

CHAPTER 194

MOTOR VEHICLE TRANSPORTATION ACT

194.01	Definitions	194.24	Application; form
194.02	Legislative intent.	194.25	Nature of certificate; assignability
194.03	Interstate and foreign commerce.	194.26	Discontinuance of service subject to approval
194.04	Certificates; licenses; permits.	194.27	Pickup and delivery service; no deviation from route.
194.05	Exemption.	194.28	Reports; time for filing
194.06	Public interest.	194.29	Service to be reasonable.
194.07	Operations subject to law	194.30	Accounting system may be established.
194.08	Effect of this chapter on powers of highway commission and municipalities	194.31	Inspection of records.
194.09	Marking carrier vehicles	194.32	Busses, restrictions
194.10	Nonresident carriers; appointment of agent.	194.33	Municipal consent
194.11	Inspection of premises or vehicles.	194.34	Contract motor carriers; license; application and hearing; discrimination
194.13	Court review.	194.35	Application; form.
194.14	Existing law applicable to procedure.	194.355	Operation under permit.
194.15	Enforcement by department of justice and district attorneys.	194.36	Contract motor carriers; regulation by commission; powers; duties
194.16	Operation while delinquent unlawful	194.37	Interdepartmental relations; division of powers; cooperation
194.17	Penalties.	194.38	Regulatory powers of division of motor vehicles
194.175	Posting of bail.	194.41	Undertaking for damage to person or property
194.18	Common motor carrier; regulation by commission; powers; duties	194.42	Exemption from undertaking; proof of financial responsibility; revocation.
194.19	Charges and rates to be reasonable	194.43	Private motor carriers; regulation by division.
194.20	Certificates and licenses for carriers in interstate and foreign commerce.	194.44	Private motor carriers; permit.
194.21	Refunds of excessive charges.	194.46	Amendment or revocation of certificate, license or permit, or license under s. 194.44; hearing
194.22	Changes in tariff schedules to be approved.	194.51	Suit to recover protested tax.
194.225	Common motor carriers, bills of lading, joint liability		
194.23	Certificate required; hearing; conditions.		

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

(1) "Motor vehicle" means any automobile, truck, trailer, semitrailer, tractor, motor bus or any self-propelled or motor driven vehicle, except a motor driven cycle or a vehicle operated on rails, or trackless trolley car.

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

(3) "Commission" means the public service commission.

(4) "Person" means and includes any individual, firm, co-partnership, corporation, company, association, including express and forwarding companies or agencies and electric or steam railroad companies, or their lessees, trustees or receivers.

(5) "Common motor carrier" means any person who holds himself out to the public as willing to undertake for hire to transport by motor vehicle between fixed termini or over a regular route upon the public highways, passengers or property other than live stock, fluid milk or other farm products or farm supplies transported to or from farms. The transportation of passengers in taxicab service shall not be

construed as being that of a common motor carrier.

(11) "Contract motor carrier" means any person engaged in the transportation by motor vehicle of property for hire and not included in the term "common motor carrier of property".

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

(15) "For hire" means for compensation, and includes compensation obtained by a motor carrier indirectly, by subtraction from the purchase price or addition to the selling price of property transported, where the purchase or sale thereof is not a bona fide purchase or sale. Any person who pretends to purchase property to be transported by him; or who purchases such property immediately prior to and sells the same immediately after the transportation thereof shall be presumed to be transporting such property for hire and not a bona fide purchaser or seller thereof, which presumption may be rebutted. The lease or rental of a motor vehicle to a person for transportation of such person's property which lease or rental directly or indirectly includes the lessor's services as a driver shall be presumed to be transportation for hire

and not private carriage, except under arrangements approved by the public service commission and the division of motor vehicles. Nothing herein contained shall be construed to include motor vehicle operations which are conducted merely as an incident to or in furtherance of any business or industrial activity. Nothing contained in this subsection shall affect the rights of persons regulated under ss. 440.81 to 440.95.

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

(17) The term "gross weight" when applied to a motor vehicle used for the transportation of passengers shall mean the actual weight of such motor vehicle unloaded plus one hundred and fifty pounds for each person capable of being seated in such motor vehicle.

(18) The term "municipality" means a town or an incorporated village or city.

History: 1971 c. 164 s. 88.

194.02 Legislative Intent. It is hereby declared to be the purpose and policy of the legislature in enacting chapter 194 to confer upon the division of motor vehicles and the public service commission the power, authority and duty to supervise and regulate the transportation of persons and property by motor vehicles upon or over the public highways of this state in all matters, whether specifically mentioned herein or not, so as to protect the safety and welfare of the traveling and shipping public in their use of the highways; to relieve the existing and all future undue burdens on the highways arising by reason of the use of the highways by motor vehicles; to carefully preserve, foster and regulate transportation to the end of developing and preserving each separate type of the transportation system by highway and rail adequate to meet public needs.

