

CHAPTER 218.

FINANCE COMPANIES, AUTO DEALERS, ADJUSTMENT COMPANIES
AND COLLECTION AGENCIES.

218.01 Motor vehicle dealers; salesmen; sales finance companies, licenses; fees; regulations; coercion; subsidies; penalties.	218.02 Adjustment service companies. 218.04 Collection agencies. 218.05 Community currency exchanges.
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218.01 Motor vehicle dealers; salesmen; sales finance companies, licenses; fees; regulations; coercion; subsidies; penalties. (1) DEFINITIONS. In this section, unless the context otherwise requires, the following words and terms shall have the following meanings:

(a) "Motor vehicle dealer" means any person, firm or corporation, not excluded by paragraph (b) of this subsection who:

1. For commission, money or other thing of value, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale or exchange of an interest in motor vehicles; or,

2. Who is engaged wholly or in part in the business of selling motor vehicles, including motor driven cycles, whether or not such motor vehicles are owned by such person, firm or corporation.

(b) The term "motor vehicle dealer" does not include:

1. Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under the judgment or order of any court; or

2. Public officers while performing their official duties; or

3. Employees of persons, corporations or associations enumerated in subdivisions 1 and 2 of this paragraph, when engaged in the specific performance of their duties as such employees.

4. Sales finance companies or other loan agencies who sell or offer for sale motor vehicles repossessed or foreclosed by them under terms of an instalment contract, or motor vehicles taken in trade on such repossessions.

(c) "Motor vehicle salesman" means any person who is employed as a salesman by a motor vehicle dealer to sell motor vehicles.

(d) "Sales finance company" means and includes any person, firm or corporation engaging in the business, in whole or in part, of acquiring by purchase or by loan on the security thereof, or otherwise, retail instalment contracts from retail sellers in this state, including any motor vehicle dealer who sells any motor vehicle on an instalment contract or acquires any retail instalment contracts in his retail sales of motor vehicles.

(e) "Retail instalment contract" or "instalment contract" means and includes every contract to sell one or more motor vehicles at retail, in which the price thereof is payable in one or more instalments over a period of time and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under a form of contract designated either as a conditional sale, chattel mortgage or otherwise.

(f) "Retail seller" means a person, firm or corporation selling or agreeing to sell one or more motor vehicles under a retail instalment contract to a buyer for the latter's personal use or consumption thereof.

(g) "Retail buyer" means a person, firm or corporation buying or agreeing to buy one or more motor vehicles from a retail seller under a retail instalment contract.

(h) "Cash price" means the retail seller's price in dollars for the sale of the goods, and the transfer of unqualified title thereto, upon payment of such price in cash or the equivalent thereof.

(ha) "Time price" means the total amount which the buyer contracts to pay under a retail instalment contract.

(i) "Time price differential" means that part of the total price in the retail instalment contract of sale in excess of the cash price, and includes all charges of any nature whatsoever which may be assessed the retail buyer by the seller for costs, charges, examinations, appraisal, service, brokerage, commission, expense, fees, fines, penalties exclusive of insurance premium costs and except those charges which may be specifically provided for in this section, or in the lawful orders issued by the licensor.

(j) The term "commissioner" means the state commissioner of banks and any duly authorized deputy named or appointed by such commissioner to perform any function in the administration or enforcement of this section.

(k) "Motor vehicle" means any motor driven or trailer type vehicle required to be registered under ch. 341.

(l) The term "department" means the state motor vehicle department, and includes any duly authorized deputy named or appointed by the director thereof to perform any function in the administration or enforcement of this section.

(m) "Licensor" means the body, either the commissioner or the department or both, issuing a license hereunder.

(n) "Manufacturer" means any person, resident or nonresident who manufactures or assembles motor vehicles, or who manufactures or installs on previously assembled truck chassis special bodies or equipment which when installed form an integral part of the motor vehicle and which constitutes a major manufacturing alteration.

(o) "Distributor" or "wholesaler" means a person, resident or nonresident who in whole or part, sells or distributes motor vehicles to motor vehicle dealers, or who maintains distributor representatives.

(p) "Factory branch" means a branch office maintained by a person who manufactures or assembles motor vehicles, for the sale of motor vehicles to distributors, or for the sale of motor vehicles to motor vehicle dealers or for directing or supervising in whole or part, its representatives.

(q) "Distributor branch" means a branch office similarly maintained by a distributor or wholesaler for the same purposes.

(r) "Factory representative" means a representative employed by a person who manufactures or assembles motor vehicles or by a factory branch, for the purpose of making or promoting the sale of its motor vehicles, or for supervising or contacting its dealers or prospective dealers.

(s) "Distributor representative" means a representative similarly employed by a distributor, distributor branch or wholesaler.

(t) "Person" means a person, firm, corporation or association.

(1a) AUTHORITY OF DEPARTMENT AND COMMISSIONER. The department shall issue the licenses provided for in subsection (2) (d) 1 to 6 and have supervision over the licensees thereunder in respect to all the provisions of this section, except only as to such matters as relate to the sale of motor vehicles on retail instalment contracts and the financing and servicing of such contracts, over which matter the commissioner shall have jurisdiction and control, and the commissioner shall issue the licenses to sales finance companies. Either licensor hereunder shall, upon request, furnish the other licensor with any information it may have in respect to any licensee or applicant for license or any transaction in which such licensee or applicant may be a party or be interested. No license shall be issued under subsection (2) (d) 1 and 8 until both licensors have approved the application. The suspension or revocation of either of such licenses shall automatically likewise suspend or revoke the other license; and such suspension or revocation shall be certified by the licensor ordering it to the other licensor.

(2) LICENSES, HOW GRANTED. (a) No motor vehicle dealer, motor vehicle salesman or sales finance company shall engage in business as such in this state without a license therefor as provided in this section. If any motor vehicle dealer acts as a motor vehicle salesman he shall secure a motor vehicle salesman's license in addition to a license for motor vehicle dealer.

(am) No manufacturer of motor vehicles, or factory branch, or distributor or distributor branch shall engage in business as such in this state without a license therefor as provided in this section.

(an) No factory representative or distributor representative shall engage in business as such in this state without a license therefor as provided in this section.

(b) Application for license shall be made to the licensor, at such time, in such form and contain such information as the licensor shall require and shall be accompanied by the required fee. The licensor may require in such application, or otherwise, information relating to the applicant's solvency, his financial standing or other pertinent matter commensurate with the safeguarding of the public interest in the locality in which said applicant proposes to engage in business, all of which may be considered by said licensor in determining the fitness of said applicant to engage in business as set forth in this section.

(c) All licenses shall be granted or refused within 30 days after application therefor, and shall expire, unless sooner revoked or suspended, on December 31 of the calendar year for which they are granted, except that where a complaint of unfair cancellation of dealer franchise is in the process of being heard, no replacement application for such franchise shall be considered until a decision is rendered by the department.

(d) The license fee for each calendar year, or part thereof, shall be as follows, effective January 1, 1938:

1. For motor vehicle dealers, \$10 for each office or branch or agent thereof, plus \$1 for a supplemental license for each used car lot not immediately adjacent to the office or to a branch.

2. For motor vehicle manufacturers, \$5; and for each factory branch in this state, \$5.

3. For distributors or wholesalers, the same as for dealers.

4. Any person licensed under subdivision 2 or 3 next preceding, may also operate as a motor vehicle dealer, without any additional fee or license.

