

CHAPTER 194.

MOTOR VEHICLE TRANSPORTATION ACT.

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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 of Wisconsin.

(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 two-wheeled 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 shall pretend to purchase property to be transported by him; or who shall purchase such property immediately prior to and sell 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. 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 indus-

trial activity. Nothing contained in this subsection shall affect the rights of persons regulated by the provisions of chapter 129.

(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.

See note to §5.92, citing *Glendenning Motorways v. Green Bay & W. R. Co.* 256 W 69, 39 NW (2d) 694.

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 motor vehicle department 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 commerce. (1) This chapter shall apply to motor carriers engaged in interstate 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 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 commerce shall obtain permits and display evidence thereof as required by the motor vehicle department 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.

History: 1951 c. 261 s. 10.

194.04 Certificates; licenses; permits. (1) **AUTHORITY TO OPERATE.** (b) Every application for a certificate shall be accompanied by a filing fee of \$25. Every application for approval of an assignment or lease of a certificate or for an amendment to a certificate which shall involve establishing service at any city or village incorporated or unincorporated shall be accompanied by a filing fee of \$25. No fee shall be required for an application for abandonment of service.

(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 shall be accompanied by a filing fee of \$15.

(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 chapter 85.

(2) **PERMITS; APPLICATION, EXPIRATION.** Every permit, except the quarterly permits issued pursuant to paragraph (cm) of subsection (1) of this section, for the operation of a motor vehicle shall expire on June 30 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 section 85.01 shall be paid in this state.

(3) **PERMITS; RESTRICTION OF USE.** (a) No motor vehicle permit issued under the provisions of 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.

(b) When a motor truck, 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 motor vehicle department for the same year to such replacement vehicle without charge.

(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 private motor carriers, having a gross weight less than eight thousand pounds, one dollar.

(e) Motor vehicles operated by private motor carriers, having a gross weight of eight thousand pounds or over, two dollars.

(f) The receipt showing payment of said permit fee by said private motor carrier shall be credited to the payment of the motor truck registration license fee required by section 85.01 of the statutes for said motor vehicle covered thereby.

(5) PERMITS; FEES FOR SPECIAL. The fees for special permits issued under section 194.49 shall be as follows:

- (a) Motor vehicles operated by common motor carriers, six dollars.
 - (b) Motor vehicles operated by contract motor carriers, four dollars.
 - (c) Motor vehicles operated by private motor carriers, two dollars.
- (6) DISPOSITION OF FEES COLLECTED. All moneys received under this section of the statutes shall be paid into the highway fund.

History: 1951 c. 319 s. 216; 1951 c. 712.

194.05 Exemption. (1) This chapter shall not apply to motor vehicles owned by the United States, any state, or any political subdivision thereof.

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

194.05 construed as applied to typical private truck. Opinion in 39 Atty. Gen. 484 re-situations involving carriage of mail in private truck. Opinion in 40 Atty. Gen. 66.

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 commission and municipalities. None of the provisions of this chapter shall be deemed to deprive the state 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 motor vehicle department 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 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 motor vehicle department 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 commissioner of the motor vehicle department to act as his agent for the service of process in the legal proceedings above set forth. The commissioner, 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 commissioner shall be effected by serving upon him the original and the number of copies that 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 shall be \$2 for each defendant so served.

History: 1951 c. 521.

194.11 Inspection of premises or vehicles. The motor vehicle department, 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.

[194.12 Stats. 1937 repealed by 1939 c. 410]

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 motor vehicle department shall be guided as to the procedure by the provisions of chapters 195 and 196 in so far 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 attorney-general and district attorneys. Upon request of the motor vehicle department, the attorney-general or the district attorney of the proper county shall aid in any investigation, hearing or trial had under the provisions of 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 motor vehicle department 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 section 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 mileage or flat taxes due under sections 194.48 and 194.49 or of interest due thereon.

