless the person is registered by another state under a single-state or unified carrier registration system consistent with the standards under, respectively, 49 USC 14504 or 49 USC 13908 and 14504a, for the operation of the vehicle, except that no permit is required for the operation of a semitrailer. The department may issue or refuse to issue any certificate. The department may attach to the exercise of the privilege granted by a certificate any terms or conditions which are permitted under this chapter.

(2) The department shall issue a certificate without a hearing and order if the department finds that the applicant is fit, willing and able to provide the transportation authorized by the certificate and to comply with this chapter.

(3) In determining the ability and fitness of a common motor carrier under sub. (2), the department shall consider all of the following:

(a) The applicant's compliance with the requirements of ss. 194.41 and 194.42.

(b) The applicant's safety record.

(c) The applicant's financial ability to provide cargo insurance or to have adequate financial resources in order to pay for damage claims against the company.

(d) The applicant's reliability and service record.

(4) If the department denies a certificate, the department shall notify the applicant in writing of the reason, and the applicant shall have 30 days to correct the deficiency and reapply without payment of an additional application fee.

**History:** 1981 c. 347 ss. 51, 80 (1); 1985 a. 208; 1993 a. 16; 1999 a. 139; 2007 a. 20.

**194.24 Application; form.** Applications for all certificates, licenses and permits required under this chapter shall be verified, written, and in conformity with department requirements as to form and content. The department shall prepare and make the forms available to applicants.

**History:** 1977 c. 29 ss. 1313, 1654 (7) (e); 1977 c. 418; 1981 c. 347 s. 80 (1); 1993 a. 16.

**194.25 Nature of certificates. (1)** No certificate or license issued in accordance with provisions of this chapter shall be construed to be irrevocable, or to confer any property right upon the holder thereof.

(3) When the holder of a certificate or license or any right or privilege thereunder dies, his or her personal representative, heirs or surviving spouse may continue to operate thereunder for a reasonable period after his or her death. The department shall have power to determine when such period shall end and no person shall operate under the provisions of this subsection beyond the date fixed by the department. Any person electing to operate under this subsection shall be considered as having assented to be considered as the holder of said certificate, license or any right or privilege thereunder for purposes of regulation under the laws of Wisconsin.

**History:** 1981 c. 347 ss. 52, 53, 80 (1); 1993 a. 16.

**194.31 Inspection of records.** The secretary, or any person employed by the secretary, shall, upon demand, have the right to inspect the insurance records of any common motor carrier of property or of passengers or of any contract motor carrier and to examine under oath any officer, agent or employee of such carrier in relation to the insurance required under s. 194.41; provided that any person other than the secretary who shall make such demand shall produce his or her authority under the hand and seal of the department.

**History:** 1977 c. 29 s. 1654 (7) (c), (9) (e); 1977 c. 273; 1981 c. 347; 1993 a. 16.

**194.32 Buses, restrictions.** No common motor carrier of passengers shall operate any passenger-carrying bus over any public highway of this state with any trailer or semitrailer attached except for an articulated bus as defined in s. 340.01 (2m). No interurban motor bus which is of a double-decked open-roof design shall be operated upon the public highways under the authority of this chapter. As used in this section an interurban motor bus is deemed to be of a "double-decked open-roof design" when passengers are carried therein on an upper level throughout the length of the bus over passengers on a lower level throughout the length of the bus and the bus roof does not extend throughout the length of the bus or is not permanently enclosed with rigid construction.

**History:** 1981 c. 159; 1993 a. 16; 2005 a. 11; 2011 a. 54, 243.

**194.33 Municipal consent.** No common motor carrier of property or of passengers shall operate any motor vehicle within or through any municipality except in compliance with action taken by the municipality in relation to streets, roads and routes in the municipality. No action by any municipality under this section shall be subject to review by the department.

**History:** 1977 c. 29 s. 1654 (7) (a); 1993 a. 246.

**194.34 Contract motor carriers; license; application and hearing. (1)** No person may operate any motor vehicle as a contract motor carrier unless the person first obtains a license and, if required under this chapter, a permit issued by the department, or unless the person is registered by another state under a single-state or unified carrier registration system consistent with the standards under, respectively, 49 USC 14504 or 49 USC 13908 and 14504a, for the operation of the motor vehicle, except that no permit is required for the operation of a semitrailer. The department may refuse to issue any license or may attach to the exercise of the privilege granted by a license any terms or conditions which are permitted under this chapter.