194.03 Interstate and foreign commerce.

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

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

(4) Motor carriers operating in interstate and foreign commerce shall obtain permits and display evidence thereof as required by the division of motor vehicles in the same manner as

is required of motor carriers operating in intrastate commerce.

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

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

194.04 Certificates; licenses; permits. (1)

AUTHORITY TO OPERATE. (b) Every application for a certificate shall be accompanied by a filing fee of \$40. Every application for approval of an assignment or lease of a certificate or for an amendment to a certificate except an amendment to a certificate under the federal motor carrier act of 1935 shall be accompanied by a filing fee of \$40. No fee shall be required for an application for abandonment of service under all or any part of a certificated authority nor for a restatement of authority contained in a certificate without enlarging the same.

(bd) Except as hereinafter provided each holder of a certificate shall also pay an annual permit fee as provided in this section for each motor vehicle operated under such certificate.

(c) Every application for a license or for approval of assignment or lease thereof or for an amendment thereto except an amendment to a license under the federal motor carrier act of 1935 shall be accompanied by a filing fee of \$25. Only one fee shall be required when an application for assignment and application for amendment are filed simultaneously by one applicant.

(cb) Except as hereinafter provided, each holder of a license shall also pay an annual permit fee as provided in this section for each motor vehicle operated under such license.

(cm) Vehicles permitted under common or contract motor carrier authorities shall pay permit fees for the same period as registration fees are paid under ch. 341.

(2) **PERMITS; APPLICATION, EXPIRATION.** Every permit, except the quarterly permits issued pursuant to sub. (1) (cm), for the operation of a motor vehicle expires on December 31 of each year. Except as herein provided application for permits shall be made annually and shall be accompanied by the annual fee reduced by one-fourth for each quarter of the permit year in which the vehicle has not been operated, except that there shall be no reduction of the fees paid by private motor carriers or on renewals. No permit shall be issued or renewed for any motor vehicle unless the registration required by ch. 341 is paid in this state.

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

(am) No additional permit or payment of fees is required by the lessee of a contract motor carrier vehicle licensed in this state if the lessor is a Wisconsin resident and the lessee has a contract carrier license or common carrier certificate of authority issued by the commission and insurance on file with the division of motor vehicles as prescribed in s. 194.41.

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

(c) 1. Any individual, copartnership or corporation whose principal business is leasing of motor vehicles, including trailers and semitrailers as described in s. 194.44, without drivers for compensation, may, upon payment of an additional annual permit fee of \$20 for each such leased motor vehicle, trailer or semitrailer, lease the same to common and contract motor carriers. Such lessor shall not be considered to obtain the privileges or be subject to the obligations of s. 194.23 or 194.34 nor shall either of said sections apply to such lessor.

2. An authorized common or contract carrier, when leasing a motor vehicle, trailer or semitrailer from a person engaged in the business of leasing under this section and under s. 194.44, shall not be required to procure a permit as prescribed in s. 194.23 or 194.34 if the motor vehicle trailer or semitrailer leased carries the permit required under this section.

(4) ANNUAL PERMIT FEES. The annual permit fees required for motor vehicles except as provided in subsection (2) hereof operated under this chapter shall be as follows:

(a) Motor vehicles operated by common motor carriers of passengers, twenty dollars.

(b) Motor vehicles operated by common motor carriers of property, twenty dollars.

(c) Motor vehicles operated by contract carriers, ten dollars.

(d) Motor vehicles operated by common motor carriers of property, \$10. Such fees shall be remitted by the division to an association rate and tariff bureau designated by each carrier and shall be used by such bureau to publish the rates and tariffs of such carrier and to promote the efficient use of common motor carriers of property in this state.

(5a) COLLECTION OF FEES. The division of motor vehicles shall collect all fees prescribed by this section except filing fees, which shall be collected by the public service commission.

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

194.05 Exemption. (1) This chapter shall not apply to motor vehicles owned by the United States, any state, or any political subdivision thereof, except in the case of transportation systems acquired and operated in contiguous or cornering counties under s. 59.968 (4).

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

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

History: 1973 c. 63, 259.

194.06 Public Interest. The business of all common motor carriers of property or of passengers and of contract motor carriers is

hereby declared to be affected with a public interest.

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

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

194.09 Marking carrier vehicles. Each motor vehicle for which a common carrier permit, a contract carrier permit or a private carrier permit is issued, shall be plainly marked in such manner as the division of motor vehicles may prescribe, so as to identify such motor vehicle as being operated under such a permit.