194.17 Penalties. 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 shall violate any provision of this chapter or who shall do any act prohibited thereby, or shall fail or refuse to perform any duty enjoined upon him therein, or who shall fail, neglect or refuse to obey any lawful requirement or order made by the commission or the motor vehicle department under the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not exceeding sixty days, or by both such fine and imprisonment. 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 shall be 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.

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 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.

See note to 194.23, citing *Safe Way Motor Coach Co. v. Two Rivers*, 256 W 35, 39 NW (2d) 847.

An ordinance of the town in which Milwaukee county's airport is located, so far as purporting to regulate the operations of limousines by a cab company licensed by the city of Milwaukee and engaged in car-

rying air-line passengers between the city of Milwaukee and the airport under a permit from the public service commission authorizing such cab company to operate limousines interurban between the city and the airport, violates this section. *Milwaukee County v. Lake*, 259 W 208, 47 NW 87.

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 Stats. 1935 repealed by 1937 c. 288]

194.20 Certificates and licenses for carriers in interstate commerce. Motor carriers operating in interstate commerce shall obtain certificates and licenses, amendments thereto, and approval of the assignment thereof, as provided in sections 194.18, 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 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. It is hereby declared to be the legislative intent that if the foregoing provision relative to denial of certificates, licenses, amendments and approval of assignments, or the application of such provision to any person or circumstances, is held invalid, the remaining provisions and the application of said provision to other persons and circumstances shall not be affected thereby.

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 shall have power to 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 in the manner provided for railroad companies and express companies in section 195.38.

(3) No complaint may be filed for an under or an over or excessive charge, or 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 is given by the motor carrier to the claimant of disallowance of the claim or any part thereof.

History: 1951 c. 712.

194.22 Changes in tariff schedules to be approved. 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, thirty 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.

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.

History: 1951 c. 712.

The power of regulation of common motor carriers is primarily in the state, which may delegate such power to its various agencies, both state and municipal, to such extent as may seem to it to be likely to best serve the public interest; and the power delegated to the public service commission by this chapter is a power to act throughout the state. 194.18 (1) vesting the public service commission with the power to designate the public highways as routes over which common motor carriers may or may not operate, and 194.23 (1) providing that no person shall operate any motor vehicle as a common carrier except in accordance with the terms and conditions of a certificate issued by the commission, is mandatory and, considered with related provisions, confers on the commission, as a state agency acting for the state throughout its boundaries, the exclusive power to designate routes for common motor carriers. *Safe Way Motor Coach Co. v. Two Rivers*, 256 W 35, 39 NW (2d) 847.

See note to 194.25, citing *Clintonville Transfer Line v. Public Service Comm.* 258 W 570, 46 NW (2d) 741.

194.24 Application; form. Applications for certificates and motor vehicle permits shall be verified and made in writing, and shall contain such information and be in such form as the commission may require.

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.

History: 1951 c. 712.

The public service commission must approve an assignment of a certificate of a common motor carrier if the same is not against the public interest, which is the requirement prescribed by 194.25 (2), and the commission cannot impose an additional requirement by a rule providing that, if a certificate of an intrastate common motor carrier is to be assigned to another like carrier operating a connecting route and it is proposed to operate the combined systems as a single through route, the application must be supported by evidence that public convenience and necessity require the through service; but if it is proposed to link up the 2 routes and operate a single-line service, thereby creating new operating rights, it is necessary for such assignee to file an application for an amendment to its certificate, pursuant to 194.23, and then to establish public convenience and necessity, as required by that section. *Clintonville Transfer Line v. Public Service Comm.* 258 W 570, 46 NW (2d) 741.

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.

History: 1951 c. 712.

194.27 Pick-up 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 pick-up 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 commissioner of the motor vehicle department, or any person employed by the department, 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 commissioner who shall make such demand shall produce his authority under the hand and seal of the department.

194.32 Trailers excluded. 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 shall exceed 40 feet in length or 8

feet 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 shall be 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.

History: 1951 c. 650.

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 motor vehicle department. Provided that no carrier operating under this chapter shall be denied the right to operate in any such municipality over any federal or state trunk highway upon payment of such license tax not exceeding the maximum specified in subsection (17) of section 76.54 as the municipality may prescribe.

