

CHAPTER 218

FINANCE COMPANIES, AUTO DEALERS, ADJUSTMENT COMPANIES AND COLLECTION AGENCIES

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SUBCHAPTER I

MOTOR VEHICLE DEALERS;
SALESMEN; SALES FINANCE
COMPANIES**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 par. (b) who:

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

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

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

1. Receivers, trustees, administrators, executors, guardians or other persons appointed by or

acting under the judgment or order of any court; or

2. Public officers while performing their official duties; or

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

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

(c) "Motor vehicle salesman" means sales representative, sales manager, general manager or other person who is employed by a motor vehicle dealer for the purpose of selling or approving retail sales of motor vehicles. Any motor vehicle salesman licensed hereunder shall be licensed to sell only for one dealer at a time.

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

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(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" has the meaning set forth in s. 421.301 (20).

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

(k) "Motor vehicle" means any motor driven or trailer type vehicle required to be registered under ch. 341 except mopeds, semitrailers or trailers designed for use in combination with truck or truck tractor, and except that mobile home dealers and salespersons and moped dealers and salespersons are not required to be licensed under s. 218.01 (2) (d) 1 and 5.

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

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

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

(p) "Factory branch" means a branch office maintained by a person who manufactures or assembles motor vehicles, for the sale of motor vehicles to distributors, or for the sale of motor

vehicles to motor vehicle dealers or for directing or supervising in whole or part, its representatives.

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

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

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

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

(u) "Agreement" means contract or franchise or any other terminology used to describe the contractual relationship between manufacturers, distributors, importers and dealers.

(v) "Department" means the department of transportation.

(w) "Secretary" means the secretary of transportation.

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

(1b) LICENSES FOR DEALERS, DISTRIBUTORS, MANUFACTURERS OR TRANSPORTERS OF SEMITRAILERS AND TRAILERS. Subject to ch. 180 where applicable, any dealer, distributor, manufacturer or transporter of semitrailers or trailers designed for use in combination with a truck or truck tractor is deemed licensed under this section where for purposes of chs. 341 and 342 license under this section is required. This

subsection is enacted to remove an undue burden on interstate commerce from a class of commercial transactions in which the business character of the parties does not require the protection provided by this section and to promote the expansion of credit for truck operators who require banking and financing facilities throughout the United States.

(2) LICENSES, HOW GRANTED; AGREEMENTS, FILING. (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. Every motor vehicle dealer shall be responsible for the licensing of every motor vehicle salesman in his employ.

(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.

(bc) Except as provided in this subsection every dealer and distributor of new motor vehicles other than power-driven cycles or motor bicycles, shall, at the time of application for a license, file with the department a certified copy of the applicant's written agreement and a certificate of appointment as dealer or distributor, respectively. The certificate of appointment shall be signed by an authorized agent of the manufacturer of domestic vehicles on direct manufacturer-dealer agreements; or, where the manufacturer is wholesaling through an appointed distributorship by an authorized agent of the distributor on indirect distributor-dealer agreements. The certificate shall be signed by an authorized agent of the importer on direct

importer-dealer agreements of foreign-made vehicles; or, by an authorized agent of the distributor on indirect distributor-dealer agreements. The distributor's certificate of appointment shall be signed by an authorized agent of the manufacturer; or, by an agent of the manufacturer or importer of foreign manufactured vehicles.

(bd) 1. A dealer or distributor need not file a written agreement if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships utilizes the identical basic agreement for all its dealers or distributors in Wisconsin and certifies in the certificate of appointment that such blanket agreement is on file and such written agreement with such dealer or distributor, respectively, is identical with the filed blanket agreement, and has filed with the department one such agreement together with a list of authorized dealers or distributors. Such manufacturer, distributor or importer shall notify the department immediately of the appointment of any additional dealers or distributors, of any revisions of or additions to the basic agreement on file, or of any individual dealer or distributor supplements to such agreement. Such manufacturer, distributor or importer shall notify the dealer or distributor and forward a copy of such notice to the department of the discontinuation or cancellation of the agreement of any of its dealers or distributors at least 60 days before the effective date thereof together with the specific grounds for discontinuation or cancellation of the agreement, if discontinued or canceled. Agreements and certificates of appointment are deemed to be continuing unless the manufacturer, distributor or importer has notified the department of the discontinuation or cancellation of the agreement of any of its dealers or distributors, and annual renewal of certifications filed as provided in this subsection is not necessary.

2. Any dealer or distributor discontinued or canceled may within such 60-day notice period, file with the department and transportation commission and serve upon the respondent a complaint for a determination of unfair discontinuation or cancellation under sub. (3) (a) 17. Allowing opportunity for an answer, the transportation commission shall thereafter schedule a hearing on and decide the matter. Agreements and certificates of appointment shall continue in effect until final determination of the issues raised in such complaint. If the complainant prevails he or she shall have a cause of action against the defendant for reasonable expenses and attorney's fees incurred by him or her in such matter.