194.10 Nonresident carriers; appointment of agent. If any common motor carrier of property or of passengers, any contract motor carrier, or any private motor carrier, subject to this chapter, is a nonresident of this state, he shall, prior to operating under this chapter, appoint an agent in this state upon whom process and notices in any or all legal proceedings, arising out of its operation within this state or under this chapter, may be served and shall forthwith notify the division of motor vehicles of such appointment and of the name and address of such agent, and such nonresident carrier shall, so long as he continues to operate in this state, maintain such an agent. Unless such an agent is appointed by the time the certificate, license or permit is issued, authorizing such nonresident carrier to operate in this state under this chapter, or if at any time thereafter, so long as he continues to operate in this state under this chapter, he does not maintain such an agent in this state, he shall be deemed to have authorized the administrator of the division of motor vehicles to act as his agent for the service of process in the legal proceedings above set forth.

The administrator, while he is such agent shall, upon being served with process as the agent of such nonresident carrier, forthwith mail to him the papers so served. Such service on the administrator shall be effected by serving upon him the original, one copy for the administrator's record of service and such additional number of copies as there are defendants so served in the action, the original to be returned with proper certificate of service attached for filing in court as proof of service of the copies by having mailed them by registered mail to the defendants named therein. The service fee is \$2 for each defendant so served.

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

194.13 Court review. Orders and determinations made pursuant to this chapter shall be subject to review in the manner provided in chapter 227.

194.14 Existing law applicable to procedure. (1) In exercising the powers conferred by this chapter, the public service commission and division of motor vehicles shall be guided as to the procedure by chs. 195 and 196 insofar as the same are applicable and not inconsistent with the specific requirements of this chapter.

(2) Notwithstanding the provisions of chapter 227 the commission, when passing upon an application for a certificate, license or amendment thereto as provided for in this chapter, may, in making its decision thereon, rely on an oral or written summation of the record made by the person who has heard the testimony.

(3) The commission shall make its finding and issue its order on any such application within 60 days after submission of all evidence and after the date set for the filing of briefs or oral argument, whichever is later, submitted upon behalf of any party to such case. If the commission shall fail to make its finding and issue its order within the time herein prescribed, a grant of the certificate, license or amendment thereto shall thereupon issue by operation of law.

194.15 Enforcement by department of justice and district attorneys. Upon request of the department of transportation, the department of justice or the district attorney of the proper county shall aid in any investigation, hearing or trial had under this chapter, and shall institute and prosecute all necessary actions or proceedings for the enforcement of such provisions and for the punishment of violations of the same, and the attorney general may upon request of the department of transportation appoint a qualified attorney employed by it as an assistant attorney general to assist in the performance of the duties imposed upon him by this section and s. 195.07.

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

194.17 Penalties. (1) Every common motor carrier of property or of passengers, every contract motor carrier and every private motor carrier to which this chapter applies, and every person who violates any provision of this chapter or who does any act prohibited thereby, or fails or refuses to perform any duty enjoined upon him therein, or who fails, neglects or refuses to obey any lawful requirement or order made by the commission or the division of motor vehicles under this chapter, shall be fined not less than \$50 nor more than \$100 or imprisoned not more than 60 days, or both. Each day during which such a violation continues shall constitute a separate offense. In construing and enforcing the provisions of this section, the act, omission or failure of any officer, agent or servant or other person acting for or employed by any common motor carrier of property or of passengers, any contract motor carrier or any private motor carrier, done within the scope of his employment is deemed to be the act, omission, or failure of such common motor carrier of property or of passengers, contract motor carrier or private motor carrier.

(2) When leases are required to be carried on the vehicles under public service commission rules any person failing to do so although he has complied with all other provisions may be fined not more than \$20. Subsection (1) shall not apply to violations under this subsection.

Cross reference: See 194.175 (1) for provision as to deposit of bail.

194.175 Posting of bail. (1) Whenever a person is arrested for a violation of ch. 194 and ss. 440.81 to 440.95, or administrative orders issued

pursuant to law, the sheriff, chief of police or clerk of the court having jurisdiction of the violation is authorized to receive at his office, from the accused, a deposit in money not to exceed the amount of the maximum penalty which may be imposed if the accused is found guilty. Thereupon, the accused may be released from arrest until the court having jurisdiction of the violation opens on the next succeeding day in which such court is in session or until such time as is fixed for the hearing of the case.

(2) If the person so arrested and released fails to appear, personally or by an authorized attorney or agent, before the court at the time fixed for the hearing of the case, the money deposited by the accused pursuant to sub. (1) shall be retained and used for the payment of the penalty, which may be imposed, together with costs, after an ex parte hearing upon the accused. The excess, if any, shall be returned to the person who made the deposit, upon his application therefor. If the accused is acquitted, the entire amount of the deposit shall be refunded to the depositor upon application therefor.

(3) This section shall not be construed so as to make the county or municipality in any case liable for the whole or any part of any money deposited pursuant to this section.

History: 1971 c. 278 s. 43.