This section confers on a city a power which is subordinate to the exclusive authority conferred on the public service commission by 194.18 (2) to designate routes, and does not confer on a city the power to nullify an order of the commission designating the routes over which a common motor carrier may operate within the city. An ordinance which attempts to change such designated routes is void as a usurpation of power conferred solely on the commission. *Safe Way Motor Coach Co. v. Two Rivers*, 256 W 35, 39 NW (2d) 847.

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 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 existing public transportation facilities in the territory for which a license is sought, including contract motor carriers, common motor carriers and steam and electric railways. If the commission shall grant 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 may deem 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.

194.35 Application; form. Applications for contract motor carrier licenses and motor vehicle permits shall be verified and made in writing and shall contain such information and be in such form as the commission may require.

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 chapters 85, 110 and 194.

History: 1951 c. 712.

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 act:

(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 act.

(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 act.

(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 act.

(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.

(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 to 194.40 Stats. 1935 repealed by 1937 c. 288]

194.37 Interdepartmental relations; division of powers; co-operation. (1) The commissioner of the motor vehicle department and the public service commission shall cooperate with each other to the end that their respective duties under this chapter and chapter 110 may be effectively carried out. The public service commission shall retain, as provided in section 110.03, jurisdiction to determine the authority of motor carriers contained in certificates and licenses and to exercise jurisdiction over the regulation of rates and service, excluding regulations for safety of operations, of common and contract motor carriers and to exercise such supplementary powers as are expressly preserved to it by section 110.03. The commissioner of the motor vehicle department shall exercise all other jurisdiction over motor carriers provided by chapter 194 including the enforcement of the orders of the commission.

(2) Such portions of the motor carrier files of the public service commission as relate to the powers, duties and functions transferred to the commissioner of motor vehicles shall be transferred to said department, except that such files as relate both to functions transferred and functions retained by the public service commission may be physically retained by the commission as may be determined by agreement of the respective departments and in such event the motor vehicle department shall be provided access to such files.

(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 but may be received from applicants by either the commission or the motor vehicle department. The department which receives the application in the first instance shall determine whether a filing fee is required and the amount thereof, shall collect the same, and deposit it in the state treasury. The commission and department shall co-operate to the end that uniform construction and application of the statutes relating to the payment of filing fees is adopted and the motor vehicle department shall be guided in its practice in this respect by the interpretations placed upon the statutes by the public service commission. Upon receiving an application for certificate, license, amendment, or approval of assignment, the motor vehicle department shall transmit the same to the public service commission for appropriate disposition.

(4) The public service commission shall prepare copies of all certificates and licenses which are in force and effect and all outstanding general and special orders made under the provisions of chapter 194 and furnish the same to the commissioner of the motor vehicle department. The preparation and furnishing of such copies shall proceed as rapidly as is reasonably practicable. Certified copies of all orders, determinations, certificates, licenses and amendments thereto which shall be made or issued under the authority of chapter 194 by the public service commission shall, as the same are entered and issued, be delivered to the commissioner of the motor vehicle department.

194.38 Regulatory powers of motor vehicle department. It shall be the duty of the motor vehicle department:

(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) At the beginning of each fiscal year the public service commission shall estimate the costs to be incurred from the appropriation made by this subsection relating to carrying out its functions under chapter 194 and section 76.54 (17) and shall certify such cost estimates to the director of budget and accounts who shall forthwith draw his warrant on the highway fund for such amount and deposit such proceeds in the general fund. The estimated cost of administering the provisions of chapter 194 and section 76.54 (17) shall be adjusted to actual costs on the cash basis per the records of the department of budget and accounts as of June 30 following, and such adjustment shall be reflected in the fund transfer covering cost estimates for the ensuing year pursuant to this subsection.

History: 1951 c. 319 s. 217.