3. No manufacturers', distributors' or importers' vehicles shall be sold in this state unless

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either the manufacturer on direct dealerships of domestic vehicles, the importer of foreign manufactured vehicles on direct dealerships or the distributor on indirect dealerships of either domestic or foreign vehicles are licensed under s. 218.01. The obtaining of a license under s. 218.01 shall conclusively establish that such manufacturer, distributor or importer is doing business in this state and shall subject the licensee to all provisions of the Wisconsin statutes regulating manufacturers, importers and distributors.

(be) Any manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships who has filed with the department an agreement used by all its dealers or distributors in this state together with a list of all such dealers or distributors who fails to notify the department of any revisions, changes or additions when and as required by par. (bd) may be fined not more than \$200 or imprisoned not more than 6 months or both.

(c) All licenses shall be granted or refused within 60 days after application therefor, and shall expire, unless sooner revoked or suspended, on December 31 of the calendar year for which they are granted, except that where a complaint of unfair cancellation of dealer agreement is in process of being heard, no replacement application for such agreement shall be considered until a decision is rendered by the transportation commission.

(d) The license fee for each calendar year, or part thereof, shall be:

1. For motor vehicle dealers, \$20 for each office or branch thereof, plus \$1 for a supplemental license for each used motor vehicle lot within the same municipality, but not immediately adjacent to the office or to a branch.

2. For motor vehicle manufacturers, \$20; and for each factory branch in this state, \$20.

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

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

5. For motor vehicle salesmen, \$4.

6. For factory representative, or distributor branch representative, \$4.

7. For sales finance companies on the basis of the gross volume of purchases of retail sales contracts of motor vehicles sold in this state for the 12 months immediately preceding October 31 of the year in which the application or license is made, as follows: On a gross volume of \$25,000 or less, \$25; on a gross volume of over \$25,000 and not over \$100,000, \$50; on each \$100,000 over \$100,000 and up to \$500,000, an additional \$15; and on each \$100,000 over \$500,000, an additional \$10. 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, which 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 \$10,000 of gross volume, \$10; and on each \$1,000 of gross volume, or part thereof, over \$10,000 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 leaving an employer, the salesman shall immediately surrender his license to his employer who shall mail the license to the licensor. If during the license year such individual again is employed or acts as a salesman he shall make application for reissue of a salesman's license. There shall be no fee in connection with such subsequent applications.

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

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

(i) Application for dealers' licenses shall be submitted to the department in duplicate and

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

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

(k) After the receipt of an application in due form, properly verified and certified, and upon the payment of the \$5 examination fee, it is the duty of the secretary, or the deputy secretary or any salaried employe of the department designated by the said secretary, within a reasonable time and in a place reasonably accessible to the applicant for a license, to subject each first-time applicant for license and if the secretary deems necessary, any applicant for renewal of license, to a personal written examination as to competency to act as a motor vehicle salesman. When it is shown from such application and examination that the applicant: 1. intends in good faith to act as a motor vehicle salesman; 2. is of good reputation; 3. has had experience or training in, or is otherwise qualified for selling motor vehicles; 4. is a resident of this state (unless application is for a nonresident motor vehicle salesman's license); 5. is reasonably familiar with the motor vehicle sales laws or contracts the applicant is proposing to solicit, negotiate or effect; and 6. is worthy of a license, the said secretary shall issue to the applicant a license to transact business in this state as a resident or nonresident motor vehicle salesman.

(2a) CHANGES IN PLACES OF BUSINESS TO BE REPORTED. (a) Before changing the location of a place of business or opening a new place of business in a municipality in which authorized to do business, a licensed dealer, distributor, or manufacturer shall apply to the department for an amended license. The department shall issue such license without charge.

(b) Whenever a licensed dealer, distributor, manufacturer or transporter opens a new place of business, the licensee shall promptly report

such fact, including the address thereof, to the department.

(c) Whenever a licensed dealer, distributor or manufacturer discontinues or disposes of his or her business, such person shall promptly report such fact to the department and return the license and registration plates issued. Whenever a licensed dealer, distributor or manufacturer discontinues business due to license suspension or revocation, such person shall surrender the licenses and registration plates to the department for such suspension or revocation period.

(d) Any dealer, distributor, manufacturer or transporter who fails to comply with the requirements of this subsection may be fined not more than \$200 or imprisoned not more than 6 months or both.