5. For motor vehicle salesmen, \$2.

6. For factory representative, or distributor branch representative, \$2.

7. For sales finance companies on the basis of the gross volume of purchases of retail sales contracts of motor vehicles sold in this state for the 12 months immediately preceding October thirty-first of the year in which the application for license is made, as follows: On a gross volume of \$25,000 or less, \$25; on a gross volume of over \$25,000 and not over \$100,000, \$50; on each \$100,000 over \$100,000 and up to \$500,000, an additional \$15; on each \$100,000 over \$500,000 and up to \$1,000,000, an additional \$10; and on each \$100,000 over \$1,000,000, an additional \$5. No extra charge shall be made for branch licenses for sales finance companies. Gross volume shall be based on the unpaid balance of the retail contracts.

8. For motor vehicle dealers, who operate as a sales finance company, and carry or retain time sales contracts for more than 30 days, the same as sales finance companies, except for the first \$5,000 of gross volume, \$1; on each \$1,000 of gross volume, or part thereof, over \$5,000 and up to \$25,000, \$1.

(e) The licenses of dealers, manufacturers, factory branches, distributors, distributor branches and sales finance companies shall specify the location of the office or branch and must be conspicuously displayed there. In case such location be changed, the licensor shall indorse the change of location on the license without charge if it be within the same municipality. A change of location to another municipality shall require a new license, except for sales finance companies.

(f) Every salesman, factory representative or distributor representative shall carry his license when engaged in his business, and display the same upon request. The license 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.

(g) Every sales finance company shall be required to procure a salesman's license for itself or its employes in order to sell motor vehicles repossessed by it.

(h) Provided the licensor has reasonable cause to doubt the financial responsibility or the compliance by the applicant or licensee with the provisions of this statute the licensor may require such applicant or licensee to furnish and maintain a bond in such form, amount and with such sureties as it shall approve, but not less than \$5,000, nor more than \$15,000, conditioned upon such applicant or licensee complying with the provisions of the statutes applicable to the licensee and as indemnity for any loss sustained by any person by reason of any acts of the licensee constituting grounds for suspension or revocation of his license hereunder. The bonds shall be executed in the name of this state for the benefit of any aggrieved parties; provided that the aggregate liability of the surety to all such parties shall, in no event, exceed the amount of the bond. The above bonding requirements shall not apply to manufacturers, factory branches, and their agents.

(i) Application for dealers' licenses shall be submitted to the department in duplicate and contain such information as the licensors require. Application for sales finance company licenses shall contain such information as the commissioner requires. No motor vehicle dealer or sales finance company, unless so licensed, shall be permitted to register or receive or use registration plates under ss. 341.47 to 341.57. The department shall transmit the duplicate copy of each application for a dealer's license to the commissioner with \$1 for each application fee to cover the fee required under par. (d) (8) and the commissioner shall issue a sales finance company license to the dealer if no prior sales finance company license has been suspended or revoked, and if the applicant meets the requirements of this section relating to sales finance companies.

(j) Every motor vehicle dealer licensed in accordance with the provisions of this section shall make reports to the licensor at such intervals and showing such information as the licensor may require.

(k) After the receipt of an application in due form, properly verified and certified, and upon the payment of the \$5 examination fee, it is the duty of the commissioner of motor vehicles, or his deputy or any salaried employe of the motor vehicle department designated by the said commissioner, within a reasonable time and in a place reasonably accessible to the applicant for a license, to subject each first-time applicant for license and if the motor vehicle commissioner deems necessary, any applicant for renewal of

license, to a personal written examination as to his competency to act as a motor vehicle salesman. When it is shown from such application and examination that the applicant: 1. intends in good faith to act as a motor vehicle salesman; 2. is of good reputation; 3. has had experience or training in, or is otherwise qualified for selling motor vehicles; 4. is a resident of this state (unless application is for a nonresident motor vehicle salesman's license); 5. is reasonably familiar with the motor vehicle sales laws or contracts he is proposing to solicit, negotiate or effect; and 6. is worthy of a license, the said commissioner shall issue to the applicant a license to transact business in this state as a resident or nonresident motor vehicle salesman.

(3) LICENSES, HOW DENIED, SUSPENDED OR REVOKED. (a) A license may be denied, suspended or revoked on the following grounds:

1. Proof of unfitness of applicant.
2. Material misstatement in application for license.
3. Filing a materially false or fraudulent income tax return as certified by the department of taxation.
4. Wilful failure to comply with any provision of this section or any rule or regulation promulgated by the commissioner under this section.
5. Wilfully defrauding any retail buyer to the buyer's damage.
6. Wilful failure to perform any written agreement with any retail buyer.
7. Failure or refusal to furnish and keep in force any bond required.
8. Having made a fraudulent sale, transaction or repossession.
9. Fraudulent misrepresentation, circumvention or concealment through whatsoever subterfuge or device of any of the material particulars or the nature thereof required hereunder to be stated or furnished to the retail buyer.
10. Employment of fraudulent devices, methods or practices in connection with compliance with the requirements under the statutes of this state with respect to the retaking of goods under retail instalment contracts and the redemption and resale of such goods.
11. Having indulged in any unconscionable practice relating to said business.
12. Having charged interest in excess of 15 per cent per annum.
13. Having sold a retail instalment contract to a sales finance company not licensed hereunder.
14. Having violated any law relating to the sale, distribution or financing of motor vehicles.
15. Being a manufacturer of motor vehicles, factory branch, distributor, field representative, officer, agent or any representative whatsoever of such motor vehicle manufacturer or factory branch, who has induced or coerced or attempted to induce or coerce any automobile dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities which shall not have been ordered by said dealer.
16. Being a manufacturer of motor vehicles, factory branch, distributor, field representative, officer, agent or any representative whatsoever of such motor vehicle manufacturer or factory branch, who has attempted to induce or coerce, or has induced or coerced, any automobile dealer to enter into any agreement with such manufacturer, factory branch or representative thereof, or to do any other act unfair to said dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch or representative thereof and said dealer.
17. Being a manufacturer, factory branch, distributor, field representative, officer, agent or any representative whatsoever of such motor vehicle manufacturer or factory branch, who has unfairly, without due regard to the equities of said dealer and without just provocation, canceled the franchise of any motor vehicle dealer. The nonrenewal of a franchise or selling agreement without just provocation or cause shall be deemed an evasion of this section and shall constitute an unfair cancellation.
18. Having accepted an order of purchase or a contract from a buyer which offer of purchase or contract is subject to subsequent acceptance by the licensee, if such arrangement results in the practice of bushing. For the purpose of this section, bushing is defined as the practice of increasing the selling price of a car above that originally quoted the purchaser after the purchaser has made an initial payment, either with money or trade-in, and signed a purchase order or contract which is subject to subsequent acceptance by the licensee.
19. Having advertised, printed, displayed, published, distributed, broadcast or televised or caused or permitted to be advertised, printed, displayed, published, distributed, broadcast or televised in any manner whatsoever, any statement or representation with regard to the sale or financing of motor vehicles which is false, deceptive or misleading.
20. Having set up, promoted or aided in the promotion of a plan by which motor vehicles are sold to a person for a consideration and upon the further consideration that the purchaser agrees to secure one or more persons to participate in the plan by respec-

tively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser being given the right to secure money, credits, goods or something of value, depending upon the number of persons joining in the plan.

(b) The licensor may without notice deny the application for a license within 30 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Upon request by the applicant, whose license has been so denied, the licensor shall set the time and place of hearing a review of such denial, the same to be heard with reasonable promptness.