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 shall have on file with the motor vehicle department 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 persons or 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 persons, five thousand dollars to any one person and ten thousand dollars for any one accident for vehicles having a gross weight not in excess of ten thousand pounds and ten thousand dollars to any one person and twenty thousand dollars for any one accident for vehicles having a gross weight in excess of ten thousand pounds, (b) for injury to property, five thousand dollars for any one accident. Such liability may be restricted so as to be inapplicable to damage claims on account of injury to 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 condition as the department may require. No common motor carrier of passengers shall operate any motor vehicle unless it shall have 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 persons, including passengers in at least the following amounts:

(a) Not exceeding ten thousand dollars to any one person or thirty thousand dollars for any one accident for each motor vehicle having a seating capacity of seven passengers or less;

(b) Not exceeding ten thousand dollars to any one person or forty thousand dollars for any one accident for each motor vehicle having a seating capacity of more than seven and less than sixteen passengers;

(c) Not exceeding ten thousand dollars to any one person or fifty thousand dollars for any one accident for each motor vehicle having a seating capacity of more than fifteen and less than twenty-five passengers; and

(d) Not exceeding ten thousand dollars to any one person or seventy-five thousand dollars for any one accident for each motor vehicle having a seating capacity of twenty-five 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.

This section deals strictly with public-liability insurance, not with collision insurance, and is intended to protect users of the highway against damage from an insured with whom they have no relationship; it does not prohibit in such a policy a clause excluding liability on the part of the insurer for injury to property "owned by, rented to, in charge of, or transported by, the insured," and under such clause the insurer is not liable for damage to a tractor leased to the insured trucker, and damaged in a collision while being operated by the insured. *Faust v. Daves*, 257 W 353, 43 NW (2d) 365.

194.42 Exemption from undertaking; proof of financial responsibility; revocation. The motor vehicle department may by order exempt from the requirements of section 194.41 any common motor carrier of property or of passengers 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 the provisions of section 194.41. Any person so exempted shall furnish to the department from time to time such information as to his financial ability as the department may require and shall promptly report to the department 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 department may by order revoke any such exemption, after hearing upon ten days' notice, and for cause. Within ten days after the date of such order of revocation the person affected thereby shall in all respects comply with the requirements of section 194.41.

194.43 Private motor carriers; regulation by commission. The motor vehicle department 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 motor vehicle department 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, desire to lease such motor vehicles without drivers, or to lease such trailers to private motor carriers, such lessor shall be entitled to procure a private motor carrier permit in his name for the motor vehicles or trailers to be 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. Provided, that in the event of a leased motor vehicle or trailer being 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

shall have been issued shall be responsible to the state of Wisconsin for the payment of all taxes, fees and other payments due under chapters 85 and 194 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. Provided, that the owner of each such leased motor vehicle or trailer shall before leasing the same comply with the insurance requirements of section 194.41. The annual permit fee for each such leased motor vehicle shall be \$10 and for each such leased trailer \$7.50. It shall be the duty of the department to supervise and regulate the operations of such leased motor vehicles and trailers to effectually accomplish the intent of section 194.02.

(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.

194.46 Amendment or revocation of certificate, license or permit; 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, 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. 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.

194.47 Exemptions from taxes imposed by 194.48 and 194.49. The following operations are exempt from assessment of taxes provided by sections 194.48 and 194.49, and each vehicle permitted under common carrier certificates or contract carrier licenses shall claim exemption for the number of quarters for which registration fee is paid under chapter 85.

(1) Operations of motor vehicles which have a gross weight of less than eight thousand pounds and which are not operated in conjunction with other vehicles as a unit having an aggregate combined gross weight of eight thousand pounds or more.

(2) Operations of motor vehicles which, except in respect to operations performed under special permit issued under section 194.49 and tax-exempt operations under subsection (5) of this section, are engaged exclusively in transportation entirely within one municipality and municipalities contiguous thereto.

(3) Operations of motor vehicles used for the transportation of passengers which take place entirely within contiguous incorporated cities or villages and in municipalities contiguous to that in which the motor carrier has its principal place of business, or entirely within one municipality or municipalities contiguous thereto.

