

CHAPTER 110.

MOTOR VEHICLE DEPARTMENT.

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110.01 to 110.10 [Expired July 25, 1937; see 110.02 Stats. 1935]

110.01 to 110.10 [Expired April 1, 1939; see Spl. S. 1937 c. 3 s. 1; repealed by 1939 c. 514]

110.01 Motor vehicle department. (1) There is created a motor vehicle department in charge of a commissioner appointed by the governor with the advice and consent of the senate for a term of six years and until his successor is appointed and qualified. The commissioner shall be paid an annual salary of five thousand dollars.

(2) There shall be within the motor vehicle department the following divisions:

- (a) Registration and licensing;
- (b) Inspection and enforcement;
- (c) Highway safety promotion.

(3) Each such division shall be in charge of a director who shall be paid an annual salary of \$4,500. The present directors shall be given a civil service status without examination, provided they file an application and a history of their employment with the personnel board within 2 months after June 21, 1943.

(4) The commissioner shall allocate the powers, duties and functions transferred and vested in the motor vehicle department to the respective divisions as is appropriate and in the interest of highest efficiency and economy.

(5) The motor vehicle department shall have an official seal, with the words Motor Vehicle Department of Wisconsin engraved thereon, which shall be used to authenticate all papers requiring authentication.

(6) The commissioner of the motor vehicle department, and the directors of the divisions, shall each take and file the official oath and file a bond in such sum and with such sureties as the governor shall prescribe. The premiums on such bonds shall be paid out of the appropriation to the department.

(7) The commissioner and directors shall, in addition to their salary, be paid all amounts actually and necessarily incurred by them in the performance of their official duties.

(8) The commissioner and directors shall be appointed on the basis of recognized interest, training and experience and possess a knowledge and understanding of the powers, duties and functions of their respective offices.

(9) The commissioner may appoint a secretary who need not be subject to the provisions of chapter 16 and may fix his salary at not to exceed eighteen hundred dollars per annum.

(10) The motor vehicle department shall keep its office at the capitol, and shall be provided with suitable rooms, furniture, stationery, books, maps and supplies by the director of purchases. [1939 c. 410; 1943 c. 338]

110.02 Deputy commissioner. The commissioner shall appoint the director of the division of registration and licensing his deputy to act in his name, place and stead during his absence or disability. [1939 c. 410]

110.03 Powers, duties and functions transferred from other departments. Subject to the provisions of section 110.04 hereof, the powers, duties and functions heretofore vested in the following departments are transferred to and vested in the motor vehicle department, to wit:

(1) All powers, duties and functions vested in the secretary of state by virtue of chapter 85 and subsection (5) of section 14.68.

(2) All powers, duties and functions vested in the industrial commission by virtue of sections 85.06 and 85.07.

(3) All powers, duties and functions vested in the highway commission by virtue of chapter 85, excepting subsections (1) and (2) of section 85.41, subsection (3) of section

85.45, subsections (1), (2) and (3) of section 85.46, subsections (1) to (6) of section 85.53, and sections 85.54, 85.68, 85.71, 85.73, 85.76 to 85.79.

(4) All powers, duties and functions vested in the state inspection bureau of the state treasury department by virtue of sections 109.06 and 109.07.

(5) All powers, duties and functions vested in the public service commission by virtue of chapter 194, excepting those included in the provisions of paragraphs (a) and (c) of section 194.02, of section 194.03 (3) and (6), of section 194.18 (2), (3), (4), (5), (6), (7) and (9), section 194.19, sections 194.21 to 194.28, sections 194.30 and 194.35 and section 194.36 (2), (4), (5), (6), (7), (7a), (8) and (9), sections 194.34 and 194.46 and section 194.48 (5) relating and supplemental to the granting, amendment, revocation, suspension or assignment of common motor carrier certificates or contract motor carrier licenses or the regulation of rates and service of common and contract motor carriers.