(c) No license shall be suspended or revoked except after a hearing thereon. The licensor shall give the licensee at least 5 days' notice of the time and place of such hearing. The order suspending or revoking such license shall not be effective until after 10 days' written notice thereof to the licensee, after such hearing has been had; except that the licensor, when in its opinion the best interest of the public or the trade demands it, may suspend a license upon not less than 24 hours' notice of hearing and with not less than 24 hours' notice of the suspension of the license.

(d) The licensor may inspect the pertinent books, records, letters and contracts of a licensee. The actual cost of each such examination shall be paid by such licensee so examined within 30 days after demand therefor by the licensor, and the licensor may maintain an action for the recovery of such costs in any court of competent jurisdiction.

(e) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be cause for refusing, suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his salesmen while acting as his agent, if such licensee approved of or had knowledge of said acts or other similar acts and after such approval or knowledge retained the benefit, proceeds, profits or advantages accruing from said acts or otherwise ratified said acts.

(f) The licensor shall deny the dealer application of a manufacturer in any community or territory where the presently enfranchised dealer or dealers have complied with agreed requirements of such manufacturer for adequate representation in such community or territory.

(g) Any licensee or other person in interest being dissatisfied with an order of the licensor may have a review thereof as provided in ch. 227.

(4) **ADVISORY COMMITTEE.** The licensor may appoint annually one or more local advisory committees and one general advisory committee, each consisting of not more than 9 members. The committees upon request of the licensor may advise and assist the licensor in the administration of this section. The members of said committees shall receive no compensation for their services or expenses.

(5) **RULES AND REGULATIONS.** (a) The licensor shall promote the interests of retail buyers of motor vehicles relating to default, delinquency, repossession or collection charges and the refund of the time price differential and insurance premium on prepayment of the instalment contract. It shall have power to define unfair practices in the motor vehicle industry and trade between licensees or between any licensees and retail buyers of motor vehicles, but such power shall not include the power to limit the price at which licensees may sell, assign or transfer receivables, contracts or other evidence of any obligation arising out of an instalment sale made pursuant to this section.

(b) The licensor shall have the power in hearings and trials arising under this section to determine the place, in the state of Wisconsin, where they shall be held; to subpoena witnesses; to take depositions of witnesses residing without the state, in the manner provided for in civil actions in courts of record; to pay such witnesses the fees and mileage for their attendance as is provided for witnesses in civil actions in courts of record; and to administer oaths. Whenever a hearing or trial shall be held by the licensor or by an examiner, he shall report his findings in writing to the licensor, which shall thereupon make its rulings and orders.

(c) The licensor may make such rules and regulations as it shall deem necessary or proper for the effective administration and enforcement of this section, but no licensee shall be subject to examination or audit by the licensor except as provided in sub. (3) (d).

(6) **INSTALMENT SALES.** (a) Every retail instalment sale shall be evidenced by an instrument in writing, which shall contain all the agreements of the parties and shall be signed by the buyer.

(b) Prior to or concurrent with any instalment sale, the seller shall deliver to the buyer a written statement describing clearly the motor vehicle sold to the buyer, the cash sale price thereof, the cash paid down by the buyer, the amount credited the buyer for any trade-in and a description thereof, the cost to the retail buyer of any insurance, the unpaid balance to be financed which may include the cost of insurance, the amount of the

time price differential, the amount of any other charge specifying its purpose, the time balance due from the buyer, the terms of the payment of such time balance, the amount and date of each payment necessary finally to pay the time balance and a summary of any insurance coverage to be effected. The commissioner may determine the form of such statement to be included therein. In the event that a written order is taken from a prospective purchaser in connection with any such instalment sale, then shall the written statement above provided for be given to such purchaser prior to or concurrent with the signing of such order by such purchaser. The time price differential in a retail instalment sale excluding the cost of insurance shall not exceed the following rates:

1. Class 1: Any new motor vehicle—\$7 per \$100 per annum.
2. Class 2: Any used motor vehicle designated by the manufacturer by a year model of the same or 2 years prior to the year in which the sale is made—\$9 per \$100 per annum.
3. Class 3: Any used motor vehicle not in Class 2 and designated by the manufacturer by a year model not more than 5 years prior to the year in which the sale is made—\$12 per \$100 per annum.
4. Class 4: Any used motor vehicle not in Class 2 or Class 3 and designated by the manufacturer by a year model more than 5 years prior to the year in which the sale is made—\$15 per \$100 per annum.
5. The time price differential shall be computed on the unpaid balance to be financed as determined under the introductory paragraph hereof at the annual rates provided for in the above classes which are payable by instalment payments, extending for a period of one year. On instalment sales contracts providing for equal instalment payments extending for a period which is less than or greater than one year the time price differential shall be computed proportionately. On contracts payable in one instalment or in unequal instalments the seller may receive a rate that will not yield more than would be received by the use of the rates permitted in classes 1 to 4. The time price differential shall be computed on the basis of a full month for any fractional month period in excess of 15 days.

6. A minimum time price differential of \$15 may be charged on any instalment sales contract in which the time price differential, when computed at the rates indicated, results in a total charge of less than this amount.

(c) An exact copy of the instalment sale contract and any note or notes given in connection therewith shall be furnished by the seller to the buyer at the time the buyer signs such contract. The buyer's copy of the contract shall contain the signature of the seller identical with the signature on the original contract. No contract shall be signed in blank except that a detailed description of the motor vehicle including the serial number or other identifying marks of the vehicle sold which are not available at the time of execution of such contract may be filled in before final delivery of the motor vehicle.

(d) A violation of par. (a) or (b) shall bar recovery of any time price differential, or any interest on the deferred balance by the seller, or an assignee of the seller who, at the time of the assignment, had knowledge of such violation, in any suit upon a sales contract arising from the sale where such violation occurred.

(e) Prior to 30 days after acquisition of any retail instalment contract from a retail seller, every finance company shall mail or deliver to the retail buyer a notice in writing that it has acquired the retail instalment contract from the retail seller thereunder, and shall also mail or cause to be mailed therewith a statement of the particulars of the retail instalment contract price, hereinbefore required to be stated by the retail seller, in accordance with the finance company's records respecting such particulars, including the amount of the time price differential. Every finance company, if insurance is provided by it, shall also within the time stated send or cause to be sent to the retail buyer a policy or policies or certificate of insurance clearly setting forth the exact nature of the insurance coverage and the amount of the premiums which shall not exceed the rates as fixed in the published manual of a recognized standard rating bureau.

(em) In event the dealer shall finance the instalment sale contract, the commissioner may permit him to combine the information required by paragraphs (b) and (e) last above in one statement under such rules and regulations as the commissioner may from time to time prescribe.

(f) Any retail buyer of a motor vehicle, resident in the state of Wisconsin, at the time of purchase, under a retail instalment contract, shall have a valid defense in any action or proceeding at law to enforce said contract by any finance company not licensed hereunder which has purchased or otherwise acquired such contract, if such finance company has wilfully failed or refused to comply with paragraph (e) of this subsection.

(g) Any retail buyer of a motor vehicle, resident of the state of Wisconsin at the time of the purchase thereof, under a retail instalment contract made in this state, shall have a valid defense against the recovery of the principal, time price differential, interest and other fees included in such contract, in any action or proceeding at law to enforce said

contract by any person who has purchased or otherwise acquired said contract, if such person has failed or refused prior to such purchase or acquisition to be licensed as a sales finance company under the provisions of this section, and such person is actually engaged in business, in whole or in part as a sales finance company as defined in this section.

(h) No licensee shall charge interest in excess of 15 per cent per annum.

