

CHAPTER 436.

AN ACT to amend 85.52 and 85.91 (2a) and to create 85.90 and 85.91 (2b) of the statutes, relating to enforcement of motor vehicle weight limitations and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 85.52 of the statutes is amended to read:

85.52 Any traffic officer, having reason to believe that the gross weight of a vehicle is illegal, is authorized to *require the driver to stop and* to weigh the same either by means of portable or stationary scales; or, if such officer so demands, the operator of any such vehicle shall convey the same to a public scale for the purpose of ascertaining the gross weight of such vehicle. If upon such weighing it is found that the gross weight is in excess of the maximum permitted by * * * sections 85.47 (1) (c) and (d), 85.48, 85.49 and 85.54, or any ordinances enacted pursuant to sections 85.47 and 85.48 or any restrictions under section 85.54, the vehicle or vehicles shall not proceed without reloading or unloading to conform to such sections, ordinances and restrictions. This shall not prevent the traffic officer from directing the driver to proceed to a suitable place for such reloading or unloading. All material or goods so reloaded or unloaded shall be reloaded or unloaded and cared for by the owner or operator of such vehicle, at the risk of such owner or operator. A failure or refusal to stop or to submit vehicle, vehicles or load to a weighing as herein provided shall constitute a violation of section 85.47 (1) (c) or (d), 85.48 or 85.54.

SECTION 2. 85.90 of the statutes is created to read:

85.90 WEIGHT LIMITATIONS, CERTIFICATES OF CONVICTION FILED, REPETITIOUS VIOLATORS. (1) Whenever any owner or operator is convicted of violating sections 85.47, 85.48, 85.49 and 85.54, or is convicted of violating any ordinance enacted pursuant to sections 85.47 and 85.48 or restrictions promulgated under section 85.54, it shall be the duty of the clerk of court wherein such conviction is had to forward a certificate of such conviction to the state motor vehicle department within 48 hours thereof, on a suitable form devised and furnished by the motor vehicle department. For the purpose of determining a repetitious violator, receipt of a certificate of conviction by the motor vehicle department shall constitute prima facie evidence of a conviction. If the court wherein such conviction is had does not have a clerk, it shall be the duty of the presiding judge, justice or magistrate, to forward such certificate to said department. Failure to forward certificates of conviction of any owner or operator, upon whom the duty so to do is imposed, shall constitute malfeasance in office.

(2) (a) In the event the certificates of conviction are not forwarded to the motor vehicle department by the clerk, judge or justice, the public service commission may act upon other proof of such convictions from any competent source.

(b) Forfeiture of bail or appearance money or payment of a fine shall be deemed a conviction within the meaning of this section.

(c) In determining whether 5 convictions have occurred within a given 12-month period, the commission may count either the original judgment of conviction in justice or trial court if the original judgment is affirmed or the affirmance of a judgment of conviction in an appellate court. This method of counting is authorized to effectually reach the repetitious violator and to prevent the misuse of the right of appeal from a justice court conviction in forestalling revocation or the penalties provided in section 85.91 (2a) and (2b).

(3) (a) It is declared to be the public policy of the state that prosecutions for overweight violations shall in every instance where practicable be instituted against the person, firm, or corporation holding authority, certificates, licenses or permits evidencing their operating privileges from the state public service commission or motor vehicle department, which may be the proper subject of cancellation or revocation proceedings as herein provided. In instances where a combination of tractor and trailer or semi-trailer is used, the person standing in the relationship of principal or employer to the driver of the tractor portion of the vehicle combination shall be liable for violation of the weight limitation statutes along with the owner holding authority, certificates, licenses or permits from the state. It shall be a violation of sections 85.47, 85.48 or 85.54 for the owner, or any other person, employing or otherwise directing the operator of the vehicle, to require or knowingly to permit the operation of such vehicle upon a highway contrary to the provisions of sections 85.47, 85.48 and 85.54.

(b) The driver, as an agent thereof, shall accept service of a summons from a law enforcement officer for the person, firm or corporation holding authority, certificate,

license or permit from the state and for the owner of the tractor portion of a vehicle combination of tractor and trailer or semitrailer.

(4) If any provisions of this section or the application of such provision to any person or circumstances shall be held invalid, the remainder of the section and the application of such provision to persons or circumstances other than those as to which it is held invalid shall be deemed independent and separable and shall not be affected by such determination.

SECTION 3. 85.91 (2a) of the statutes is amended to read:

85.91 (2a) Any person violating any provision of sections 85.45, * * * 85.49, and 85.52 * * * shall be punished by a fine of not less than \$50 nor more than \$100. For the second or each subsequent conviction within * * * *any period of 12 consecutive months as determined by section 95.90* such person shall be punished by a fine of not less than \$100 nor more than \$200 or by imprisonment for not less than 10 days nor more than 30 days, or by both such fine and imprisonment.

SECTION 4. 85.91 (2b) of the statutes is created to read:

85.91 (2b) Any person, firm or corporation who violates any provisions of sections 85.47, 85.48 and 85.54 shall be guilty of a misdemeanor, and upon conviction therefor shall pay the following penalties:

(a) If the weight is 1,000 pounds or less in excess of schedules provided in sections 85.47 (1) (c) and (d), 85.48 or 85.54, a fine of not less than \$50 or more than \$100. For the second or each subsequent conviction within one year thereafter such person shall be punished by a fine of not less than \$100 nor more than \$200 or by imprisonment for not less than 10 days nor more than 30 days, or by both such fine and imprisonment.

(b) If the weight exceeds the schedules provided in sections 85.47 (1) (c) and (d), 85.48 or 85.54 by more than 1,000 pounds, the fine shall be computed according to the legal weights as defined in section 85.47 (1) (a), 85.48 or 85.54, as the case may be, and imposed according to the following schedule: for the first conviction thereof, such person, firm or corporation shall be fined not less than \$50 nor more than \$200 plus an amount equal to: 2 cents for each pound of total excess load when the total excess is not over 2,000 pounds; 4 cents for each pound of total excess load if the excess is over 2,000 pounds and not over 3,000 pounds; 6 cents for each pound of total excess load if the excess is over 3,000 pounds and not over 4,000 pounds; 8 cents for each pound of total excess load if the excess is over 4,000 pounds and not over 5,000 pounds; 10 cents for each pound of total excess load if the excess is over 5,000 pounds. For the second and each subsequent conviction, within any period of 12 consecutive months, as determined by section 85.90, such person, firm or corporation shall be punished by a fine of not less than \$100 nor more than \$300 or by imprisonment for not less than 10 days nor more than 30 days or by both such fine and imprisonment, plus an amount equal to: 2 cents for each pound of total excess load when the total excess is not over 2,000 pounds; 4 cents for each pound of total excess load if the excess is over 2,000 pounds and not over 3,000 pounds; 6 cents for each pound of total excess load if the excess is over 3,000 pounds and not over 4,000 pounds; 8 cents for each pound of total excess load if the excess is over 4,000 pounds and not over 5,000 pounds; 10 cents for each pound of total excess load if the excess is over 5,000 pounds. In computing the amount of penalty for violations under 85.47, the total excess load shall be determined from the basic figures in 85.47 (1) (a) and not from 85.47 (1) (c) and (d).

SECTION 5. This act shall take effect upon July 1, 1951.

Approved June 26, 1951.