194.18 Common motor carrier; regulation by commission; powers; duties. The commission is vested with power and authority and it shall be its duty:

(2) To designate from time to time the public highways as routes over which said common motor carriers may or may not operate, and to designate the time that such vehicles shall or shall not be operated thereon, so as to prevent congestion which shall affect the safety of persons or property upon such public highways. Said commission may also determine whether the granting of additional certificates to common carriers on any highway will cause any congestion, so as to affect the safety of persons and property upon such public highway by the additional use thereof by such persons seeking such additional common carrier certificates, and such a finding by the commission shall be grounds for the denial of such certificates or permits, with respect to such highway or any portion thereof.

(3) To fix, alter, regulate and determine just, fair, reasonable and sufficient rates, fares, charges and classifications for such common motor carriers.

(4) To regulate the facilities, accounts and service of each such common motor carrier.

(5) To regulate the operating and time schedules and routes of such common motor

carriers so as to meet the needs of any community, insure adequate transportation service to the territory traversed by such common motor carriers, and prevent unnecessary duplication of service between such common motor carriers or between them and the lines of competing steam and electric railroads.

(6) To require the co-ordination of service and schedules of common motor carriers of property or passengers and electric or steam railroads.

(7) To require the filing of annual and other reports, tariffs, schedules and other data by such common motor carriers.

(9) To supervise and regulate such common motor carriers in all matters affecting their relationship with the public and with other common carriers and with each other, to the end that adequate service at reasonable rates shall be afforded.

(10) The commission shall have power and authority to co-operate with or participate in proceedings before the Interstate Commerce Commission or such other federal authority as may have jurisdiction over carriers by motor vehicle or railroad under the laws of the United States, in relation to such carriers operating in interstate and foreign commerce into, out of, or through this state, or whose operations and service affect traffic moving into, out of, or within this state.

(11) Relieve the existing and all future undue burdens on the highways arising by reason of the use of the highways by motor vehicles.

(12) Carefully preserve, foster and regulate transportation and permit the co-ordination of transportation facilities.

194.19 Charges and rates to be reasonable. All rates, fares and charges made by any common motor carrier of property or passengers shall be just and reasonable, and shall not be unjustly discriminatory, prejudicial or preferential; and every unreasonable, unjust or unjustly discriminatory, prejudicial or preferential rate, fare or charge is hereby prohibited. No such carrier shall charge, demand, collect or receive a greater or less or different remuneration for the transportation of passengers or property, or for any service in connection therewith, from the rates, fares and charges which have been legally established and filed with the public service commission, nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges required to be collected by the tariffs lawfully on file with the public service commission.

194.20 Certificates and licenses for carriers in interstate and foreign commerce. (1) Motor carriers operating in interstate and foreign commerce shall obtain certificates and licenses, amendments thereto, and approval of the assignment thereof, as provided in ss. 194.23, 194.25 and 194.34, but the issuance thereof shall not be predicated upon findings in respect to public convenience and necessity. Certificates, licenses, amendments thereto and approval of assignments thereof which involve operations in interstate and foreign commerce may be denied by the commission if it finds that the record and experience of the applicant evinces a disposition to violate or evade the laws or regulations of the state applicable to the operations proposed by him.

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

194.21 Refunds of excessive charges. (1) It shall be unlawful for any person, firm or corporation knowingly to accept or receive any rebate, concession or discrimination in respect to transportation of property wholly within this state, or for any service in connection therewith, whereby any such property shall, by any device whatsoever, be transported at a less rate than that named in the tariffs in force applicable to the motor carriers transporting said property, or whereby any service or advantage is received other than is therein specified. Any person, firm or corporation violating the provisions of this section shall be fined not less than fifty dollars nor more than one thousand dollars for each offense or by imprisonment in the county jail for not to exceed six months or both such fine and imprisonment.

(2) The commission may require common motor carriers of property or public contract motor carriers required by the commission to file maximum rates with it to refund any over or excessive charges paid to them for the transportation of property.

(3) No complaint may be filed for an under or an over or excessive charge, nor may an action be brought therefor, after 3 years from the delivery of property at destination, except that if a claim for the under or an over or excessive charge has been presented to the motor carrier within such 3 year period, then said period shall be extended to include 6 months from the time notice in writing

194.21 MOTOR TRANSPORTATION

2860

is given by the motor carrier to the claimant of disallowance of the claim or any part thereof.

Cross reference: See 194.175 (1) for provision as to deposit of bail.

194.22 Changes in tariff schedules to be approved.

(1) No change shall be made by any common motor carrier of property or passengers in any tariff schedule or in any classification, unless such change shall be first approved by the commission and all such changes shall be plainly indicated upon existing tariff schedules, or by filing new tariff schedules in lieu thereof, 30 days prior to the time the same are to take effect; provided, that the commission may authorize the filing of such tariff schedules on shorter notice in particular cases.

(2) All rules and regulations that in any manner affect the rates and charges named in a tariff, if not physically included therein, shall nevertheless be deemed to be a part of the tariff if reference is made therein to tariff or tariffs which do contain such rules and regulations.