(6m) NOTICE OF INSURANCE TO BUYER UNDER INSTALMENT SALES CONTRACT. Whenever a person sells or agrees to sell any motor vehicle at retail under a retail instalment contract wherein provision is made for insurance coverage, or a charge is made therefor, such policy so issued or provided for, shall include public liability coverage protecting the driver of such motor vehicle against damages resulting from the negligent use thereof, or the seller shall, in writing, notify the buyer at the time of making such contract that the motor vehicle is not covered by public liability insurance protecting the driver against damages resulting from the negligent use thereof, and shall obtain a dated, written receipt for such notice signed by the buyer.

(7) PROHIBITED ACTS. (a) No manufacturer of motor vehicles, no wholesaler or distributor of motor vehicles, and no officer, agent or representative of either shall induce or coerce, or attempt to induce or coerce, any retail motor vehicle dealer or prospective retail motor vehicle dealer in this state to sell, assign or transfer any retail instalment sales contract, obtained by such dealer in connection with the sale by him in this state of motor vehicles manufactured or sold by such manufacturer, wholesaler or distributor, to a specified sales finance company or class of such companies, or to any other specified person, by any of the acts or means hereinafter set forth, namely:

1. By any statement, suggestion, promise or threat that such manufacturer, wholesaler or distributor will in any manner benefit or injure such dealer, whether such statement, suggestion, threat or promise is express or implied, or made directly or indirectly.

2. By any act that will benefit or injure such dealer.

3. By any contract, or any express or implied offer of contract, made directly or indirectly to such dealer, for handling such motor vehicles, on the condition that such dealer sell, assign or transfer his retail instalment contract thereon, in this state, to a specified sales finance company or class of such companies, or to any other specified person.

4. By any express or implied statement or representation, made directly or indirectly, that such dealer is under any obligation whatsoever to sell, assign or transfer any of his retail sales contracts, in this state, on motor vehicles manufactured or sold by such manufacturer, wholesaler or distributor to such sales finance company, or class of companies, or other specified person, because of any relationship or affiliation between such manufacturer, wholesaler or distributor and such finance company or companies or such specified person or persons.

(b) Any such statements, threats, promises, acts, contracts or offers of contracts, set forth in paragraph (a) of this subsection are declared unfair trade practices and unfair competition and against the policy of this state, are unlawful and are prohibited.

(c) No sales finance company, and no officer, agent or representative thereof, shall induce or coerce or attempt to induce or coerce any retail motor vehicle dealer to transfer to such sales finance company any of the retail instalment sales contracts in this state of such dealer on any motor vehicle by any of the following acts or means, namely:

1. By any statement or representation, express or implied, made directly or indirectly, that the manufacturer, wholesaler or distributor of such motor vehicles will grant such dealer a franchise to handle such motor vehicles if such dealer shall sell, assign or transfer all or part of such retail sales contracts to such sales finance company.

2. By any statement or representation, express or implied, made directly or indirectly, that the manufacturer, wholesaler or distributor of such motor vehicles will in any manner benefit or injure such dealer if such dealer shall or shall not sell, assign or transfer all or part of such retail sales contracts to such sales finance company.

3. By an express or implied statement or representation made directly or indirectly, that there is an express or implied obligation on the part of such dealer to so sell, assign or transfer all or part of such retail sales contracts on such motor vehicles to such sales finance company because of any relationship or affiliation between such sales finance company and the manufacturer, wholesaler or distributor of such motor vehicles.

(d) Any such statement or representations set forth in paragraph (c) of this subsection are declared to be unfair trade practices and unfair competition and against the policy of this state, are unlawful and are prohibited.

(e) Any retail motor vehicle dealer who, pursuant to any inducement, statement, promise or threat hereinbefore declared unlawful, shall sell, assign or transfer any or all of his retail instalment contracts shall not be guilty of any unlawful act and may be compelled to testify to each such act.

(f) No manufacturer shall directly or indirectly pay or give, or contract to pay or give, anything of service or value to any sales finance company licensee in this state, and no such licensee in this state shall accept or receive or contract or agree to accept or receive directly or indirectly any payment or service of value from any manufacturer, if the effect of the payment or giving of any such thing of service or value by the manufacturer, or the acceptance or receipt thereof by the sales finance company licensee, may be to lessen or eliminate competition or tend to grant an unfair trade advantage or create a monopoly in the licensee who accepts or receives the payment, thing or service of value or contracts or agrees to accept or receive the same.

(7a) USED CARS. (a) No used motor vehicle shall be offered for sale by any motor vehicle dealer or motor vehicle salesman unless the speedometer reading thereon shall be turned back to zero, except that speedometers need not be set back to zero if readings thereon are indicated in writing by owners when selling or trading their cars to dealers and subsequently shown to purchasers.

(b) It shall be unlawful for any motor vehicle dealer or motor vehicle salesman to refuse to furnish, upon request of a prospective purchaser, the name of the previous owner of any used car offered for sale.

(8) PENALTIES. Any person, firm or corporation violating any of the provisions of this section shall be deemed guilty of misdemeanor and upon conviction thereof shall be punished as follows:

(a) For violation of any provision of subsection (7) of this section, by a fine of not exceeding \$10,000 or by imprisonment in the county jail for not to exceed one year or by both such fine and imprisonment.

(b) For violation of sub. (2) or (6m), by a fine not exceeding \$500 or by imprisonment not to exceed 90 days, or both.

(c) Any person violating any provision of this section or a lawful order issued thereunder for which there is no specific penalty shall, upon conviction, be subject to a fine not less than \$25 and not more than \$100, and imprisonment not to exceed 90 days, or both, and licensor may cancel the license of the offending licensee, and the license plates issued to any such licensee shall be surrendered to any police officer upon direction of the department without any refund of the fees paid. Any license so canceled shall not be renewed during the current year.

(d) Any person or persons violating subsection (3) (a) 15, 16 and 17, may in addition to, or in lieu of, the general denial, suspension or revocation penalties in said subsection, be subject to a fine of not more than \$5,000 or be subject to a suspension or revocation sentence of not more than a year effective only in the territory formerly served by the unfairly canceled dealer, or by both such fine and suspension or revocation, except that in a metropolitan area serviced by several dealers handling the same motor vehicle, the suspension or revocation order shall not be applicable to the remaining dealers.

History: 1951 c. 261 s. 10; 1953 c. 115, 302, 441; 1955 c. 221, 364, 594; 1957 c. 260, 307, 477, 554, 672.

Cross Reference: As to endless chain sales, see also 945.12.

Under 1953 statutes the commissioner properly applied a rule made by him under (5), regulating "dealer participation" by car dealers in charges in time-sale contracts financed through sale finance companies, and fixing maximum amounts when he included insurance commissions received by a car dealer in determining the amount of dealer participation; a finance company wholly owned the insurance company which wrote only the insurance required by the finance company on vehicles sold on its time-sales plan; the finance company required no separate application or payment for insurance to be made to the insurance company, and advertised the insurance as part of a "one-package plan"; the separate corporate entity of the insurance company is asserted for the purpose of paying car dealers added dealer participation indirectly under the guise of insurance commissions; the 2 companies should be treated as one person for the purpose of the regulation in question. It does not deny equal protection of the laws nor deprive the finance company of its property without due process. *General Motors A. Corp. v. Commissioner of Banks*, 253 W 56, 45 NW (2d) 83, 46 NW (2d) 328.