(4) All motor vehicles equipped with dump bodies while engaged exclusively in the transportation of dirt, sand, gravel, stone, asphalt, cinders, ashes or cement for highway and building construction and maintenance, not more than 20 miles from the point of loading, and all such motor vehicles while operated empty for the purpose of moving such vehicles from one location to another.

(5) Operations of motor vehicles which, except in respect to operations performed under special permit issued under section 194.49 and tax-exempt operations under subsection (2) of this section, are engaged exclusively in any or all of the following operations:

(a) Transportation of fluid milk or cream, live stock or raw cheese.

(b) Transportation of butter, dairy products or unmanufactured agricultural or forest products or manufactured or burned clay or burnt limestone products immediately and directly from point of production, or transportation to farms of materials, supplies or equipment for use thereon, and the transportation by private motor carriers of farm machinery and parts of farm machinery.

(6) Any vehicle while performing transportation of property which due to the physical characteristics of the vehicle or load requires a permit under subsections (1) and (3) of section 85.53 and all necessary mileage of such vehicle incidental to such transportation.

Canned cream product described by canner as "scientifically processed" is not "fluid cream" nor a "dairy product". 39 Atty. Gen. 109.

Motor vehicle used to transport cement blocks is not exempt from ton-mile tax. 39 Atty. Gen. 825.

Transportation of seed corn from a processing plant to another plant or to market held under the facts not to be exempt from ton-mile tax. 39 Atty. Gen. 459.

Privately owned and operated motor ve-

hicles used exclusively to transport the United States mail are subject to the weight or mileage tax. 39 Atty. Gen. 484.

Truck transporting dry grain sprouts from breweries to mill, from which they are delivered to farms and sold to farmers calling for them, is not exempt from taxes under 194.48 or 194.49. 39 Atty. Gen. 548.

194.05 construed as applied to typical situations involving carriage of mail in private truck. Opinion in 39 Atty. Gen. 484 reviewed and clarified. 40 Atty. Gen. 66.

194.48 Weight tax on motor carriers. (1) No motor carrier shall operate, or cause to be operated, on the highways of this state a motor vehicle otherwise than as described in section 194.47 unless there shall have been paid to the motor vehicle department the tax on such vehicle provided by this section or by section 194.49, and unless there shall be on such vehicle such evidence of such payment as the motor vehicle department may require.

(2) The tax herein referred to shall be a quarterly tax assessed and levied for all operations taking place during the 3-month periods commencing on July 1, October 1, January 1 and April 1. The quarterly tax for any vehicle permitted under a common carrier certificate or a contract carrier license shall be paid for the same number of quarters as registration fee is paid under chapter 85.

(3) The rate of tax for each quarter for vehicles operated in common motor carriage of passengers shall be: For each ton, or fraction, of gross weight, seven dollars and fifty cents.

(4) The rate of tax for each quarter for vehicles operated for the carriage of property shall be as follows:

(a) For motor vehicles having a gross weight of less than four thousand five hundred pounds, five dollars.

(b) For motor vehicles having a gross weight of four thousand five hundred pounds and less than six thousand pounds, seven dollars and fifty cents.

(c) For motor vehicles having a gross weight of six thousand pounds and less than eight thousand pounds, twelve dollars.

(d) For motor vehicles having a gross weight of eight thousand pounds and less than ten thousand pounds, fifteen dollars.

(e) For motor vehicles having a gross weight of ten thousand pounds and less than twelve thousand pounds, eighteen dollars.

(f) For motor vehicles having a gross weight of twelve thousand pounds and less than fourteen thousand pounds, twenty-four dollars.

(g) For motor vehicles having a gross weight of fourteen thousand pounds and less than sixteen thousand pounds, thirty dollars.

(h) For motor vehicles having a gross weight of sixteen thousand pounds and less than eighteen thousand pounds, thirty-seven dollars.

(i) For motor vehicles having a gross weight of eighteen thousand pounds and less than twenty thousand pounds, forty-five dollars.

(j) For motor vehicles having a gross weight of twenty thousand pounds and less than twenty-two thousand pounds, sixty-seven dollars.