194.225 Common motor carriers, bills of lading, joint liability.

(1) Every common motor carrier receiving property for intrastate transportation shall issue a bill of lading therefor and shall be liable to the lawful holder thereof for any loss of or injury to such property caused by it or by any common carrier to which such property may pass, and no contract, receipt, rule or regulation shall exempt the issuer from the liability hereby imposed.

(2) Any holder of such bill of lading may bring an action against all of the carriers and on proof that the property was lost, destroyed or damaged in transit, the liability shall attach to all the defendants and judgment shall be entered accordingly against them all unless a carrier proves its nonliability, in which case the judgment shall go only against the other defendants.

(3) The carrier issuing such bill of lading shall be entitled to recover from the common motor carrier on whose line the loss or injury was sustained the amount of damages it may be required to pay to the owner of such property, as may be evidenced by any receipt or judgment.

194.23 Certificate required; hearing; conditions.

(1) No person shall operate any motor vehicle as a common motor carrier except in accordance with the terms and conditions of a certificate issued to and held by him and except by virtue of a permit issued to him for the operation of such vehicle. The commission, upon the filing of an application for a certificate, or for an amendment thereto involving establishment or abandonment of service at any city or village

shall fix a time and place for hearing thereon, and shall cause notice of such hearing to be given not less than ten days prior to such hearing in such manner as the commission may prescribe. The commission shall have power, as the public interest may require, upon a finding of public convenience and necessity, to issue or refuse any such certificate or amendment or to issue it for the partial exercise only of the privilege sought. The commission may attach to the exercise of the privilege granted by such certificate or amendment such terms and conditions as in its judgment the public interest may require and as are permitted under this chapter. Before granting a certificate or amendment the commission shall take into consideration existing transportation facilities in the territory proposed to be served, including common and contract motor carriers and steam and electric railways.

(2) The commission may, pending notice and hearing, issue temporary certificates or amendments thereto when in its judgment an emergency exists and the public interest so requires.

194.24 Application; form. (1) Applications for certificates shall be verified, written, and in conformity with commission requirements as to form and content.

(2) Applications for motor vehicle permits shall be verified, written and in conformity with the requirements of the administrator of the division of motor vehicles as to form and content.

194.25 Nature of certificate; assignability.

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

(2) No right, privilege, certificate or license under the provisions of this chapter shall be sold, assigned, leased, transferred or mortgaged either by voluntary or involuntary action, except after a finding by the commission that the same is not against the public interest.

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

194.26 Discontinuance of service subject to approval. No common motor carrier without first having secured the approval of the commission shall abandon all or any part of its certificated authority or discontinue any service established under the provisions of this chapter except temporarily by reason of road conditions or when ordered by the state or local highway authorities. Every contract motor carrier who shall cease operation or abandon his rights under his license shall notify the commission thereof within 30 days of such cessation or abandonment.

194.27 Pickup and delivery service; no deviation from route. (1) Subject to the terms of their certificates, and subject to any regulations which may be imposed under the provisions of sections 194.08 and 194.33, a common motor carrier of property shall be authorized to engage in pickup and delivery service in connection with its transportation throughout every city or village in which it operates and which it serves, and in such other territory as the commission shall define.

(2) No common motor carrier shall operate a motor vehicle for which a common motor carrier permit is required on routes or highways other than those authorized to be used by its certificate, except to the extent that detours are necessary by reason of suspension of highway traffic on its authorized routes.

194.28 Reports; time for filing. Prior to April 1 of each year, unless the time therefor is extended by the commission for cause, the holder of every certificate shall file with the commission a report upon such forms as the commission shall prescribe and furnish. Such reports shall be under oath and, if made on behalf of a corporation, shall be sworn to by the president and secretary thereof, and shall contain such information as to the operation of motor vehicles under the certificate and the furnishing of service, and such financial statements and other information as the commission may prescribe.

194.29 Service to be reasonable. Every common motor carrier of property or of passengers shall furnish reasonable, safe and adequate service and facilities.

194.30 Accounting system may be established. The commission may, if it deems advisable, establish a system of accounts to be kept by common motor carriers of property or of passengers, and may classify such common motor carriers and establish a system of accounts for each class, and prescribe the manner in which such accounts shall be kept.

194.31 Inspection of records. The public service commission and the administrator of the division of motor vehicles, or any person employed by either of them, shall, upon demand, have the right to inspect the books and papers of any common motor carrier of property or of passengers and to examine under oath any officer, agent or employe of such carrier in relation to its business and affairs; provided that any person other than said commission or administrator who shall make such demand shall produce his authority under the hand and seal of the commission or of the department.

194.32 Busses, restrictions. No common motor carrier of passengers shall operate any passenger-carrying bus over any public highway of this state with any trailer or semitrailer attached. No interurban motor bus which exceeds 40 feet in length or 8 feet 6 inches in width or is double-decked shall be operated upon the public highways under the authority of a common carrier permit. As used in this section an interurban motor bus is deemed "double-decked" when passengers are carried therein on an upper level throughout the length of the bus over passengers on a lower level throughout the length of the bus.