This section, in respect to requirements for the licensing of motor vehicle dealers, was designed to protect Wisconsin buyers from fraud and is a proper exercise of the police power of the state. It 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. The statute is not void as placing an undue burden on, nor as discriminating against, interstate commerce. The state may adopt proper regulations in the interests of the peace, safety and welfare of its residents in the absence of a federal statute either dealing with or pre-empting the particular field, or unless the state regulation discriminates against persons engaged in interstate commerce or places an undue burden thereon. *State v. Helwig*, 262 W 293, 54 NW (2d) 907.

For discussion of validity and applicability of this section, see *Kühl 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 court cannot revoke the license under (3), and cannot invoke the penalty of the bond under (2) (h), since the action would have to be against the obligors of the bond. *MacNaughton v. United Motor Sales*, 272 W 473, 76 NW (2d) 373.

218.01 (7a) (a) 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 121.69 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.

The commissioner, in regulating the sale of automobile instalment contracts, has power under (5) to require the inclusion in dealer participation of sums received by a finance company, 25 per cent or more of the stock of which is owned by the motor vehicle dealer or his stockholders or by his or their families. 39 Atty. Gen. 126.

Trailers designed to be hauled by automobiles are not "motor driven vehicles": persons engaged in the sale of such trailers

are not required to be licensed as motor vehicle dealers. 39 Atty. Gen. 478.

Sales finance companies licensed under 218.01 are entitled to purchase and use dealers' license plates under 85.02 (6) in connection with the sale of repossessed and foreclosed automobiles or automobiles taken in trade on such sales. The use of dealers' plates does not extend to automobiles purchased by such companies for use by its officers, managers or employees. 41 Atty. Gen. 81.

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

218.02 Adjustment service companies. (1) DEFINITIONS. As used in this section:

(a) "Adjustment service company," hereinafter called company, shall mean a corporation, association, partnership or individual engaged as principal in the business of prorating the income of a debtor to his creditor or creditors, or of assuming the obligations of any debtor by purchasing the accounts he may have with his several creditors, in return for which the principal receives a service charge or other consideration.

(b) "Commissioner" shall mean the commissioner of banks.

(2) LICENSES; APPLICATIONS; FEES; BOND. (a) Each adjustment service company, within 30 days of the beginning of such business, shall apply to the commissioner of banks for a license to engage in such business. Application for a separate license for each office of a company to be operated under this section shall be made to the commissioner in writing, under oath, in a form to be prescribed by the commissioner. The commissioner may issue more than one license to the same licensee.

(b) Every application for license shall be accompanied by a fee as follows:

1. \$100 if the place of business of the applicant is located in a city 25,000 of population or more.

2. \$50 if the place of business of the applicant is located elsewhere than in any such city.

(c) The commissioner may require any licensee either before or after the issuance of the license to file and maintain in force a bond in a form to be prescribed by him and acceptable to him, in such sum as he may deem necessary to safeguard the interest of the borrowers and the public, not exceeding, however, the sum of \$5,000.

(3) CONDITIONS OF THE ISSUANCE OF LICENSES. The commissioner shall issue a license to the applicant to conduct such business at the office specified in the application in accordance with the provisions of this section, if the commissioner shall find:

(a) That the applicant has filed the required application and paid the required fees.

(b) That the financial responsibility, experience, character and general fitness of the applicant, and of the members thereof if the applicant be a partnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently within the purposes of this section.

(c) That allowing such applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted.

(4) ORDER DENYING APPLICATION. If the commissioner is not satisfied as to all of the matters specified in subsection (3) he shall enter a special order denying the application for a license and shall return to the applicant his license fee. The commissioner shall make findings of fact as part of and in support of his order denying any application for a license.

(5) LICENSES; POSTING; CHANGES OF LOCATION; RENEWAL. (a) Every license issued shall state the address of the office at which the business is to be conducted, the name of the licensee, and if the licensee is a partnership or association, the names of the members thereof, and if a corporation the date and place of its incorporation. Such license shall be kept conspicuously posted in the office of the licensee and shall not be transferable or assignable.

(b) Whenever a licensee shall contemplate a change of his place of business to another location within the same city or village, he shall give written notice thereof to the commissioner, who shall attach to the license his authorization of such removal, specifying the date thereof and the new location. Such authorization shall be authority for the operation of such business under the same license at the specified new location. No change in the place of business of a licensee to a location outside of the original city or village shall be permitted under the same license.

(c) Every licensee shall, on or before the tenth day of each December, pay to the commissioner the annual license fee for the next succeeding calendar year.

(6) **REVOCACTION; SUSPENSION; REINSTATEMENT AND TERM OF LICENSES.** It shall be the duty of the commissioner and he shall have power, jurisdiction and authority, after complaint, notice and hearings as provided in section 214.10, to revoke any license in the following cases:

(a) If the licensee has failed to pay the annual license fee or to maintain in effect the bond required under the provisions of this section;

(b) If the licensee has violated any provisions of this section or of any lawful order issued hereunder;

(c) If any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the department in refusing to issue such license;

(d) If the licensee has demonstrated untrustworthiness or incompetency to act in such business in a manner to safeguard the interests of the public.

(7) **POWERS OF COMMISSIONER.** It shall be the duty of the commissioner and he shall have power, jurisdiction and authority to investigate the conditions and ascertain the facts with reference to such companies and upon the basis thereof:

(a) To issue general or special orders in execution of or supplementary to this section, but not in conflict therewith, to protect debtors from oppressive or deceptive practices of licensees;

(b) To regulate advertising and solicitation of business by licensees, and to prevent evasions of this section;

(c) At any time and so often as the commissioner may determine to investigate the business and examine the books, accounts, records and files used therein of every licensee. The actual cost of such examination shall be paid to the commissioner by every licensee so examined within 30 days after demand therefor by the commissioner, and the state may maintain an action for the recovery of such costs in any court of competent jurisdiction;

(d) To determine and fix by general order the maximum fees or charges that such companies may make.

(8) When any settlement or reduction of accounts has been made by such company, it shall furnish the debtor on demand a verified statement showing the amount due creditors by the terms of such settlement or reduction.

(9) The commissioner may make such rules and require such reports as he may deem necessary for the enforcement of this section. The provisions of sections 214.08, 214.09, 214.12, 214.26 and 214.27 shall apply to and be available for the purposes of this section. Orders of the commissioner under this section shall be subject to review in the manner provided in chapter 227.

(10) Any person violating any of the provisions of this section shall be punished by a fine of not more than \$500 or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment.

History: 1955 c. 10.

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 constitutes 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 Collection agencies. (1) **DEFINITIONS.** The following terms, as used in this section, shall have the meaning stated, unless the context requires a different meaning:

(a) "Commissioner" means the state commissioner of banks.

(b) "Person" includes individuals, partnerships, associations and corporations.

(c) "Licensee" means a person licensed under this section.

(d) "Special order" means an order against a person.

(e) "General order" means an order which is not a special order.

(f) "Collection agency" means any person engaging in the business of collecting or receiving for payment for others of any account, bill or other indebtedness. It shall not include attorneys at law authorized to practice in this state and resident herein, banks, express companies, savings and loan associations organized under the laws of Wisconsin, insurance companies and their agents, trust companies, or professional men's associations collecting accounts for its members on a nonprofit basis, where such members are required by law to have a license, diploma or permit to practice or follow their profession, real estate brokers, real estate salesmen and justices of the peace whose principal business is not collections.

(g) "Collector" or "solicitor" means any person employed by a collection agency to collect or receive payment or to solicit the receiving or collecting of payment for others of any account, bill or other indebtedness outside of the office.

