

## 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.

**218.01 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 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. Employes 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 employes.

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 this state 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.

(i) "Finance charge" means that part of the total price in the retail instalment contract of sale in excess of the cash price, and includes, unless otherwise specified, the insurance premium, if any.

(j) The term "commission" means the state banking commission and including any member or members thereof or any duly authorized deputy named or appointed by such commission to perform any function in the administration or enforcement of this section.

(k) "Motor vehicle" means any motor driven vehicle required to be registered under section 85.01.

(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 commission or the department or both, issuing a license hereunder.

(n) "Manufacturer" means any person resident or nonresident in this state who manufactures or assembles motor vehicles in this state.

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

(p) "Factory branch" means a branch office maintained in this state, 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 in this state.

(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 COMMISSION. 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 commission shall have jurisdiction and control, and the commission 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 thirty days after application therefor, and shall expire, unless sooner revoked or suspended, on December thirty-first of the calendar year for which they are granted.

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

1. For motor vehicle dealers, \$3 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, five dollars; and for each factory branch in this state, five dollars.

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, two dollars.

6. For factory representative, or distributor branch representative, two dollars.

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 twelve months immediately preceding October thirty-first of the year in which the application for license is made, as follows: On a gross volume of twenty-five thousand dollars or less, twenty-five dollars; on a gross volume of over twenty-five thousand and not over one hundred thousand dollars, fifty dollars; on each one hundred thousand dollars over one hundred thousand dollars and up to five hundred thousand dollars, an additional fifteen dollars; on each one hundred thousand dollars over five hundred thousand dollars and up to one million dollars, an additional ten dollars; and on each one hundred thousand dollars over one million dollars, an additional five dollars. 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) The licensor may require any licensee to furnish and maintain a bond in such form, amount and with such sureties as it shall approve, but not in excess of \$5,000, conditioned upon such licensee complying with the provisions of this section and the lawful orders of the licensor hereunder.

(i) Application for dealers' licenses shall be submitted to the department in duplicate and contain such information as the licensors may require. Application for sales finance company licenses shall contain such information as the commission may require. No motor vehicle dealer or sales finance company, unless so licensed, shall be permitted to register or receive or use license plates under section 85.02. Sales finance companies licensed hereunder shall have all the rights accorded to and be liable to all the penalties imposed on motor vehicle dealers under section 85.02. The department shall transmit the duplicate copy of each application for a dealer's license to the commission with \$1 for each application fee to cover the fee required under 218.01 (2) (d) 8 and the commission shall issue a sales finance company license to the dealer if no prior sales finance company license has been suspended or revoked, and if 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.

(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 tax commission.
4. Wilful failure to comply with any provision of this section or any rule or regulation promulgated by the commission 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 com-

pliance 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 fifteen per cent per annum.

13. Having sold a retail instalment contract in this state 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.

(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 relating to any written complaint made to it against such licensee. If such licensee is found guilty of violating this section or any lawful order of the licensor, 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) Any licensee or other person in interest being dissatisfied with an order of the licensor may have a review thereof as provided in chapter 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 the retail buyers of motor vehicles. 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.

(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, the same to be effective when published at least once in the official state paper, but no licensee shall be subject to examination or audit by the licensor except as provided in paragraph (d) of subsection (3) of this section.

(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 amount of the finance charge, the amount of any other charge specifying its purpose, the net balance due from the buyer, the terms of the payment of such net balance and a summary of any insurance coverage to be effected. The commission 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.

(c) Prior to five days after completion of any instalment sale, the seller shall mail or deliver to the buyer a true and complete copy of the instalment sale contract and any note or notes given in connection therewith.

(d) A violation of paragraphs (a) or (b) of this subsection shall bar recovery of any finance charge 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 thirty 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 finance charge, which may include the cost of insurance, if any. 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 included in the finance charge, if such type of insurance be listed.

(em) In event the dealer shall finance the instalment sale contract, the commission 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 commission 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, finance charges, interest and other fees included in such contract, in any action or proceeding at law to enforce said contract by any person, firm or corporation who has purchased or otherwise acquired said contract, if such person, firm or corporation 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, firm or corporation is actually engaged, in this state, 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 fifteen per cent per annum.

(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 con-

tract, 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.

(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 ten thousand dollars or by imprisonment in the county jail for not to exceed one year or by both such fine and imprisonment.