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

1. Proof of unfitness.
2. Material misstatement in application for license.
3. Filing a materially false or fraudulent income tax return as certified by the department of revenue.
4. Wilful failure to comply with any provision of this section or any rule or regulation promulgated by the licensor under this section.
5. Wilfully defrauding any retail buyer to the buyer's damage.
6. Wilful failure to perform any written agreement with any retail buyer.
7. Failure or refusal to furnish and keep in force any bond required.
8. Having made a fraudulent sale, transaction or repossession.
9. Fraudulent misrepresentation, circumvention or concealment through whatsoever subterfuge or device of any of the material particulars or the nature thereof required hereunder to be stated or furnished to the retail buyer.
10. Employment of fraudulent devices, methods or practices in connection with compliance with the requirements under the statutes of this state with respect to the retaking of goods under retail instalment contracts and the redemption and resale of such goods.
11. Having indulged in any unconscionable practice relating to said business.
12. Having charged a finance charge in excess of the rate permitted by s. 422.201 (3).
13. Having sold a retail instalment contract to a sales finance company not licensed hereunder.
14. Having violated any law relating to the sale, distribution or financing of motor vehicles.
15. Being a manufacturer of motor vehicles, factory branch, distributor, field representative, officer, agent or any representative whatsoever

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of such motor vehicle manufacturer or factory branch, who has induced or coerced or attempted to induce or coerce any motor vehicle 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 motor vehicle 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; or being a manufacturer, factory branch or importer, who unfairly, without due regard to the equities of a distributor and without just provocation canceled the franchise of any distributor. All existing dealers' franchises shall continue in full force and operation under a newly appointed distributor on the termination of an existing distributor unless a mutual agreement of cancellation is filed with the department between the newly appointed distributor and such dealer. The nonrenewal of a franchise or selling agreement without just provocation or cause shall be deemed an evasion of this section and shall constitute an unfair cancellation.

18. Having accepted an order of purchase or a contract from a buyer if such arrangement results in the practice of bushing. For the purpose of this section, "bushing" means the practice of increasing the selling price of a motor vehicle above that originally quoted the purchaser as evidenced by a purchase order or contract which has been signed by both the purchaser and dealer licensee.

19. Having advertised, printed, displayed, published, distributed, broadcast or televised or caused or permitted to be advertised, printed, displayed, published, distributed, broadcast or televised in any manner whatsoever, any statement or representation with regard to the sale or financing of motor vehicles which is false, deceptive or misleading.

20. Having set up, promoted or aided in the promotion of a plan by which motor vehicles are sold to a person for a consideration and upon the

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

21. Being a dealer who keeps open his place of business on Sunday for the purpose of buying or selling motor vehicles; but nothing in this subdivision shall apply to any person who conscientiously believes that the 7th day of the week, from sunset Friday to sunset Saturday, should be observed as the Sabbath and who actually refrains from conducting or engaging in the business of buying, selling or offering for sale motor vehicles, or performing other secular business on that day.

22. Being a manufacturer, factory branch or distributor who for the protection of the buying public fails to specify the delivery and preparation obligations of its dealers prior to delivery of new motor vehicles to retail buyers. A copy of the delivery and preparation obligations of its dealers shall be filed with the department by every licensed motor vehicle manufacturer, factory branch or distributor and shall constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer, factory branch or distributor. Any mechanical, body or parts defects arising from any express or implied warranties of the manufacturer or importer shall constitute the manufacturer's or importer's product or warranty liability. The manufacturer, factory branch or distributor shall reasonably compensate any authorized dealer who performs work to rectify the manufacturer's or importer's product or warranty defects at a labor rate equal to the effective labor rate charged all customers.

23. Being a manufacturer who unreasonably withholds its approval of a change of ownership or executive management of a dealership.

24. Being a manufacturer who unreasonably closes a dealer point.

25. Having violated chs. 421 to 427.

26. Being a manufacturer, factory branch, distributor, field representative, officer, agent or any representative of such manufacturer, factory branch or distributor who, notwithstanding the terms of any agreement, refuses to honor the succession to the ownership or operation of a dealership under an existing franchise agreement by a designated family member of a deceased or incapacitated dealer, except in the

manner prescribed by sub. (3c), or who unreasonably withholds its approval of a change of ownership or executive management of the dealership after the dealer's death or incapacity.

27. The selling of new motor vehicles for which the dealer is not franchised.

28. Willful failure to provide and maintain facilities and business records as required by this section or by any rule promulgated by the licensor pertaining to facility and business records.

29. Being an inactive business, as evidenced by 3 or less motor vehicle purchases and sales during the prior year licensing period.

30. Failure to obtain proper business zoning or failure to obtain and maintain any required additional state or local license or permit.

31. Having violated an order issued under par. (h).

(b) The licensor may without notice deny the application for a license within 60 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Within 30 days after such notice, the applicant may petition the transportation commission to conduct a hearing to review the denial, and a hearing shall be scheduled with reasonable promptness.

(bf) 1. The department shall not license as a dealer an applicant for the sale of motor vehicles at retail unless such applicant owns or leases a vehicle display lot and a permanent building wherein there are facilities to display automobiles and motorcycles and facilities to repair functional and nonfunctional parts of motor vehicles and where replacement parts, repair tools and equipment to service motor vehicles are kept, and at which place of business shall be kept and maintained the books, records and files necessary to conduct the business. A residence, tent or temporary stand is not a sufficiently permanent place of business within the meaning of this paragraph.