(6) All powers, duties and functions vested in the public service commission by virtue of section 129.11. [1939 c. 410, 486; 1943 c. 420]

Revisor's Note: Particular attention is called to the repeal of sections 109.06 and 109.07, Stats. 1937, by 110.03 (4). It seems rather evident that the functions of the "inspection bureau" under 109.06 and 109.07 are fully expressed in 110.07; and, therefore, it is not necessary to print or pay any further attention to those repealed sections.

110.035 Additional powers and duties. The commissioner of the motor vehicle department shall have the power and it shall be his duty to prescribe reasonable rules and regulations setting forth the conditions under which school busses may be operated; a "school bus" being defined to be any motor vehicle transporting, under written contract with any school or school district, children to and from school, or used in transporting school basketball, baseball or football teams and school bands to and from such school or district. [1939 c. 410]

110.04 Transfer of powers, duties and functions. The powers, duties and functions of the respective departments transferred to the motor vehicle department by section 110.03 shall be transferred to and vested in such department within ninety days after the effective date of this chapter, as the commissioner may determine. [1939 c. 410]

Note: Organization powers of commissioner of motor vehicle department considered and analyzed. 28 Atty. Gen. 571.

110.05 Transfer of records, equipment and personnel. All records, books, papers, documents and equipment, and so much of the personnel now employed in the departments hereby transferred, as the commissioner may deem necessary to the efficient execution of the functions so transferred, shall automatically be transferred to and become the property and employes of the motor vehicle department as each such transfer is consummated. [1939 c. 410]

110.06 Rules and regulations. (1) The commissioner of the motor vehicle department shall have the power to make such reasonable and uniform orders, rules and regulations not inconsistent with law as he may deem necessary to the discharge of the powers, duties and functions vested in such department. Such orders, rules and regulations shall take effect 20 days after publication in the official state paper. He shall also have power and authority to prescribe forms for applications, notices and reports required by law to be made to the department or which may be deemed necessary to the efficient discharge of all such powers, duties and functions.

(2) All outstanding orders, rules and regulations of the secretary of state, highway commission, industrial commission, inspection bureau and public service commission heretofore made under the authority transferred by section 110.03 to the motor vehicle department shall continue in full force and effect except in so far as the same may be rescinded, altered or amended by the commissioner of the motor vehicle department.

(3) All orders, determinations, rules and regulations made by the commissioner of the motor vehicle department under the powers and authority transferred to him by this chapter shall have the same force and effect as is provided for similar orders, determinations, rules and regulations of any department, made under the powers transferred hereby, and violations thereof pertaining to chapter 85 shall be punished as provided by section 85.01 (12), to chapter 194 as provided by section 194.17, and to section 129.11 as provided by section 129.11 (13).

(4) The orders and determinations, rules and regulations made by the commissioner shall be subject to review in the manner provided in chapter 227. [1939 c. 410; 1943 c. 375 s. 45; 1943 c. 420; 1943 c. 553 s. 27]

110.07 Traffic officers; powers and duties. (1) The commissioner of motor vehicles shall employ not to exceed 55 traffic officers to enforce and assist in the administration of the provisions of chapters 85, 110 and 194, or orders, rules or regulations issued pursuant thereto. Such traffic officers shall have the powers of sheriff in the enforcing of the above chapters and section and orders, rules or regulations issued pursuant thereto.

Such traffic officers shall have authority to enter any place where vehicles subject to the provisions of chapters 85, 110 and 194 are stored or parked at any time to examine such vehicles, or to stop such vehicles while en route at any time upon the public highways to examine the same and make arrests for all violations thereof. It shall be the duty of all justices of the peace, judges, district attorneys and law enforcement officers to assist in enforcing the provisions of chapters 85, 110 and 194, and orders, rules or regulations issued pursuant thereto, and law enforcement officers shall report to the motor vehicle department all arrests and disposition of court cases involving the aforementioned statutes.