(2) LICENSES REQUIRED. No person shall operate as a collection agency or as a collector or solicitor in this state without first having obtained a license as required by this section.

(3) LICENSES; APPLICATIONS; FEES; BOND. (a) Application for licenses under the provisions of this section shall be made to the commissioner in writing, under oath, on a form to be prescribed by the commissioner. All licenses shall expire on June thirtieth next following their date of issue.

(b) At the time of making application every applicant for a collection agency license shall pay a fee of \$100 to the commissioner for investigating the application, unless the applicant is already licensed hereunder, and the sum of \$50 as an annual license fee. In the event the cost of investigation exceeds \$100, the applicant shall, upon demand of the commissioner, pay the excess cost. No investigation fee shall be required on the renewal of a license.

(c) The license fee for a collector or solicitor shall be \$2. This license shall be carried as a means of identification whenever the collector is engaged in business. The license shall state the name of the employer and in case of a change of employer the commissioner shall indorse such change on the license without charge.

(d) The commissioner may require any licensee to file and maintain in force a bond, in a form to be prescribed by the commissioner and acceptable to him, and in such sum as he may deem reasonably necessary to safeguard the interests of the public.

(4) ISSUANCE OR DENIAL OF LICENSES. (a) Upon the filing of such application and the payment of such fee, the commissioner shall make his investigation, and if he finds that the character and general fitness and the financial responsibility of the applicant, and the members thereof if the applicant is a partnership or association, and the officers and directors thereof if the applicant is a corporation, warrant the belief that the business will be operated in compliance with this section the commissioner shall thereupon issue a license to said applicant. Such license is not assignable and shall permit operation under it only at or from the location specified in the license. A nonresident of this state may, upon complying with all other provisions of this section, secure a collection agency license provided he maintains an active office in this state.

(b) No licensee shall conduct a collection agency business within any office, room or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the department upon its finding that the character of such other business is such that the granting of such authority would not facilitate evasion of this section or the lawful orders issued thereunder.

(5) REVOCATION; SUSPENSION; REINSTATEMENT OF LICENSES. (a) The commissioner may suspend or revoke any license issued under this section if he finds that 1. the licensee has violated any of the provisions of this section or any lawful order of the commissioner made thereunder or 2. any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the commissioner in refusing to issue such license; or 3. the licensee has failed to pay the annual license fee or to maintain in effect the bond required under subsection (3) (d) or 4. the licensee has failed to remit money due to any and all claimants or forwarders within 30 days from the close of the month during which the collection was effected.

(b) No license shall be revoked or suspended except after a hearing. A complaint stating the grounds for suspension or revocation together with a notice of hearing shall be delivered to the licensee at least 5 days in advance of the hearing. In the event the licensee cannot be found, complaint and notice of hearing may be left at the place of business stated in the license and this shall be deemed the equivalent of delivering the notice of hearing and complaint to the licensee.

(c) In the event of the death of a licensee, if the licensee is an individual, or of the partners, if the licensee is a partnership, the license of the agency shall terminate as of the date of death of said licensee, except the commissioner may reinstate a license if the estate of the former licensee signifies to the commissioner within 45 days its intention to continue the business of the agency.

(6) LICENSES; POSTING; CHANGES OF LOCATION; RENEWAL. (a) Whenever a collection agency shall contemplate a change of its place of business to another location within the same city or village, it shall give written notice thereof to the commissioner, who shall attach to the license his authorization of such removal, specifying the date thereof and the new location. Such authorization shall be authority for the operation of such business under the same license at the specified new location. All collection agency licenses shall be conspicuously posted in the office of the licensee.

(b) Every licensee applying for a renewal of his license shall, on or before the first day of June, pay in advance to the commissioner the annual license fee.

(e) Before discontinuing operating as a collection agency under the provisions of this section, every licensee shall furnish the commissioner with proof in a form to be determined by the commissioner and approved by the advisory committee that:

1. Proper remittance has been made to all claimants or forwarders on money collected.
2. All accounts have been returned to the claimants or forwarders.
3. All valuable papers given to the licensee by the claimant or forwarder in connection with claims have been returned to the claimants or forwarders.

(7) POWERS OF COMMISSION; ADVISORY COMMITTEES. It shall be the duty of the commissioner and he shall have power, jurisdiction and authority to investigate the conditions and ascertain the facts with reference to the collection of accounts and upon the basis thereof:

(a) To issue any general or special order in execution of or supplementary to this chapter to protect the public from oppressive or deceptive practices of licensees and to prevent evasions of this chapter.

(b) For the purpose of discovering violations of this section the commissioner may cause an investigation to be made of the business of the licensee transacted under the provisions of this section, and shall cause an investigation to be made of convictions reported to him by any district attorney for violation by a licensee of any of the provisions of this section. The place of business, books of accounts, papers, records, safes and vaults of said licensee shall be open to inspection and examination by the commissioner or his representative for the purpose of such investigation and the commissioner shall have authority to examine under oath all persons whose testimony he may require relative to said investigation. The cost of the first investigation or examination during any licensing year shall be paid by the licensee, but the cost of additional investigation or examination during such year shall be paid by the licensee only if such examination discloses violation of subsection (5) (a) 4 of this section. Said cost shall be determined by prorating the amount of salaries and expenses of all examiners, employes and other persons engaged in examining licensees under this section, if any, and any other expenses which may be attributable thereto. The licensee shall pay the cost of any hearing including witness fees, unless it be found by the commissioner, board of review or court that licensee has not violated any provision of this section. All said costs shall be paid by the licensee within 30 days after demand therefor by the commissioner. The state may maintain an action for the recovery of such costs and expenses in any court of competent jurisdiction.

(c) To appoint advisers from the individuals engaged in the collection business in the state and in any locality, which advisers shall be consulted by and shall assist the commissioner in the execution of his duties under the provisions of this section. The commissioner may appoint such advisers as deputies. Such persons, either as advisers or deputies, shall receive no compensation for their services but may be reimbursed for their actual and necessary traveling expenses. Such expenses shall be audited and paid and charged to the commissioner for the administration of this chapter.

(d) To make all necessary or proper orders, rules and regulations for the administration and enforcement of this section.

(8) HEARINGS AND ORDERS. The commissioner shall have the same power to conduct hearings, take testimony and secure evidence as is provided in sections 214.08, 214.09 and 214.10.

(9) ADMINISTRATIVE REVIEW. Any licensee or other person in interest being dissatisfied with any order of the commissioner made under this section may have a review thereof as provided in section 220.037.

(9m) DELINQUENT COLLECTION AGENCIES; COMMISSIONER MAY TAKE POSSESSION. (a) If the commissioner finds that a license is insolvent or that he has collected accounts but has failed to remit money due to any claimant or forwarder within 30 days from the end of the month in which collection was made, and it is necessary to protect the interest of the public or when the license of a collection agency has expired or has terminated for any reason whatsoever, he may take possession of the assets and the books and records of the licensee for the purpose of liquidating its business, and for such other relief as the nature of the case and the interest of the claimants or forwarders may require. The liquidation of business shall be made by and under the supervision of the commissioner either in the name of the commissioner or in the name of the licensee and the commissioner or his successor shall be vested with title to all of the assets including the proceeds of the bond or bonds which have been filed with the commissioner as provided for under subsection (3) (d), and the proceeds of any and all money paid direct to the claimant or forwarder by the debtor prior to the date said license has terminated. Money paid to the licensee or to the commissioner after the termination of the license shall be disposed of by the commissioner with the approval of the circuit court.