2. An approved service contract with an established repair shop having the repair parts and repair facilities specified in subd. 1 shall serve in lieu of the applicant's owning or leasing his own repair facilities if such service connection is within a reasonable distance from the applicant's place of business and if such service connection guarantees in writing the making of the repairs or replacements ordered by the dealer.

3. This paragraph does not apply to persons who deal only in power-driven cycles or motor bicycles.

(c) No license may 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. Matters involving suspensions or revocations brought before the department shall be heard and decided upon by the transportation commission.

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

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

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

(g) Any person in interest aggrieved by a decision of the transportation commission may have a review thereof as provided in ch. 227 or aggrieved by an order of the commissioner may have a review thereof as provided in s. 220.037.

(h) In addition to the licensor's authority to deny, suspend or revoke a license under this section, the commissioner, after public hearing, may issue a special order enjoining any licensee from engaging in any act or practice which is determined by the commissioner to be in violation of any provision of par. (a), and the transportation commission may be petitioned to issue such a special order after notice and hearing thereon.

(3a) WHEN DEPARTMENT TO REVOKE LICENSE OF DEALER, DISTRIBUTOR, MANUFACTURER, OR TRANSPORTER. (a) If a dealer, distributor or manufacturer is convicted under s.

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341.55 (1) a second or subsequent time within the same registration year, the department shall revoke the license of such dealer, distributor or manufacturer for a period not to exceed one year. For the purposes of this paragraph, the conviction of the employe of a dealer, distributor or manufacturer shall be counted as a conviction of the employer.

(b) If a transporter is convicted under s. 341.55 (3) a second or subsequent time within the same license year, the department shall revoke the license of such transporter for a period not to exceed one year.

(c) A dealer, distributor, manufacturer or transporter whose license has been revoked shall forthwith surrender its registration plates to a traffic officer or peace officer designated by the department. A dealer, distributor, manufacturer or transporter who fails to return the plates as required by this subsection may be fined not more than \$200 or imprisoned not more than 6 months or both.

(d) The appeal of a conviction does not suspend the act or order of revocation unless a stay is ordered by the judge of the court to which the appeal is taken.

(3c) FAMILY MEMBER'S RIGHT TO SUCCEED DECEASED OR INCAPACITATED DEALER UNDER EXISTING FRANCHISE AGREEMENT. (a) The term "designated family member", as used in this subsection and in sub. (3) (a) 26, means the spouse, child, grandchild, parent, brother or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will or under the laws of intestate succession of this state, or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term "designated family member" shall also mean and include the duly appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(b) Any designated family member of a deceased or incapacitated dealer shall have the right to succeed such dealer in the ownership or operation of the dealership under the existing franchise agreement provided the designated family member gives the manufacturer, factory branch or distributor written notice of his or her intention to do so within 120 days of the dealer's death or incapacity and unless there exists good cause for refusal to honor such succession on the part of the manufacturer, factory branch or distributor. The manufacturer, factory branch or distributor may request, and the designated family member shall provide, such personal and financial data as is reasonably necessary to

determine whether the succession should be honored.

(c) If a manufacturer, factory branch or distributor believes it has good cause for refusing to honor the succession to the ownership and operation of a dealership by a family member of a deceased or incapacitated dealer under the existing franchise agreement, such manufacturer, factory branch or distributor may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, serve upon such designated family member and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date such notice is served. Such notice shall state the specific grounds for the refusal to honor the succession and the discontinuance of the franchise agreement. If no notice of such refusal and discontinuance is timely served upon the family member and department, or if the transportation commission rules in favor of the complainant in a hearing held under par. (d), the franchise agreement shall continue in effect subject to termination only in the manner prescribed in this subchapter.

(d) Any designated family member who receives a notice of the manufacturer's, factory branch's or distributor's refusal to honor his or her succession to the ownership and operation of the dealership may within the 60-day notice period, serve on the respondent and file in triplicate with the transportation commission a verified complaint for a hearing and determination by the transportation commission on whether good cause exists for such refusal and discontinuance. The transportation commission shall forward a copy of the complaint to the department. The manufacturer, factory branch or distributor shall have the burden of establishing good cause for such refusal by showing that the succession would be detrimental to the public interest or to the representation of the manufacturer, factory branch or distributor. The franchise agreement shall continue in effect until the final determination of the issues raised in such complaint. If the complainant prevails he or she shall have a cause of action against the defendant for reasonable expenses and attorney's fees incurred in such matter. If the manufacturer, factory branch or distributor prevails, the transportation commission shall include in its order approving the termination of the franchise agreement such conditions as are reasonable and adequate to afford the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(e) Nothing in this subsection shall prevent a dealer, during the dealer's lifetime, from designating any person as his or her successor dealer by written instrument filed with the manufacturer, factory branch or distributor.