(2) The department shall issue a license without a hearing and order if the department finds that the applicant is fit, willing and able to provide the transportation to be authorized by the license and to comply with this chapter.

(3) In determining the ability and fitness of a contract motor carrier under sub. (2), the department shall consider all of the following:

(a) The applicant's compliance with the requirements of ss. 194.41 and 194.42.

(b) The applicant's safety record.

(c) The applicant's financial ability to provide cargo insurance or to have adequate financial resources in order to pay for damage claims against the company.

(d) The applicant's reliability and service record.

(4) If the department denies a license, the department shall notify the applicant in writing of the reason, and the applicant shall have 30 days to correct the deficiency and reapply without payment of an additional application fee.

**History:** 1981 c. 347 ss. 61, 80 (1); 1985 a. 208; 1993 a. 16; 1999 a. 139; 2007 a. 20.

**194.355 Operation under certificate, license or permit.** The operation of a motor vehicle under a certificate or permit issued to a common motor carrier or under a license or permit issued to a contract motor carrier shall, during the effective life of the certificate, license or permit, be deemed to be the operation of the holder of the certificate, license or permit for all purposes related to the enforcement of this chapter and chs. 110, 341 to 349 and 351.

**History:** 1979 c. 333 s. 5; 1981 c. 390; 1993 a. 16.

**194.37 Enforcement.** The department shall enforce the orders relating to the provisions of this chapter and shall coordinate and allocate its activities so as to effectively enforce such orders and this chapter.

**History:** 1977 c. 29 ss. 1318, 1654 (7) (e), (9) (e); 1981 c. 347 ss. 63, 80 (1); 1993 a. 16.

**194.38 Regulatory powers of department. (1)** It shall be the duty of the department:

(b) To prescribe rules and regulations as to safety of operations and the hours of labor of drivers of motor vehicles operated under the authority of this chapter.

(e) To act in accordance with 49 USC 14504 by making any finding, determination and otherwise doing any other thing necessary to proceed under that statute. Nothing in this paragraph shall permit the department to extend the length or weight of motor vehicles.

(2) Nothing in this section shall permit the department to promulgate any rule under which the provisions of 49 CFR 390, 391, 392, 395, and 397 are applicable to, or enforceable with respect

to, any farm truck or dual purpose farm truck combined with any semitrailer or farm trailer, or any vehicle combined with a horse trailer, if the vehicle combination's gross combination weight rating, registered weight, and actual gross weight do not exceed 26,000 pounds, the vehicle combination does not include a commercial motor vehicle described in s. 340.01 (8) (c) or (d), and the vehicle combination is operated solely in intrastate commerce.

**History:** 1971 c. 139; 1977 c. 29 s. 1654 (7) (a); 1981 c. 20, 42, 347; 1993 a. 16; 1999 a. 139; 2005 a. 65.

**Cross-reference:** See also Trans 327, Wis. adm. code.

**194.407 Unified carrier registration system.** (1) The department may participate in and do all things necessary to implement and administer a unified carrier registration system for motor carriers, including private motor carriers, in accordance with 49 USC 13908 and 14504a. The department may, consistent with federal law, establish by rule an annual fee under this section for a motor vehicle that is operated in this state and that is subject to the unified carrier registration system.

(3) The department may use the emergency rules procedure under s. 227.24 to promulgate rules establishing the annual fee specified in sub. (1). Notwithstanding s. 227.24 (1) (c) and (2), these emergency rules may remain in effect until a subsequent rule is promulgated under this subsection or until the date on which permanent rules take effect, whichever is sooner. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