(k) For motor vehicles having a gross weight of twenty-two thousand pounds and less than twenty-four thousand pounds, seventy-nine dollars.

(l) For motor vehicles having a gross weight of twenty-four thousand pounds and less than twenty-six thousand pounds, ninety-two dollars.

(m) For motor vehicles having a gross weight of twenty-six thousand pounds and less than twenty-eight thousand pounds, one hundred and five dollars.

(n) For motor vehicles having a gross weight of twenty-eight thousand pounds or more, one hundred five dollars plus seven dollars and fifty cents for each ton, or fraction thereof, of gross weight in excess of fourteen.

(5) If upon any application for a certificate, license or permit, or for the approval of any transfer thereof, it shall appear to the public service commission that the applicant has operated any motor vehicle in violation of this section and that the taxes herein provided for have not been paid, it shall, upon a finding thereof, refuse to issue such certificate, license or permit until such unpaid taxes together with interest thereon at the rate of fifteen per cent per annum from the date they became due shall have been paid.

(6) If before the expiration of a quarterly period a vehicle is disposed of by a carrier and is replaced by another vehicle, no quarterly tax shall be paid on the latter vehicle, except that if the replacement vehicle is subject to a higher quarterly tax the carrier shall pay the difference between said tax and the tax paid on the vehicle that is replaced, provided the carrier shall furnish the motor vehicle department with proof in such form as it may require, that the replaced vehicle has been disposed of.

194.49 Mileage tax; special permits. (1) Any motor carrier may elect to operate any motor vehicle in taxable operations under a mileage permit and to pay a mileage tax on the operations of any such vehicle in lieu of the taxes provided in section 194.48. A motor vehicle may be operated under such mileage permit while at the same time holding a regular permit to engage in tax-exempt operations described in section 194.47. The mileage permit issued shall expire on completion of one thousand miles of operation thereunder; provided that all such permits shall lapse and become null and void on the first day of January following their issuance.

(2) The application for such special permit shall be in such form and contain such information as the motor vehicle department shall prescribe; and may or may not include a detailed schedule of the operations to be performed under such permit.

(3) If the application shall contain a detailed schedule of the operations to be performed under the permit, the amount of tax to accrue from such operations shall be paid with the filing of the application, and the permit shall authorize only the operations scheduled therein.

(4) If the application does not include a schedule of operations there shall be paid with the filing of the application as a minimum assessment and advance payment of tax for operations thereunder, an amount equal to the tax for one thousand miles of operation. No operation under such a permit shall be conducted unless the holder of the permit shall have first delivered or mailed to the department a report of such operation in such form and detail as shall be prescribed by the department and shall carry on the motor vehicle so operated proof of such delivery or mailing. Upon receipt of such report the department shall assess the tax accruing from said operation and shall charge the same against the advance payment made with the filing of the application. Upon the completion of one thousand miles of operation under such permit, no further operation shall be performed unless a new permit shall be first obtained. If before the completion of the thousand miles of operation a vehicle is disposed of by the carrier and is replaced by another, the uncharged portion of the tax and permit fee paid on the former shall be credited to the amount chargeable for operations of the latter during the same quarter.

(5) The tax imposed by this section shall be at the rate of one mill per ton or fraction thereof of gross weight per mile of operation for vehicles of less than fourteen thousand pounds of gross weight, one and one-half mills per ton or fraction thereof of gross weight per mile of operation for vehicles of fourteen thousand pounds or more but not in excess of twenty thousand pounds of gross weight, two mills per ton or fraction thereof of gross weight per mile of operation for vehicles of more than twenty thousand pounds and less than twenty-four thousand pounds of gross weight and two and one-fourth mills per ton or fraction thereof of gross weight per mile of operation for vehicles of 24,000 pounds or greater gross weight.

194.50 Purpose of taxes imposed by 194.48 and 194.49. The tax imposed by sections 194.48 and 194.49 is hereby levied and assessed as partial compensation for the maintenance, repair and construction of the public highways, and shall be in addition to all other taxes imposed upon motor carriers.