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

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

(b) The commissioner and transportation commission shall have the power in hearings and trials arising under this chapter 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.

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

(5m) **CONTRACT PROVISIONS.** (a) No contract for the sale of a motor vehicle shall contain a clause which, upon nonacceptance of the vehicle by the buyer, would subject the buyer to a penalty greater than 5 per cent of the cash price of the vehicle.

(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, the cash paid down by the buyer, the amount credited the buyer for any trade-in and a description of the trade-in, the cost to the retail buyer of any insurance, the amount financed which may include the cost of insurance, sales and use taxes, the amount of the finance charge, the amount of any other charge specifying its purpose, the total of payments due from the buyer, the terms of the payment of such total, the amount and date of each payment necessary finally to pay the total and a summary of any insurance coverage to be effected. The commissioner may determine the form of the statement. If a written order is taken from a prospective purchaser in connection with any instalment sale, the written statement shall be given to the purchaser prior to or concurrent with the signing of the order by the purchaser. The finance charge in a retail instalment sale made prior to April 6, 1980 or after October 31, 1981, however computed, excluding the cost of insurance shall not exceed the amount computed on the basis of the following annual percentage rates:

1. Class 1: Any new motor vehicle—12.75% per year; except for transactions of 72 months or more—11.7% per year.

2. Class 2: Any used motor vehicle designated by the manufacturer by a year model of the same or 2 years prior to the year in which the sale is made—16.25% per year; except for transactions of 72 months or more—14.7% per year.

3. Class 3: Any used motor vehicle not in Class 2 and designated by the manufacturer by a year model not more than 4 years prior to the year in which the sale is made—21.25% per year; except for transactions of 72 months or more—19.15% per year.

4. Class 4: Any used motor vehicle not in Class 2 or Class 3 and designated by the manufacturer by a year model more than 4 years prior to the year in which the sale is made—23.25% per year; except for transactions of 72 months or more—20.75% per year.

5. Class 5: Any new truck or truck tractor having a gross vehicular weight of 15,000 pounds or more—15.25% per year.

6. The maximum allowable finance charge shall be computed on the declining principal balance of the amount financed as determined under the introductory paragraph hereof at the annual percentage rates provided for in the classes under subds. 1 to 5 according to the actuarial method as defined in s. 421.301 (1).

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

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8. In addition to other charges, an instalment sales contract may include a charge sufficient to cover the fee for filing the termination statement required by s. 409.404.

(bm) The finance charge in a retail instalment sale made on or after April 6, 1980 and prior to November 1, 1981, or the refinancing, renewal, extension or modification on or after April 6, 1980 and prior to November 1, 1981, of any retail instalment sale, however computed, excluding the cost of insurance shall not exceed the amount computed on the basis of the following annual percentage rates:

1. Any new motor vehicle, the lesser of 18% per year or a rate of not more than 4% in excess of the discount rate on 90-day commercial paper in effect 15 days prior to the date of sale at the federal reserve bank in the federal reserve district where the seller is located.

2. Any used motor vehicle, 18% per year.

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

(d) A violation of par. (a), (b) or (bm) bars recovery of any finance charge by the seller, or an assignee of the seller who, at the time of the assignment, had knowledge of the violation, in any suit upon a sales contract arising from the sale where the violation occurred.

(e) Prior to 30 days after acquisition of any retail instalment contract from a retail seller, every finance company shall mail or deliver to the retail buyer a written notice that it has acquired the retail instalment contract from the retail seller, and shall also mail or cause to be mailed with the notice a statement of the particulars of the retail instalment contract price required under par. (b) 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. Every finance company, if insurance is provided by it, shall also within the 30 days send or cause to be sent to the retail buyer a policy of insurance clearly setting forth the exact nature of the insurance coverage and the amount of the premiums, each stated separately, which shall be filed with the commissioner of insurance in accordance with ch. 625. The cancellation and rewriting of any

such policy shall comply with the requirements of s. 631.69.

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

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

(g) Any retail buyer of a motor vehicle, resident of the state of Wisconsin at the time of purchase, under a retail instalment contract made in this state, shall have a valid defense against the recovery of the principal, finance charge and other fees included in the contract, in any action or proceeding at law to enforce the contract by any person who has purchased or otherwise acquired the contract, if the person has failed or refused prior to the purchase or acquisition to be licensed as a sales finance company under this section, and the person is actually engaged in business, in whole or in part as a sales finance company.

(h) All transactions which constitute consumer transactions (s. 421.301 (13)) are subject to chs. 421 to 427, in addition to this section.

(j) This subsection does not apply to a retail instalment sale made on or after April 6, 1980 and prior to November 1, 1981, of a motor vehicle having a gross vehicular weight or a gross carrying weight of 15,000 pounds or more if the motor vehicle is to be used primarily for a business or commercial purpose, or to any refinancing, renewal, extension or modification on or after April 6, 1980 and prior to November 1, 1981, of any retail instalment sale of such a motor vehicle.