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

194.34 Contract motor carriers; license; application and hearing; discrimination. (1) No person shall operate a motor vehicle upon the public highways as a contract motor carrier without first having obtained from the commission a license and a permit for the operation of such vehicle. The commission, upon the filing of an application for such license, shall have power as the public interest may require, upon a finding of public convenience and necessity as to service to be performed for the public generally or any (well defined) class thereof, and of convenience and necessity as to other contract motor carrier services, to grant or deny the license prayed for or to grant it for the partial exercise only of the privilege sought, and may attach to the exercise of the privilege granted by such license such terms and conditions as in its judgment the public interests may require; provided that no application for a license or permit to operate a motor vehicle for automobile wrecking or tow service when such motor vehicle is used to

194.34 MOTOR TRANSPORTATION

2862

transport other vehicles for emergency repairs shall be denied for failure of the applicant to show or the commission to find convenience and necessity therefor. Before granting a license to a contract motor carrier the commission shall take into consideration all existing transportation facilities in the territory for which a license is sought. If the commission grants in whole or in part any application for a license or amendment without hearing, it shall publish the authority so granted in such manner as it deems proper, and in such detail as is necessary to show the extent thereof. Any person having an interest may, within 30 days of any such grant, petition the commission for a public hearing thereon and such petition shall be granted by the commission as a matter of course, and the commission may in its discretion suspend such license or amendment until further order of the commission.

(4) No contract motor carrier shall transport property by motor vehicle for compensation except in accordance with the authority set forth in his license, or except under contracts for isolated or emergency instances of transportation. Applications for additional authority shall be treated as applications for amendments to the contract motor carrier license and shall be acted upon in the same manner as is provided for applications for licenses.

(5) No contract motor carrier shall unreasonably or unjustly discriminate in the furnishing of service or the charging of rates therefor with respect to the transportation of any such commodities or any such description or class of traffic as he is authorized by his license to furnish to the public generally or to any class thereof. Any unjust or unreasonable discriminatory rate or practice of such a carrier with respect to such transportation is declared unlawful and is hereby prohibited.

Note: See Wis. Adm. Code, Ch. PSC 20, re "isolated or emergency transportation" as used in 194.34 (4)

194.35 Application; form. (1) Applications for contract motor carrier licenses shall be verified, written and in conformity with commission requirements as to form and content.

(2) Applications for contract motor carrier permits shall be verified, written and in conformity with the requirements of the administrator of the division of motor vehicles as to form and content.

194.355 Operation under permit. The operation of a motor vehicle under a permit issued to a common motor carrier or a contract motor carrier shall, during the effective life of said permit, be deemed to be the operation of the permittee for all purposes related to the enforcement of chs. 110, 194 and 341 to 349.

194.36 Contract motor carriers; regulation by commission; powers; duties. The commission is hereby vested with power and authority and it shall be its duty, as it may deem necessary to carry out the provisions of this chapter:

(2) To designate from time to time the public highways as routes over which said contract motor carriers may or may not operate, and to designate the time that such vehicles shall or shall not be operated thereon, so as to prevent congestion which shall affect the safety of persons or property upon such public highways.

(4) To regulate, supervise and inspect the accounts of contract motor carriers in so far as the commission may deem necessary under the provisions of this chapter.

(5) To require the filing of such annual or other reports or data of such carriers as it may deem necessary under the provisions of this chapter.

(6) To require the filing and exclusive use of uniform bill of lading and contract to be prescribed by the commission for the transportation of property upon the public highways to which any contract motor carrier is a party and under which he agrees to furnish such transportation, and such other information with respect to the operation of such carriers as it may deem necessary under the provisions of this chapter.

(7) If at any time, after full hearing upon complaint or in an investigation on its initiative, the commission finds that any charge for the transportation of property by a contract motor carrier by motor vehicle is unduly low in that it:

(a) Gives or causes any undue or unreasonable advantage or preference to those whom it serves as compared to those served by any common carrier, or

(b) Subjects the patrons of any common carrier to any undue or unreasonable discrimination or disadvantage, or

(c) By unfair competition unduly impairs the service or business or the regulation of the service or business of any common carrier, the commission may determine, prescribe and order the minimum charge to be thereafter assessed and collected or imposed by such contract motor carrier in the particulars set forth in the complaint or in the notice of investigation by the commission.

(7a) To the end that the commission may enforce these provisions, each contract motor carrier shall file with the commission a statement of his rates and charges and any changes therein as may be required by the commission and such other information, as the commission may require.

(8) The commission shall have the power, by general order or otherwise, to prescribe a general

scale of minimum and maximum rates for contract carriers applicable to their operations in all or any specified part or parts of the state, and to prescribe such rules and regulations as it may deem necessary in carrying out the provisions of this chapter. Such power shall be exercised only after a hearing and on order of a majority of the members of said commission.