**History:** 2007 a. 20; 2011 a. 262.

**Cross-reference:** See also ch. Trans 178, Wis. adm. code.

**194.41 Contract of liability for damage to person or property.** (1) No permit or vehicle registration may be issued to a common motor carrier of property, contract motor carrier, or rental company, no permit or vehicle registration may remain in force to operate any motor vehicle under the authority of this chapter, and no vehicle registration may be issued or remain in force for a semitrailer unless the carrier or rental company has on file with the department and in effect an approved certificate for a policy of insurance or other written contract in such form and containing such terms and conditions as may be approved by the department issued by an insurer authorized to do a surety or automobile liability business in this state under which the insurer assumes the liability prescribed by this section with respect to the operation of such motor vehicles. The certificate or other contract is subject to the approval of the department and shall provide that the insurer shall be directly liable for and shall pay all damages for injuries to or for the death of persons or for injuries to or destruction of property that may be recovered against the owner or operator of any such motor vehicles by reason of the negligent operation thereof in such amount as the department may require. Liability may be restricted so as to be inapplicable to damage claims on account of injury to or destruction of property transported, but the department may require, and with respect to a carrier transporting a building, as defined in s. 348.27 (12m) (a) 1., shall require, a certificate or other contract protecting the owner of the property transported by carriers from loss or damage in the amount and under the conditions as the department may require. No permit or vehicle registration may be issued to a common motor carrier of passengers by any motor vehicle, or other carrier of passengers by motor bus, except those registered in accordance with s. 341.26 (2) (a) and (d), and no permit or vehicle registration may remain in force to operate any motor vehicle unless it has on file with the department a like certificate or other contract in the form and containing the terms and conditions as may be approved by the department for the payment of damages for injuries to property and injuries to or for the death of persons, including passengers, in the amounts as the department may require. This subsection does not apply to a motor carrier that is registered by another state under a

single-state or unified carrier registration system consistent with the standards under, respectively, 49 USC 14504 or 49 USC 13908 and 14504a.

(2) No certificate or other contract filed under this section may be limited as to the total liability of the insurer thereunder, for any series of accidents, and no such certificate or other contract may be terminated at any time prior to its expiration under the terms thereof, nor canceled for any reason whatever, unless there has been filed with the department by the insurer a notice thereof at least 30 days prior to the date of termination or cancellation. The 30-day notice may be waived if an acceptable replacement has been filed under this section.

(3) The provisions of this section shall be deemed a part of every such certificate or other contract and no other provision thereof or agreement between the parties thereto may operate to avoid the same.

(4) The department shall adopt rules for the administration and enforcement of this section and the secretary may appoint any employee in the department as a representative to affix the secretary's signature, including any facsimile signature adopted by the secretary, to administrative letters, notices and orders to enforce this section.

(5) The department of transportation may require blanket filings of insurance, subject to such rules as the department may adopt.

(6) (a) Except as provided under par. (b), the minimum insurance required under sub. (1) is the minimum level of insurance established under 49 USC 13906 (a) (1).

(b) 1. The minimum insurance required under sub. (1) for a vehicle with a gross weight of 10,000 pounds or less is \$300,000 unless the vehicle is transporting hazardous materials as listed under 49 CFR 172.101, in which case the minimum insurance requirements under par. (a) apply.

2. The minimum insurance required under sub. (1) for a taxicab operating under this chapter is the minimum levels of liability insurance for bodily injury and property damage required by the local taxicab licensing or regulating ordinance applicable to such taxicab. No such local ordinance may establish minimum levels of liability insurance which are less than those required for a policy or bond under s. 344.15 (1). If no minimum levels of liability insurance are established by such local ordinance, the minimum levels are the same as the levels required for a policy or bond under s. 344.15 (1).

**History:** 1973 c. 200; 1975 c. 243, 421; 1977 c. 29 ss. 1319, 1654 (7) (a); 1977 c. 59, 203, 325; 1977 c. 418 s. 924 (48); 1979 c. 102, 154; 1981 c. 347; 1983 a. 34; 1985 a. 208, 332; 1987 a. 216 s. 20; 1993 a. 16; 1999 a. 139; 2005 a. 250; 2007 a. 20.

**Cross-reference:** See also ch. Trans 176, Wis. adm. code.

An insurer that paid for damages caused by a fleet vehicle not listed on the policy and for which no premium was received may recover from the insured under a policy reimbursement clause. *Rural Mutual Insurance Co. v. Peterson*, 134 Wis. 2d 165, 395 N.W.2d 776 (1986).

Under this section, "operation" includes loading and unloading, and an "operator" includes a 3rd party permissively unloading the vehicle. *Mullenberg v. Kilgust Mechanical, Inc.* 2000 WI 66, 235 Wis. 2d 770, 612 N.W.2d 327, 99-2118. See also *Bauer v. Century Surety Company*, 2006 WI App 113, 293 Wis. 2d 382, 718 N.W.2d 163, 05-1218.

**194.42 Exemption from undertaking; proof of financial responsibility; revocation.** The department may by order exempt from the requirements of s. 194.41 any common motor carrier of property or of passengers, or other carrier of passengers by motor bus, or contract motor carrier upon written application therefor and finding that the applicant has the financial ability to pay any and all damages, liability for which would otherwise be assumed by an indemnitor under s. 194.41. Any person so exempted shall furnish to the department from time to time such information as to financial ability as the department may require and shall promptly report to the department all accidents and injuries arising out of its operations subject to this chapter. Such exemption may be granted as to all or part of the motor vehicles operated by the applicant. The department may by order revoke any such exemption, after hearing upon 10 days' notice, and for cause. Within 10 days after the date of such order of revocation

the person affected thereby shall in all respects comply with s. 194.41.