(2) The traffic officers employed pursuant to the provisions of this section shall constitute a state traffic patrol to assist local enforcement officers wherever possible in the regulation of traffic and the prevention of accidents upon the public highways. No state traffic officer shall be used in or take part in any dispute or controversy between employer or employe concerning wages, hours, labor or working conditions; nor shall any such traffic officer be required to serve civil processes. [1939 c. 410; 1941 c. 285; 1943 c. 229]

110.08 Revisor of statutes directed to make changes. The revisor of statutes is directed to make the necessary changes in the language of the statutes so as to indicate the transfers provided in section 110.03. [1939 c. 410]

110.10 Itinerant merchant trucker. (1) **DEFINITIONS.** In this section, unless context otherwise requires:

(a) "Person" means a natural person, firm, partnership, association, corporation, trust, lessee, trustee or receiver, as the context may require.

(b) The words "sales", "sell", "selling" or any grammatical forms thereof mean and include barter, trade or exchange in addition to the usual and ordinary meaning of said words; and this definition shall not be construed to limit any meanings of said words but shall extend such meanings.

(c) "Department" means the motor vehicle department.

(d) "Itinerant merchant trucker" means any person who buys or offers to buy or sells or offers to sell, in this state, at wholesale or retail any personal property, and transports the same upon any highway by use of a motor truck or other vehicles, and who at any time transports in said motor truck or other vehicle a net load exceeding three thousand pounds, except as herein otherwise provided.

(e) "Established place of business" means any permanent warehouse, building or structure, at or from which a permanent business is carried on as such in good faith and not for the purpose of evading the provisions of this section, and at which stocks of the property being transported are produced, stored or kept in quantities reasonably adequate for, and usually carried for, the requirements of such business, and which business is carried on regularly during normal business hours throughout the year, and shall not mean residences, tents, temporary stands or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement.

(2) **EXCEPTIONS.** The term "itinerant merchant trucker" as used in this section shall not mean or include the following:

(a) A person using a motor truck or other vehicle owned by him, whether operated by him or his agent, for the transportation of milk, dairy products, grain, fruits, vegetables, live stock, poultry or other agricultural products, produced by him, whether his residence be within or without this state.

(b) A person transporting property owned by him in a motor truck or other vehicle owned or leased by him, his agent or employe, whether operated by him, his agent or employe, when such transportation is incident to a business conducted by him at or from an established place of business operated by him, either within or without this state, and when such property is being transported to or from such established place of business.

(c) A person transporting property for his own consumption or use.

(d) A person duly licensed under the provisions of sections 129.01 to 129.04.

(e) Any person to whom a wholesaler's license has been issued pursuant to section 78.03 of the statutes.

(3) **PROOF OF EXEMPTION.** (a) No person shall be exempt from the requirements of this section, except a person duly licensed under the provisions of section 78.03 or sections 129.01 to 129.04, by reason of the provisions of subsection (2) of this section unless he or the driver of the motor vehicle upon which his property is being transported shall, upon the request of any person, officer or judge charged with the enforcement of any of the laws of this state, sign and swear to under oath before some person authorized by the laws of this state to swear persons under their oath, and deliver to such person, officer or judge a statement in writing clearly showing that the person claiming the exemption is entitled to one or more of the exemptions provided in this section.

(b) If the person claiming the exemption is not a natural person such statement shall

be signed and sworn to by some natural person authorized to act for it or by the driver of the motor vehicle carrying the property. Such statement shall not be sufficient unless it shall contain in addition to any other necessary facts, the following of such facts as are material to the particular exemption claimed: The name of the person claiming the exemption and the name of the person signing such statement, and the business and residence addresses of both; where and when the products described in paragraph (a) of subsection (2) of this section were produced, and the place where they are to be delivered if known; the location of the established place of business, how long there established, and whether the premises where located are owned or leased by the person claiming the exemption; the kind of business there conducted; if the property has been sold prior to the commencement of the transportation, the name and address of the purchaser. The person, officer or judge receiving such statement shall promptly forward it to the department. Any person knowingly making any false, material statement shall be guilty of perjury and shall, upon conviction thereof be punished as provided by statute.