(b) In taking possession of the property and business of any such collection agency, the commissioner shall forthwith give notice to any and all banks or bank corporations holding or in possession of any bank balances or assets of such agency and thereafter such assets shall be held subject to the order of the commissioner.

(c) In addition to the authority conferred by paragraph (b), the commissioner may, with the approval of the circuit court for the county wherein the main office is located, for the purposes of collection or liquidation, sell, assign, convey and transfer or approve the sale, assignment, conveyance and transfer of the assets of such collection agency under such terms and conditions as the commissioner may deem for the best interests of the claimants of such collection agency.

(d) The provisions of section 220.08 (3b), (4), (6), (7), (8), (13), (14) and (17) shall apply to this section in so far as they are applicable.

(e) The commissioner shall cause notice to be given by advertisement, if no action has been commenced as provided under paragraph (f) in such newspapers as he may direct, weekly for 4 consecutive weeks, calling on all persons who may have claims against such licensee, to present the same to the commissioner, and make legal proof thereof at a place and within a time, to be therein specified. The commissioner may mail a similar notice to all persons whose names appear as claimants or forwarders upon the books and records of the licensee or as may appear in the records of the commissioner on the sworn reports required to be furnished the commissioner according to the provisions of subsection (10). Any claimant or forwarder whose portion of the collection or collections has not been properly remitted shall file a claim which shall be considered as a preferred claim for the amount actually due the claimant or forwarder after deducting any commission or fee that may be due and owing the licensee. If the commissioner doubts the justice and validity of any claim, he may reject the same and serve notice of such rejection upon the claimant either by mail or personally. An affidavit of the service of such notice, which shall be prima facie evidence thereof, shall be filed with the commissioner. An action upon a claim so rejected must be brought in the circuit court for the county wherein the licensee is located within 30 days after such service of such notice of rejection of claim has been filed. Claims presented after the expiration of the time fixed in the notice to the claimants or forwarders shall be entitled to receive only liquidating dividends declared after presentation, unless otherwise ordered by the court. The court may fix a date after which all claims shall be barred.

(f) Whenever any agency, of whose assets and business the commissioner has taken possession, as aforesaid, deems itself aggrieved thereby, it may, at any time within 10 days after such taking possession, apply to the circuit court for the county in which the main office of such agency is located to enjoin further proceedings; and such court, after citing the commissioner to show cause why further proceedings should not be enjoined and hearing the allegations and proofs of the parties and determining the facts, may, upon the merits dismiss such application or enjoin the commissioner from further proceedings, and direct him to surrender such business and property to such agency.

(g) Whenever the commissioner shall have paid to each and every claimant or forwarder of such collection agency whose claims as such claimant or forwarder have been duly proved and allowed the full amount of such claims and shall have made proper provisions for unclaimed and unpaid collections and shall have paid all the expenses of the liquidation, he shall liquidate the remaining assets exclusive of the proceeds of the bond or bonds for the benefit of the general creditors; or if no claims have been filed by or in behalf of the general creditors, the commissioner shall turn over the remaining assets to the circuit court for further disposition.

(h) All accounts and valuable papers given to the agency by the claimant or forwarder in possession of the commissioner, pertaining to accounts placed with the agency for collection shall be returned to the claimant or forwarded by the commissioner within 30 days after verification of the claim has been made.

(10) ANNUAL REPORT; RECORDS. (a) Each licensee shall annually, on or before the fifteenth day of March, file a report with the commissioner giving such reasonable and relevant information as the commissioner may, by general or special order, require concerning the business and operations conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the commissioner.

(b) The commissioner shall require the licensee to keep such books and records in his place of business as will enable the commissioner to determine whether the provisions of this section are being complied with. Every such licensee shall preserve the records of final entry used in such business for a period of at least 6 years after final remittance is made on any account placed with the licensee for collection or after any account has been returned to the claimant on which one or more payments have been paid.

(11) **SUBTERFUGE.** The provisions of this chapter shall apply to any licensee or other person who, by any device, subterfuge or pretense whatever, shall make a pretended purchase or a pretended assignment of accounts from any other person for the purpose of evading the provisions of this section.

(12) **PENALTIES.** Any person who shall violate any provision of this section shall be guilty of a misdemeanor and, for each and every such offense shall, upon conviction thereof, be punished by a fine of not more than \$1,000 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

(13) **ENFORCEMENT.** It shall be the duty of the commissioner and he shall have power, jurisdiction and authority to investigate, ascertain and determine whether this section or the lawful orders issued hereunder are being violated and for such purposes the commissioner shall have all the powers conferred by subs. (4) and (5). The commissioner shall report all violations to the district attorney of the proper county for prosecution.

History: 1951 c. 261 s. 10; 1953 c. 61.

An assignment of life 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 (3) are not "taxes", nor exorbitant nor prohibitive fees, nor is the bond which the commissioner may require a "tax". The section does not impede

the flow of interstate commerce and is a proper exercise of the state's police power. 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.

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. 426.

218.05 Community currency exchanges. (1) **DEFINITIONS.** As used in this section:

(a) "Commissioner" means the state commissioner of banks.

(b) "Community currency exchange" means any person, firm, association, partnership or corporation, except banks incorporated under the laws of this state and national banks organized pursuant to the laws of the United States, and any credit union operating under chapter 186, Wisconsin statutes, which has or shall obtain a certificate of authority from the commissioner of banks of Wisconsin to engage in the business and functions herein set forth, engaged in the business of and providing facilities for cashing checks, drafts, money orders and all other evidences of money acceptable to such community currency exchange for a fee or service charge, or other consideration, or engaged in the business of selling or issuing money orders under his or their or its name or any other money orders (other than United States post-office money orders, American Express money orders, Postal Telegraph money orders, or Western Union money orders), or engaged in both such businesses. Nothing in this section shall be held to apply to any person, firm, association, partnership or corporation engaged in the business of transporting for hire, bullion, currency, securities, negotiable or non-negotiable documents, jewels or other property of great monetary value, nor to any person, firm, association, partnership or corporation engaged in the business of selling tangible personal property at retail nor to any person licensed to practice a profession or licensed to engage in any business in this state, who, in the course of such business or profession and, as an incident thereto, cashes checks, drafts, money orders or other evidences of money.

(2) **LICENSES REQUIRED.** After July 1, 1945, no person, firm, association, partnership or corporation shall engage in the business of a community currency exchange without first securing a license to do so from the commissioner as required by this section.

(3) **LICENSES; APPLICATIONS; FEES; BOND.** (a) Application for such license shall be in writing, under oath, on a form to be prescribed by the commissioner. Each application shall contain the following information:

1. The full name and address (both of residence and place of business) of the applicant, and if the applicant is a partnership or association, of every member thereof, and the name and business address if the applicant is a corporation.

2. The county and municipality, with street and number, if any, where the community currency exchange is to be conducted; and

3. Such other information as the commissioner may require.

(b) Such application shall be accompanied by a fee of \$100 which fee shall be for the cost of investigating the applicant. When the application has been approved by the commissioner and the applicant so advised, an additional sum of \$50 as an annual license fee for a period terminating on the last day of the current calendar year shall be paid to the commissioner by the applicant. The license fee for an applicant applying for a license after July 1 of any year shall be \$25 for the balance of such year.