(b) For violation of subsection (2) of this section, by a fine not exceeding five hundred dollars or by imprisonment in the county jail for a period not to exceed ninety days, or by both such fine and imprisonment.

(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.

(9) SEVERABILITY. If any provision of this section or the application thereof to any person or circumstance is held unconstitutional, the remainder of the section and the application of such provision to other persons or circumstances shall not be affected thereby. [1935 c. 474; 1937 c. 377, 378, 417; 1939 c. 273, 489; 1943 c. 219, effective Jan. 1, 1944; 1943 c. 375 s. 89; 1943 c. 515 s. 14; 1943 c. 552 s. 19a]

**Note:** Section 218.01 (3) (a) 17, enacted July 14, 1937 did not apply to or affect existing contracts. *Buggs v. Ford Motor Co.*, 113 F. (2d) 618.

Word "interest" in (3) (a) 12 and (6) (h) does not apply to finance charge as defined in (1) (i), but applies to interest on instalments not paid when due. 24 Atty. Gen. 606.

Person engaged in delivery of motor vehicles from manufacturer to dealer who does not sell such vehicles except when damaged in transit is entitled to dealers' license plates under 85.02, Stats. 1935, and should consequently be licensed by division of consumers' credit of state banking department under 218.01, Stats. 1935, as condition precedent to securing plates under 85.02. 25 Atty. Gen. 38.

(7) (g) is valid and reasonable exercise of police power and is constitutional. 25 Atty. Gen. 90.

Persons who make complaint in criminal proceedings for violation of this section, are not limited to banking commission, its members, agents or employees. 27 Atty. Gen. 90.

This section may be amended without two-thirds vote of both houses of legislature. 27 Atty. Gen. 839.

Wilful failure by automobile dealer to perform contract with retail buyer is ground for revocation of dealer's license under 218.01 (3) (a) 6, but does not constitute criminal offense. 31 Atty. Gen. 216.

Person, firm or corporation previously licensed as "sales finance company" under 218.01, Stats. 1941, having no activity other than liquidation of contracts previously acquired and not acquiring any new contracts, is not required to be licensed under 218.01. 32 Atty. Gen. 1.

#### 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) "Commission" shall mean the banking commission.

(2) LICENSES; APPLICATIONS; FEES; BOND. (a) Each adjustment service company, within thirty days of the effective date of this section or the beginning of such business that may be established subsequent thereto, shall apply to the banking commission for a license to engage in such business. Application for a separate license for each office of a company to be operated under the provisions of this section shall be made to the commission in writing, under oath, in a form to be prescribed by the commission. The commission may issue more than one license to the same licensee.

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

1. One hundred dollars if the place of business of the applicant is located in a city twenty-five thousand of population or more.

2. Fifty dollars if the place of business of the applicant is located elsewhere than in any such city.

(c) The commission 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 it and acceptable to it, in such sum as it may deem necessary to safeguard the interest of the borrowers and the public, not exceeding, however, the sum of five thousand dollars.

(3) CONDITIONS OF THE ISSUANCE OF LICENSES. The commission 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 commission 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 commission is not satisfied as to all of the matters specified in subsection (3) it shall enter a special order denying the application for a license and shall return to the applicant his license fee. The commission shall make findings of fact as part of and in support of its 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 commission, which shall attach to the license its 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 commission the annual license fee for the next succeeding calendar year.

(6) REVOCATION; SUSPENSION; REINSTATEMENT AND TERM OF LICENSES. It shall be the duty of the commission and it 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 COMMISSION. It shall be the duty of the commission and it 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 commission may determine to investigate the business and examine the books, accounts, records and files used therein of every licensee. The actual cost of each such examination shall be paid to the commission by every licensee so examined within thirty days after demand therefor by the commission, 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 commission may make such rules and require such reports as it 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 commission 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. [1935 c. 515; 1943 c. 375 s. 90]

**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) "Commission" means the state banking commission.

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



(e) "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, building 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 commission in writing, under oath, on a form to be prescribed by the commission. All licenses shall expire on June thirtieth next following their date of issue.

(b) The annual license fee for a collection agency shall be \$25 for the main office. Branch licenses may be secured for an additional fee of \$10 each.

(c) The license fee for a collector or solicitor shall be two dollars. 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 commission shall endorse such change on the license without charge.

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

(4) CONDITIONS OF THE ISSUANCE OR DENIAL OF LICENSES. Licenses issued pursuant to this section shall be issued in accordance with and subject to the provisions of sections 214.03 and 214.04 in so far as the same may be applicable. 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.