(c) A person licensed under section 78.03 or sections 129.01 to 129.04 and complying therewith, shall not be required to make the affidavit provided herein.

(4) LICENSE REQUIRED. No person shall engage in business or use any motor vehicle in this state as an itinerant merchant trucker, as defined in subsection (1) hereof without obtaining from the department the license required by this section.

(5) APPLICATION FOR LICENSE; FEES. An application for a license to engage in business as an itinerant merchant trucker shall be made to the department upon forms to be prepared by the department. A separate application and license shall be required for each motor vehicle to be operated. In addition to any other essential information required by the department, such application shall state the following: The name and legal status of the applicant, his business address; if a natural person, his residence address; if not a natural person, the names and business and residence addresses of the principal and managing officers, agents or partners; a general description of the business to be conducted and the area in which it will be conducted; an exact description of the motor vehicle to be used including the make, type, manufacturer's rated loading capacity, motor number, serial number, place where registered, and registration or license number. The fee for each license shall be two hundred dollars annually for the fiscal year beginning with July first and ending on June thirtieth. The proper fee shall accompany the application. The application shall be signed and sworn to by the applicant if a natural person; if not a natural person, by some officer or partner authorized to act for him.

(6) INSURANCE POLICIES AND BONDS REQUIRED. No such license shall be issued by the department until the applicant shall have filed with each application, and the same shall have been approved by the department, the following insurance policies and bonds issued by an insurance company or bonding company authorized to do business within this state. Every insurance policy and bond filed with the department under the provision of this section shall contain an indorsement or provision that the same shall not be canceled by the obligor, shall not expire, and shall not become reduced in amount, until ten days after notice thereof by registered United States mail has been sent to the department. Upon receipt of such notice the department shall immediately send the itinerant merchant at his last known address by registered United States mail, return receipt requested, a notice advising him that unless a new insurance policy or bond is filed prior to the time of such cancellation, expiration or reduction becomes effective, the license of such itinerant merchant shall be revoked at the time such cancellation, expiration or reduction becomes effective. If a new policy or bond is not filed in accordance with such notice the department must revoke said license at said time.

(a) A good and sufficient 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 under which such indemnitor shall be directly liable for and shall pay all damages for injuries to persons or property for the negligent operation of such motor vehicle in an amount not less than five thousand dollars to any one person and ten thousand dollars for one accident, and up to five thousand dollars for damage to property in any single accident.

(b) A bond in the penal sum of five hundred dollars in such form as may be prescribed by the department, conditioned to pay any taxes, and penalties and interest thereon, due to this state or any governmental subdivision thereof, by reason of the failure of the itinerant merchant trucker to pay any such taxes.

(c) A bond in the penal sum of one thousand dollars in such form as may be prescribed by the department, for the purpose of protecting the public against fraud, conditioned upon the delivery of honest weights, measures or grades, if the commodities handled by the itinerant merchant trucker are those customarily sold by weights, measures or grades, accurate representation as to quality or class of such commodities, the actual

payment of checks, drafts or other obligations delivered by the itinerant merchant trucker in exchange for the purchase of commodities, and conditioned to pay any judgment that may be obtained against the itinerant merchant trucker for civil liability arising out of the conduct of such business.

(7) **PROCEDURE.** Any person having a cause of action against the itinerant trucker arising out of the matters described in paragraphs (a) and (b) of subsection (6) of this section may join such itinerant merchant and the surety on his bond in the same action, or may sue such surety without joining such itinerant merchant trucker in the action if the itinerant merchant trucker is deceased or if it is impossible to obtain jurisdiction of his person within the state where the cause of action arose.

(8) **DEPARTMENT AGENT TO ACCEPT SERVICE.** (a) Before a license shall issue the applicant shall sign and file with the department an irrevocable power of attorney appointing the department his agent to accept service of summons for all causes of action against him arising out of the conduct of his business as an itinerant merchant trucker and the operation of the motor vehicle described in the application.