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

the negligent use thereof. The seller shall obtain, on a form separate from the retail instalment contract, the signed acknowledgment of the buyer that he or she has been notified that the contract does or does not include such insurance.

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

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

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

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

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

(b) Any such statements, threats, promises, acts, contracts or offers of contracts, set forth in par. (a) 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 par. (c) 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) MOTOR VEHICLES. (a) No motor vehicle shall be offered for sale by any motor vehicle dealer or motor vehicle salesman unless the odometer reading thereon is disclosed in writing

by the prior owners and such disclosure is subsequently shown to the retail purchaser by the dealer or salesman prior to sale. Such disclosure requirement shall not apply to a motor vehicle with a gross weight rating of more than 16,000 pounds or a vehicle 25 or more years old, or a new vehicle obtained by such dealer directly from a manufacturer or distributor.

(b) It shall be unlawful for any motor vehicle dealer or motor vehicle salesman to fail to provide, upon request of a prospective purchaser, the name and address of the prior owner of any motor vehicle offered for sale.

(7b) PURCHASE OF MOTOR VEHICLE BY MINOR. No minor shall purchase any motor vehicle unless the minor, at the time of purchase, submits to the seller a statement verified before a person authorized to administer oaths and made and signed by either parent of the purchaser, if such parent has custody of the minor or, if neither parent has custody, then by the person having custody, setting forth that the purchaser has consent to purchase the vehicle. The signature on the statement shall not impute any liability for the purchase price of the motor vehicle to the consenting person. The statement shall not adversely affect any other arrangement for the assumption of liability for the purchase price which the consenting person may make. The signed statement shall accompany the application for a certificate of title and shall be filed by the department with the application. Failure to obtain the consent or to forward it with the application for a certificate of title shall not void the contract of sale of a motor vehicle in the hands of an innocent holder, without notice, for value and in the ordinary course of business. Any person who sells a motor vehicle to a minor with knowledge of such fact without procuring such a statement may be fined not more than \$200 or imprisoned not more than 6 months or both.

(8) PENALTIES. Any person violating any of the provisions of this section except sub. (3) (a) 1, 4, 6, 7, 11, 13, 20, 29 and 30, shall be punished as follows:

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

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

(c) Any person violating any provisions of this section, except sub. (3) (a) 1, 4, 6, 7, 11, 13, 20, 29 and 30, for which there is no other specific penalty herein may be fined not less than \$25 and not more than \$100, and imprisoned not to exceed 90 days, or both. In the alternative of the department's prerogative of instituting charges

under sub. (3), the department may await a conviction under this subsection and the licensor may cancel the license of the offending licensee without a hearing upon receipt of a certificate of the conviction. The license and registration of such licensee shall be surrendered to any police officer upon the direction of the department without any refund of fees paid. Any license so canceled shall not be renewed during the current year.

(d) Any person or persons violating sub. (3) (a) 15, 16, 17, 23, 24 or 26, may in addition to, or in lieu of, the general denial, suspension or revocation penalties in sub. (3), be subject to a fine of not more than \$5,000 or be subject to a suspension or revocation sentence of not more than a year effective only in the territory formerly served by the unfairly canceled dealer, or by both such fine and suspension or revocation, except that in a metropolitan area serviced by several dealers handling the same motor vehicle, the suspension or revocation order shall not be applicable to the remaining dealers.

(9) CIVIL DAMAGES. Any licensee suffering pecuniary loss because of a violation by any other licensee of sub. (3) (a) 4, 11, 15, 16, 17, 23, 24 or 26 or because of any unfair practice found by the commissioner or transportation commission under sub. (5) (a), may recover damages therefor in any court of competent jurisdiction in an amount equal to 3 times the pecuniary loss together with costs including a reasonable attorney's fee.

History: 1971 c. 112, 125; 1971 c. 164 ss. 64, 83; 1971 c. 228, 239; 1973 c. 171, 243; 1975 c. 94, 121, 263, 361; 1975 c. 375 s. 44; 1975 c. 407, 421, 422; 1977 c. 29 ss. 1363 to 1372, 1654 (7) (a), (c); 1977 c. 270, 273, 288, 405, 418, 447; 1979 c. 34, 168, 221.

Section 180 847 (1), prescribing that no foreign corporation transacting business in the state without a certificate of authority, if required, shall be permitted to maintain or defend a civil action or special proceeding, until it obtains a certificate of authority—and 218.01 (2) (bd) 3—providing that the obtaining of a license under the Motor Vehicle Dealers Law shall conclusively establish that such distributor is doing business in this state—have entirely different purposes and meanings. *Nagle Motors v. Volkswagen N. C. Distributor*, 51 W (2d) 413, 187 NW (2d) 374.