(5) REVOCATION; SUSPENSION; REINSTATEMENT OF LICENSES. (a) The commission may, after complaint, notice and hearings, revoke or suspend any license for any of the causes set forth in section 214.06 and subsection (3) of section 218.01 and in the manner therein provided.

(b) The commission may also, in the manner provided in sections 214.06 and 218.01 (3), after complaint, notice and hearings, revoke or suspend any license for failure 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.

(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 commission may reinstate a license if the estate of the former licensee signifies to the commission 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 commission, which shall attach to the license its 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 tenth day of June, pay in advance to the commission the annual license fee.

(c) Before discontinuing operating as a collection agency under the provisions of this section, every licensee shall furnish the commission with proof in a form to be determined by the commission 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 commission and it 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) At any time, upon complaint filed, the commission may investigate the business and examine the books, accounts, records and files used therein of every licensee. If such licensee is found guilty of violating this section or any lawful order of commission the actual cost of such examination shall be paid to the commission by the licensee so examined within thirty days after demand therefor by the commission, and the state may maintain an action for the recovery of such costs 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 commission in the execution of its duties under the provisions of this section. The commission 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 commission 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 commission 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) **JUDICIAL REVIEW.** Any licensee or other person in interest being dissatisfied with any order of the commission may have a review thereof as provided in chapter 227.

(9m) **DELINQUENT COLLECTION AGENCIES; COMMISSION MAY TAKE POSSESSION.** (a) When the license of a collection agency has expired or has terminated whether by voluntary surrender, by death of the licensee, by revocation, suspension or the denial of a renewal license by the commission, the commission may, for the benefit of the claimants or forwarders whose accounts were being collected by the agency, take possession of the assets and the books and records of the agency 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 commission either in the name of the commission or in the name of the agency and the commission shall be vested with title to all of the assets including the proceeds of the bond or bonds which have been filed with the commission 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 agency or to the commission after the termination of the license shall be disposed of by the commission with the approval of the circuit court.

(b) In taking possession of the property and business of any such collection agency, the commission 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 commission.

(c) In addition to the authority conferred by paragraph (b), the commission 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 commission 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 commission shall cause notice to be given by advertisement, if no action has been commenced as provided under paragraph (f) in such newspapers as it may direct, weekly for 4 consecutive weeks, calling on all persons who may have claims against such agency, to present the same to the commission, and make legal proof thereof at a place and within a time, to be therein specified. The commission shall mail a similar notice to all persons whose names appear as claimants or forwarders upon the books and records of the agency or as may appear in the records of the commission on the sworn reports required to be furnished the commission 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 agency. If the commission doubts the justice and validity of any

claim, it 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 commission. An action upon a claim so rejected must be brought in the circuit court for the county wherein the agency 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.

(f) Whenever any agency, of whose assets and business the commission 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 commission 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 commission from further proceedings, and direct it to surrender such business and property to such agency.

(g) Whenever the commission 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, it 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 commission 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 commission, pertaining to accounts placed with the agency for collection shall be returned to the claimant or forwarded by the commission within 30 days after verification of the claim has been made.

(10) ANNUAL REPORT. Each licensee shall annually, on or before the fifteenth day of March, file a report with the commission giving such reasonable and relevant information as the commission 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 commission.

(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 one thousand dollars or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

(13) ENFORCEMENT. It shall be the duty of the commission and it 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 commission shall have all the powers conferred by subsections (4) and (5). The commission shall report all violations to the district attorney of the proper county for prosecution.

(14) SEVERABILITY. The legislature intends that the several provisions of this section shall be independent of each other and that the invalidity, for any reason, of any provision shall not affect the validity of any other provision. [1937 c. 358; 1943 c. 375 s. 92, 370]

**Note:** Person engaged in collection business on effective date of this section is subject to provisions thereof regardless of fact that certain assigned claims have been reduced to judgment. 27 Atty. Gen. 797.

Exemption of attorneys from licensing provisions of collection agency law, provided by (1) (f), does not extend to lay bill collector who is operating what is virtually independent collection agency business in law-

yer's office. While lawyers may make use of lay employes in handling collections, relationship of attorney and client exists between attorney and claimant and attorney must assume full responsibility for activities of such lay employe and see that work is handled in accordance with canons of ethics and statutes applicable to attorneys. 31 Atty. Gen. 374.