(b) Service of summons in all causes of action described in this section may be made upon the itinerant merchant trucker and upon the bonding company or insurance company issuing his bonds and insurance policies by sending three copies of such summons to the department by registered United States mail; the department shall immediately upon receipt thereof indorse upon each copy the date and hour received and shall file one copy, whereupon service of said summons shall be deemed to be completed upon such itinerant merchant trucker and such bonding company and such insurance company as of the date of such filing. The department shall on the same day send to such itinerant merchant trucker and such bonding or such insurance company the other copies of said summons so received by registered United States mail, return receipt requested. The venue of such action may be laid in any county of this state in which said action arose, or in any other place authorized by law.

(9) **LICENSES; ISSUED; TRANSFER; REVOCATION.** (a) Upon the approval and issuance of the application and upon compliance with the terms of this section, the department shall issue to the applicant a license as an itinerant merchant trucker. Such license shall be numbered, shall specifically describe the itinerant merchant trucker and the motor vehicle as they are described in the application, and shall at all times be carried in the cab of the motor vehicle described and shall at all times be subject to inspection by any person. The department shall also issue to the itinerant merchant trucker a license plate containing the same number as the license, of distinctive color and size, which shall be displayed on the rear of the motor vehicle described in the license.

(b) No license or license plate issued pursuant to this section may be sold or transferred, and no license or license plate may be transferred from one vehicle to another.

(c) Upon such notice and hearing as the department may deem proper, it may revoke any license issued under the provisions of this section for failure to comply with any of the laws of this state, or in case any judgment recovered against any itinerant merchant trucker remains unpaid for a period of sixty days and such judgment is not superseded as bond upon appeal from such judgment.

(10) **DEPARTMENT RULES.** The department shall make and enforce such rules for the administration of this section as may be necessary and proper.

(11) **CUSTODY OF VEHICLES UNLAWFULLY USED.** Any motor vehicle operated in violation of this section shall be kept in the custody of any person authorized to enforce any of the laws of this state, and shall not be operated except under his authority and solely for the purpose of taking it to the nearest convenient place of custody, until the provisions of this section have been complied with.

(12) **POWERS OF LOCAL AUTHORITIES.** Nothing in this section shall be construed to repeal or amend any statute delegating authority to any county or municipal corporation to license, tax or regulate itinerant merchant truckers.

(13) **PENALTY.** Any person violating any provisions of this section shall be guilty of a misdemeanor, except as herein otherwise provided, and shall upon conviction thereof be punished by a fine of not less than one hundred dollars and not more than five hundred dollars or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment.

(14) **DUTIES OF DISTRICT ATTORNEY AND ATTORNEY-GENERAL.** (a) The attorney-general, or any district attorney, may commence an action in any court of competent jurisdiction, in the name of the state as plaintiff on the relation of the attorney-general or such district attorney, to enjoin any person from violating any of the provisions of this section. Such action may be maintained upon due showing that the defendant has violated or is threatening to violate any of the provisions of such section.

(b) Upon being presented with the petition of any resident of this state, verified upon

oath, stating facts showing that such resident has reasonable grounds to believe that some person has violated or is threatening to violate any of the provisions of this section, it shall be the duty of any district attorney of this state to commence such action for injunction within his county against the person complained of in such petition.

(15) SEVERABILITY. It is declared the intention of the legislature that no subsection, paragraph, sentence, clause, phrase or word of this section is an inducement to the enactment of any other part or portion of such section; and if any part or portion of this section should be held by any court of competent jurisdiction to be unconstitutional such decision shall not affect the validity of the remainder of the subsections of this section. [1939 c. 370, 486; 1943 c. 229]

Note: Exception to itinerant merchant tables who does not maintain established trucker law contained in (2) (b) does not place of business throughout the year. 31 apply to dealer in seasonal fruits and vegetables. Atty. Gen. 153.

110.15 [Created by chapter 56, Laws 1939, renumbered section 100.30 by 43.08(2)]