(a) Upon application of 25 contract motor carriers, or of a duly organized association representing motor carriers, the commission shall institute an investigation relating to the necessity of prescribing a minimum or maximum scale of rates and charges, or both, applicable to their operations. Upon a finding of necessity therefor, the commission shall prescribe such minimum or maximum scale of rates and charges, or both.

(9) To supervise and regulate contract motor carriers in all matters affecting the relationship between such carriers and the traveling and shipping public, and in all matters directly or indirectly impairing the efficient public service of any authorized common carrier or common carriers by motor vehicles or by steam or electric railroad then adequately serving all or any part of the same territory, in conformity with the purposes of this chapter.

194.37 Interdepartmental relations; division of powers; co-operation. (1) The administrator of the division of motor vehicles and the public service commission shall enforce the orders relating to the provisions of this chapter and shall co-ordinate and allocate their activities so as to effectively enforce such orders and this chapter.

(3) Applications for certificates, licenses, or amendments thereto, or approval of assignments thereof shall be made on forms prescribed and furnished by the public service commission. The commission shall determine whether a filing fee is required and the amount thereof, shall collect the same, and deposit it in the state treasury.

194.38 Regulatory powers of division of motor vehicles. It shall be the duty of the division of motor vehicles:

(1) To supervise and regulate all common motor carriers of property or passengers as defined in section 194.01.

(2) To prescribe rules and regulations as to safety of operations and the hours of labor of drivers of motor vehicles operated under common motor carrier permits.

(3) To supervise and regulate every contract motor carrier for the purpose of promoting safety upon the public highway and the conservation of their use.

(4) To prescribe rules and regulations for the safety of operation of such carriers, including rules and regulations as to the hours of labor of drivers of motor vehicles operated under contract motor carrier permits.

(5) To act in accordance with 49 USC section 302 (b) by making any finding, determination and otherwise doing any other thing necessary to proceed under that statute. Nothing in this subsection shall permit the department to extend the length or weight of motor vehicles.

History: 1971 c. 139

194.41 Undertaking for damage to person or property. (1) No common carrier of property, or contract motor carrier, shall operate any motor vehicle for which a permit is required by this chapter unless it has on file with the division of motor vehicles and in effect a good and sufficient indemnity bond, policy of insurance or other contract in writing in such form and containing such terms and conditions as may be approved by the department issued by a surety, indemnity or insurance company or exchange lawfully qualified to transact such business in this state under which such indemnitor shall assume the liability prescribed by this section with respect to such motor vehicle. Said undertaking shall be subject to the approval of the department and shall provide that the indemnitor shall be directly liable for and shall pay all damages for injuries to or for the death of persons or for injuries to or destruction of property that may be recovered against the owner or operator of each such motor vehicle by reason of the negligent use or operation thereof in an amount not less than a) for injury to or death of persons, \$15,000, to or for any one person and \$30,000 for any one accident, or b) for injury to or destruction of property, \$10,000 for any one accident. Such liability may be restricted so as to be inapplicable to damage claims on account of injury to or destruction of property transported, but the department may require an undertaking protecting the owner of the property transported by public carriers from loss or damage thereto, which undertaking shall be in such amount and under such conditions as the department may require. No common motor carrier of passengers by any motor vehicle, or other carrier of passengers by motor bus, except those registered in accordance with ss. 341.26

(2) (b) to (f) and (2m) and 341.267 shall operate any motor vehicle unless it has on file with the department a like undertaking in such form and containing such terms and conditions as may be approved by the department for the payment of damages for injuries to property in at least the amount hereinbefore specified and of damages for injuries to or for the death of

persons, including passengers in at least the following amounts:

(a) \$15,000 to or for any one person or \$60,000 for any one accident for each motor vehicle having a seating capacity of 7 passengers or less;

(b) \$15,000 to or for any one person or \$80,000 for any one accident for each motor vehicle having a seating capacity of more than 7 and less than 16 passengers;

(c) \$15,000 to or for any one person or \$100,000 for any one accident for each motor vehicle having a seating capacity of more than 15 and less than 25 passengers; and

(d) \$15,000 to or for any one person or \$150,000 for any one accident for each motor vehicle having a seating capacity of 25 passengers or more.

(2) Where more than one motor vehicle subject to permit is operated by the same person, a single undertaking covering the operation of all of such motor vehicles may be filed subject to the approval of the department as to form, terms and conditions.

(3) No undertaking filed under the provisions of this section shall be limited as to the total liability of the indemnitor thereunder, for any series of accidents, and no such undertaking shall be terminated at any time prior to its expiration under the terms thereof, nor canceled for any reason whatever, unless there shall have been filed with the department by the indemnitor a notice thereof at least 10 days prior to the date of such termination or cancellation.