When an instalment sale contract is signed in blank it is void. *Vic Hansen & Sons, Inc v. Crowley*, 57 W (2d) 106, 203 NW (2d) 728.

See note to 19 21, citing 66 Atty. Gen. 302.

The statute requires an initial determination by the division under sub. (5) (a), but no such requirement is imposed on claims under sub. (3) (a) 11. *Mossner Porsche Audi, Inc v. Volkswagenwerk, A. G.* 397 F Supp. 71.

SUBCHAPTER II

ADJUSTMENT SERVICE COMPANIES

218.02 Adjustment service companies.

(1) DEFINITIONS. As used in this section:

(a) "Adjustment service company," herein-after called company, shall mean a corporation, association, partnership or individual engaged

as principal in the business of prorating the income of a debtor to his creditor or creditors, or of assuming the obligations of any debtor by purchasing the accounts he may have with his several creditors, in return for which the principal receives a service charge or other consideration.

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

(2) LICENSES; APPLICATIONS; FEES; BOND.

(a) Each adjustment service company shall apply to the commissioner of banking for a license to engage in such business. Application for a separate license for each office of a company to be operated under this section shall be made to the commissioner in writing, under oath, in a form to be prescribed by the commissioner. The commissioner may issue more than one license to the same licensee.

(b) At the time of making application and before engaging in business, every applicant for an adjustment service company license shall pay a fee of \$100 to the commissioner for investigating the application and the sum of \$100 as an annual license fee. If the cost of an investigation exceeds \$100, the applicant shall, upon demand of the commissioner, pay the excess cost. No investigation fee shall be required on the renewal of a license.

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

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

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

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

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

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

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

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

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

(6) REVOCATION; SUSPENSION; REINSTATEMENT AND TERM OF LICENSES. The commissioner, after complaint, notice and hearings as provided in s. 217.19, shall 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 commissioner in refusing to issue such license;

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

(7) POWERS OF COMMISSIONER. It shall be the duty of the commissioner and he shall have power, jurisdiction and authority to investigate

the conditions and ascertain the facts with reference to such companies and upon the basis thereof:

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

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

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

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

(8) STATEMENT TO DEBTOR. 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) RULES AND REPORTS; FEES; ENFORCEMENT. (a) The commissioner may make such rules and require such reports as he deems necessary for the enforcement of this section. Sections 217.17, 217.18 and 217.21 (1) and (2) apply to and are available for the purposes of this section. Orders of the commissioner under this section are subject to review by the consumer credit review board under s. 220.037.

(b) All fees and moneys received by the commissioner under authority of this chapter shall be paid by him into the state treasury within one week after the receipt thereof.

(c) The commissioner shall investigate, ascertain and determine whether this chapter or the lawful orders issued hereunder are being violated and for such purposes he shall have all of the powers conferred by ss. 217.17 and 217.18. The commissioner shall report all violations to the district attorney of the proper county for prosecution.

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

History: 1971 c. 125, 164, 215; 1973 c. 3.

SUBCHAPTER III

COLLECTION AGENCIES

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

(a) "Commissioner" means the commissioner of banking.

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

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

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

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

(f) "Collection agency" means any person engaging in the business of collecting or receiving for payment for others of any account, bill or other indebtedness. It shall not include attorneys at law authorized to practice in this state and resident herein, banks, express companies, savings and loan associations organized under the laws of Wisconsin, insurers 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 and real estate salespersons.

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

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

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

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

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

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

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

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

(5) REVOCATION; SUSPENSION; REINSTATEMENT OF LICENSES. (a) The commissioner may suspend or revoke any license issued under this section if he finds that:

1. The licensee has violated any of the provisions of this section or any lawful order of the commissioner made thereunder;

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

3. The licensee has failed to pay the annual license fee or to maintain in effect the bond required under sub. (3) (d);

4. The licensee has failed to remit money due to any and all claimants or forwarders within 30 days from the close of the month during which the collection was effected; or

5. The licensee or any officer or employe of it has violated chs. 421 to 427.

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

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

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

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

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

1. Proper remittance has been made to all claimants or forwarders on money collected.

2. All accounts have been returned to the claimants or forwarders.

3. All valuable papers given to the licensee by the claimant or forwarder in connection with claims have been returned to the claimants or forwarders.

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

(a) To issue any general or special order in execution of or supplementary to this chapter to protect the public from oppressive or deceptive

practices of licensees and to prevent evasions of this chapter.

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

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

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

(8) HEARINGS AND ORDERS. The commissioner shall have the same power to conduct hearings, take testimony and secure evidence as is provided in ss. 217.17, 217.18 and 217.19.

(9) ADMINISTRATIVE REVIEW. Any licensee or other person in interest being dissatisfied with any order of the commissioner made under this

section may have a review thereof as provided in section 220.037.