(c) Before any license shall be issued to a community currency exchange the applicant shall file annually with and have approved by the commissioner a surety bond, issued by a bonding company or insurance company authorized to do business in this state in the principal sum of \$5,000. Such bond shall run to the state of Wisconsin and shall be for the benefit of any creditors of such community currency exchange for any liability incurred on any money orders issued by the community currency exchange and any liability for any sum or sums due to any payee of any check, draft or money order left with the community currency exchange for collection, and also for any penalties that may be imposed hereunder. If the commissioner shall find at any time the bond is insecure or exhausted or otherwise doubtful, an additional bond in like amount to be approved by the commissioner shall be filed by the licensee within 30 days after written demand therefor by the commissioner.

(4) LICENSES; ISSUANCE; DENIAL. If the commissioner shall find after investigation that the applicant is (a) trustworthy and reputable, (b) that he has business experience qualifying him to competently conduct, operate, own, or become associated with a community currency exchange, (c) that he has a good business reputation and is worthy of a license, the commissioner shall issue to the applicant qualifying hereunder, a license to operate a community currency exchange at the location specified in the application, which license shall remain in full force and effect until it is surrendered by the licensee or revoked by the commissioner. If the commissioner shall not so find, he shall not issue such license and shall notify the applicant of such denial, retaining the investigation fee to cover the cost of investigating the applicant. The commissioner shall approve or deny every application within 30 days from the filing thereof. No application shall be denied unless the applicant has had notice of a hearing on said application and an opportunity to be heard thereon. If the application is denied, the commissioner shall, within 20 days thereafter, prepare and keep on file in his office a written order of denial which shall contain his findings with respect thereto and the reasons supporting the denial, and shall mail a copy thereof to the applicant at the address set forth in the application, within 5 days after the filing of such order.

(5) FORBIDDEN TO ACT AS DEPOSITORY. No community currency exchange shall be permitted to accept money or evidences of money as a deposit to be returned to the depositor or upon the depositor's order; and no community currency exchange shall be permitted to act as bailee or agent for persons, firms, partnerships, associations or corporations to hold money or evidences thereof or the proceeds therefrom for the use and benefit of the owners thereof and deliver such money or proceeds of evidence of money upon request or direction of such owner or owners. Nothing contained herein shall prevent a community currency exchange from issuing money orders.

(6) INSURANCE. Every applicant for a license hereunder shall, after his application for a license has been approved, submit a policy or policies of insurance to be approved by the commissioner, issued by an insurance company or indemnity company authorized to do business under the laws of this state, which shall insure the applicant against loss by burglary, larceny, robbery, forgery or embezzlement in a principal sum as may be determined from time to time by the commissioner. Any such policy or policies, with respect to forgery, may carry a condition that the community currency exchange assumes the first \$50 of each claim thereunder.

(7) FUND MAINTAINED. Each community currency exchange shall have, at all times, a minimum of \$1,000 of its own cash funds available for the uses and purposes of its business and said minimum sum shall be exclusive of and in addition to funds received for exchange or transfer; and in addition thereto each such licensee shall at all times have on hand an amount of liquid funds sufficient to pay on demand all outstanding money orders issued by it.

(8) OTHER BUSINESS FORBIDDEN. A community currency exchange shall not be conducted as a department of another business. It must be an entity, financed and con-

ducted as a separate business unit. This shall not prevent a community currency exchange from leasing a part of the premises of another business for the conduct of this business on the same premises; provided, that no community currency exchange shall be conducted on the same premises with a business whose chief source of revenue is derived from the sale of alcoholic liquor for consumption on the premises. This subsection shall not apply when such other business is subject to any statute which provides for supervision and examination by the commissioner.

(9) **TOKENS.** No community currency exchange shall issue tokens to be used in lieu of money for the purchase of goods or services from any enterprise.

(10) **LICENSES; POSTING; ASSIGNMENT; NUMBER; CHANGE OF LOCATION.** (a) Such license shall state the name of the licensee and the address at which the business is to be conducted. Such license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable.

(b) No more than one place of business shall be maintained under the same license, but the commissioner may issue more than one license to the same licensee upon the compliance with the provisions of this section governing an original issuance of a license, for each new license.

(c) Whenever a licensee shall wish to change his place of business to any location other than that originally set forth in his license, he shall give written notice thereof to the commissioner and if the change is approved the commissioner shall attach to the license, in writing, a rider stating the new address or location of the community currency exchange.

(11) **RENEWAL.** Every licensee shall, on or before December 20, pay to the commissioner the sum of \$50 as an annual license fee for the next succeeding calendar year and shall at the same time file with the commissioner the annual bond and insurance policy or policies in the same amount and of the same character as required by subsections (3) (c) and (6).

(12) **REVOCACTION; SURRENDER; NOTICE.** (a) The commissioner may, upon 10 days' notice to the licensee by mail directed to the licensee at the address set forth in the license, stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard prior to such action, revoke any license issued hereunder if he shall find that:

1. The licensee has failed to pay the annual license fee or to maintain in effect the required bond or insurance policy or policies or to comply with any order, decision or finding of the commissioner made pursuant to this section.

2. The licensee has violated any provision of this section or any regulation or direction made by the commissioner under this section.

3. Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the commissioner in refusing the issuance of the license.

(b) The commissioner may revoke only the particular license with respect to which grounds for revocation may occur or exist, or if he shall find that such grounds for revocation are of general application to all offices or to more than one office operated by such licensee, he may revoke all of the licenses issued to such licensee or such number of licenses to which such grounds apply.

(c) A licensee may surrender any license by delivering to the commissioner written notice that he surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender, or affect his bond, or entitle such licensee to a return of any part of the annual license fee.

(d) Every license issued hereunder shall remain in force until the same has been surrendered or revoked in accordance with this section, but the commissioner may on his own motion issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which clearly would have warranted the commissioner in refusing originally the issuance of such license under this section.

(e) No license shall be revoked until the licensee has had notice of a hearing thereon and an opportunity to be heard. When any license is so revoked, the commissioner shall within 20 days thereafter, prepare and keep on file in his office, a written order or decision of revocation which shall contain his findings with respect thereto and the reasons supporting the revocation and shall send by mail a copy thereof to the licensee at the address set forth in the license within 5 days after the filing in his office of such order, finding or decision.

(13) **JUDICIAL REVIEW.** Any licensee dissatisfied with any order of the commissioner made under this section may have a review thereof as provided in chapter 227.

(14) **ANNUAL REPORT; EXAMINATION.** Each licensee shall annually, on or before February 15, file a report with the commissioner (which shall be used only for the official

purposes of the commissioner) giving such relevant information as the commissioner may reasonably require concerning, and for the purpose of examining, the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the commissioner. The commissioner may at any time and at least once in each year investigate the community currency exchange business of any licensee and of every person, partnership, association and corporation who or which shall be engaged in the business of operating a community currency exchange. For that purpose, the commissioner shall have free access to the offices and places of business and to such records of all such persons, firms, partnerships, associations and corporations and to the officers and directors thereof that shall relate to such community currency exchange business. The commissioner may require the attendance for examination under oath of all persons whose testimony he may require relative to such business, and in such cases the commissioner, or any qualified representative of the commissioner, may administer oaths to all such persons called as witnesses, and the commissioner, or his representative, may conduct such examinations, and there shall be paid to the commissioner by the licensee for each examination a fee of \$20 for each day or part thereof required to conduct the examination.

Exclusion of American Express Company violates equal protection clause of the 14th amendment and enforcement of act against plaintiff engaged in sale of money orders will be restrained. State has authority to regulate currency exchanges and issuance and sale of money orders, and wisdom of employing any particular mode of regulation is a matter for legislative rather than judicial determination; statute attempting to regulate such business does not violate due process clause of federal constitution. *Currency Services v. Matthew*, 90 F Supp. 40.

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