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

(5) A certificate of an authorized surety, indemnity or insurance company or exchange, lawfully qualified to transact such business in this state, in a form approved by the department and certifying that there is in effect an indemnity bond, policy of insurance or other contract as required under this section, may be filed in lieu of such indemnity bond, policy of insurance or other contract.

History: 1973 c. 200

The insurer of a lessor of a truck, while liable to 3rd parties, could escape liability to the lessee by the terms of a separate agreement of indemnification. *Huset v. Milwaukee Dressed Beef Co.* 46 W (2d) 317, 174 NW (2d) 740.

194.42 Exemption from undertaking; proof of financial responsibility; revocation. The division of motor vehicles may by order exempt from the requirements of s. 194.41 any common motor carrier of property or of passengers, or other carrier of passengers by motor bus, or contract motor carrier upon

written application therefor and finding that the applicant has the financial ability to pay any and all damages, liability for which would otherwise be assumed by an indemnitor under s. 194.41. Any person so exempted shall furnish to the division from time to time such information as to his financial ability as the division may require and shall promptly report to the division all accidents and injuries arising out of its operations subject to this chapter. Such exemption may be granted as to all or part of the motor vehicles operated by the applicant. The division may by order revoke any such exemption, after hearing upon 10 days' notice, and for cause. Within 10 days after the date of such order of revocation the person affected thereby shall in all respects comply with s. 194.41.

194.43 Private motor carriers; regulation by division.

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

194.44 Private motor carriers; permit. (1)

No private motor carrier shall operate a motor vehicle upon the public highways without first having obtained from the division of motor vehicles a private motor carrier permit therefor.

(2) If any person engaged in the business of leasing motor vehicles without drivers, or leasing trailers to be hauled or propelled by a motor vehicle, leases such motor vehicles without drivers, or leases such trailers to private motor carriers, such lessor shall procure a private motor carrier permit in his name for the motor vehicles or trailers leased to private motor carriers. In such event, a lessor's private motor carrier's permit on a motor vehicle or trailer being used by a private motor carrier shall constitute compliance with this chapter on the part of such motor carrier with respect to the requirements for a permit on such motor vehicle or trailer. When a leased motor vehicle or trailer is used by a private motor carrier under permit issued to the lessor of such motor vehicle or trailer, the person in whose name the permit is issued shall be responsible to the state for the payment of all taxes, fees and

other payments due under chs. 194 and 341 because of the operation of the motor vehicle or trailer under such permit, and for the making of all reports in connection with the operation of such motor vehicle or trailer. The owner of each such leased motor vehicle or trailer shall before leasing the same comply with the insurance requirements of s. 194.41. The annual permit fee for each such leased motor vehicle or trailer is \$10 and shall be collected by the division of motor vehicles. It is the duty of the public service commission to supervise and regulate the operations of such leased motor vehicles and trailers to effectively accomplish the intent of s. 194.02. The commission shall have the power to investigate all leasing practices of any leasing company including the inspection of its records and requiring reports periodically to determine whether the leasing company is supplying for hire truck service without complying with the provisions of ch. 194.

(3) The provisions of subsection (2) of this section shall not apply to any motor vehicle leased to or used by any private carrier who obtains a permit as required in subsection (1) of this section.

Under sub. (3) a leasing company is relieved of the obligation to obtain a private motor carrier permit under sub. (2) only if the lessee obtains the necessary permit on the leased vehicle under sub. (1). 58 Atty. Gen. 190.

194.46 Amendment or revocation of certificate, license or permit, or license under s. 194.44; hearing. The commission may at any time, by its order duly entered after a hearing had, upon notice to the holder of any certificate, license or permit, or a permit holder under s. 194.44, and an opportunity to be heard,

at which it shall be proved that such holder has wilfully violated or refused to comply with any of the provisions of this chapter, or any orders, rules or regulations of the commission, alter, amend, suspend or revoke such certificate or license or suspend or revoke such permit or operation under s. 194.44. After notice given to the licensee and opportunity to be heard, the commission may suspend or revoke any license upon a finding that service has been abandoned thereunder; and may suspend or revoke any item of authority under a license upon a finding that service under such item of authority has been abandoned.

194.51 Suit to recover protested tax. No suit shall be maintained in any court to restrain or delay the collection or payment of the taxes levied in this chapter. The aggrieved taxpayer shall pay the tax as and when due, and, if paid under protest, may at any time within 90 days from the date of such payment, sue the state in an action at law to recover the tax so paid. If it is finally determined that said tax, or any part thereof, was wrongfully collected for any reason, it shall be the duty of the department of administration to issue a warrant on the state treasurer for the amount of such tax so adjudged to have been wrongfully collected, and the treasurer shall pay the same out of the highway fund. A separate suit need not be filed for each separate payment made by any taxpayer, but a recovery may be had in one suit for as many payments as may have been made within any 90-day period preceding the commencement of such an action. Such suits shall be commenced as provided in s. 285.01.