**History:** 1977 c. 29 s. 1654 (7) (a); 1977 c. 273.

**194.43 Private motor carriers; regulation by department.** The department may regulate the operations of private motor carriers, including the power to designate from time to time the public highways over which private motor carrier vehicles may or may not be operated and to designate the time that such vehicles may or may not be operated thereon so as to prevent congestion which shall affect the safety of persons and property upon such public highways; to require the display of satisfactory evidence that such vehicle is not being used for common or contract motor carrier purposes; and to prescribe reasonable and necessary rules and regulations for the safety of operation of private motor carriers.

**History:** 1977 c. 29 s. 1654 (7) (a); 1985 a. 202.

**194.46 Amendment, suspension, or revocation of certificate, license, or permit; hearing.** The department may at any time, by its order duly entered after a hearing had, upon notice to the holder of any certificate, license, or permit under this chapter and an opportunity to be heard, at which it shall be proved that the holder has willfully violated or refused to comply with any of the provisions of this chapter or s. 346.924, or any orders or rules of the department, alter, amend, suspend, or revoke the certificate, license, or permit. The department may suspend or revoke a certificate, license, or permit under this chapter if, after providing the holder thereof notice and an opportunity to be heard on the matter, the department finds that service under the certificate, license, or permit has been abandoned. A person who is aggrieved by an order of the department under this section may, within 20 days after the date that the order is issued, request a review of the order by the division of hearings and appeals.

**History:** 1977 c. 29; 1981 c. 347 ss. 68, 80 (1); 1985 a. 277; 1993 a. 16; 2005 a. 250.

**Cross-reference:** See also s. Trans 177.09, Wis. adm. code.

**194.51 Suit to recover protested tax.** No suit shall be maintained in any court to restrain or delay the collection or payment of the taxes levied in this chapter. The aggrieved taxpayer shall pay the tax as and when due, and, if paid under protest, may at any time within 90 days from the date of such payment, sue the state in an action at law to recover the tax so paid. If it is finally determined that said tax, or any part thereof, was wrongfully collected for any reason, it shall be the duty of the secretary of administration to pay out of the transportation fund the amount of such tax so adjudged to have been wrongfully collected. A separate suit need not be filed for each separate payment made by any taxpayer,

but a recovery may be had in one suit for as many payments as may have been made within any 90-day period preceding the commencement of such an action. Such suits shall be commenced as provided in s. 775.01.

**History:** 1977 c. 29 s. 1654 (1); 1979 c. 32 s. 92 (5); 2003 a. 33.

**194.53 Certain liability provisions in motor carrier transportation contracts prohibited. (1)** In this section:

(a) “Affiliate” of a promisee means any agent of the promisee or any independent contractor that is directly responsible to the promisee, but excludes a motor carrier that is a party to a motor carrier transportation contract with the promisee, any employee or agent of such a motor carrier, or any independent contractor directly responsible to such a motor carrier.

(b) “Motor carrier” means a common motor carrier or contract motor carrier.

(c) 1. “Motor carrier transportation contract” means any agreement, regardless of whether it is written, oral, express, or implied, between a motor carrier and a promisee covering any of the following:

- a. The transportation of property for hire by the motor carrier.
- b. The motor carrier’s entrance on property for the purpose of loading, unloading, or transporting property for hire.
- c. Any service of the motor carrier incidental to any activity under subd. 1. a. or b., including the storage of property.

2. “Motor carrier transportation contract” does not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or other agreements providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment.

(d) “Promisee” means any person that enters into a motor carrier transportation contract with a motor carrier.

(2) (a) Notwithstanding s. 401.302, ch. 407, and any other provision of law, no provision of a motor carrier transportation contract, and no covenant or agreement collateral to or affecting a motor carrier transportation contract, may indemnify, hold harmless, or require the motor carrier to provide a defense to the promisee or any employee or affiliate of the promisee, or have the effect of indemnifying, holding harmless, or requiring the provision of a defense, from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the promisee or any employee or affiliate of the promisee.

(b) Any provision, covenant, or agreement in violation of par. (a) is void and unenforceable.

**History:** 2011 a. 33.