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

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

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

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

(e) The commissioner shall cause notice to be given by publication of a class 3 notice, under ch. 985, if no action has been commenced under par.

(f) calling on all persons who may have claims against such licensee, to present the same to the commissioner, and make legal proof thereof at a

place and within a time, to be therein specified. The commissioner may mail a similar notice to all persons whose names appear as claimants or forwarders upon the books and records of the licensee or as may appear in the records of the commissioner on the sworn reports required to be furnished the commissioner according to the provisions of sub. (10). Any claimant or forwarder whose portion of the collection or collections has not been properly remitted shall file a claim which shall be considered as a preferred claim for the amount actually due the claimant or forwarder after deducting any commission or fee that may be due and owing the licensee. If the commissioner doubts the justice and validity of any claim, he may reject the same and serve notice of such rejection upon the claimant either by mail or personally. An affidavit of the service of such notice, which shall be prima facie evidence thereof, shall be filed with the commissioner. An action upon a claim so rejected must be brought in the circuit court for the county wherein the licensee is located within 30 days after such service of such notice of rejection of claim has been filed. Claims presented after the expiration of the time fixed in the notice to the claimants or forwarders shall be entitled to receive only liquidating dividends declared after presentation, unless otherwise ordered by the court. The court may fix a date after which all claims shall be barred.

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

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

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

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

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

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

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

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

History: 1971 c. 125, 164, 239; 1973 c. 3; 1979 c. 102 s. 236 (4); 1979 c. 162 s. 38 (3); 1979 c. 341 s. 12 (2).

Requirement under this section that foreign collection agency maintain Wisconsin office with records may not violate commerce clause. OAG 28-80.

SUBCHAPTER IV

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

(a) "Commissioner" means the commissioner of banking.

(b) "Community currency exchange" means any person, except banks incorporated under the laws of this state and national banks organized pursuant to the laws of the United States and any credit union operating under ch. 186 which obtains a certificate of authority from the commissioner, engaged in the business of and providing facilities for cashing checks, drafts, money orders and all other evidences of money acceptable to such community currency exchange for a fee, service charge or other consideration. Nothing in this section shall be held to apply to any person engaged in the business of transporting for hire, bullion, currency, securities, negotiable or nonnegotiable documents, jewels or other property of great monetary value nor to any person engaged in the business of selling tangible personal property at retail nor to any person licensed to practice a profession or licensed to engage in any business in this state, who, in the course of such business or profession and, as an incident thereto, cashes checks, drafts, money orders or other evidences of money.

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

(3) LICENSES; APPLICATIONS; FEES; BOND.

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

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

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

3. Such other information as the commissioner may require.

(b) Such application shall be accompanied by a fee of \$100 for the cost of investigating the applicant. When the application has been approved by the commissioner and the applicant so advised, the applicant shall pay an additional

\$100 as an annual license fee for a period terminating on the last day of the current calendar year.

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

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

(5) FORBIDDEN TO ACT AS DEPOSITORY. No community currency exchange shall be permitted to accept money or evidences of money as a deposit to be returned to the depositor or upon the depositor's order; and no community currency exchange shall be permitted to act as bailee or agent for persons, to hold money or

evidences thereof or the proceeds therefrom for the use and benefit of the owners thereof and deliver such money or proceeds of evidence of money upon request or direction of such owner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) No license shall be revoked until the licensee has had notice of a hearing thereon and an opportunity to be heard. When any license is so revoked, the commissioner shall within 20

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days thereafter, prepare and keep on file in his office, a written order or decision of revocation which shall contain his findings with respect thereto and the reasons supporting the revocation and shall send by mail a copy thereof to the licensee at the address set forth in the license within 5 days after the filing in his office of such order, finding or decision.

(13) REVIEW OF ORDERS. Any person aggrieved by any order of the commissioner made under this section may have a review thereof by the consumer credit review board under s. 220.037.

(14) ANNUAL REPORT; EXAMINATION. Each licensee shall annually, on or before February 15, file a report with the commissioner (which shall be used only for the official purposes of the commissioner) giving such relevant information as the commissioner may reasonably require concerning, and for the purpose of examining, the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the commissioner. The commissioner may at any time and at least once in each year investigate the community currency exchange business of any licensee and of every person, partnership, association and corporation who or which shall be engaged in the business of operating a community currency exchange. For that purpose, the commissioner shall have free access to the offices and places of business and to such records of all such persons, firms, partnerships, associations and corporations and to the officers and directors thereof that shall relate to such community currency exchange business. The commissioner may require the attendance for examination under oath of all persons whose testimony he may require relative to such business, and in such cases the commissioner, or any qualified representative of the commissioner, may administer oaths to all such persons called as witnesses, and the commissioner, or his representative, may conduct such examinations, and there shall be paid to the commissioner by the licensee for each examination a fee of \$20 for each day or part thereof required to conduct the examination.

History: 1971 c. 125; 1979 c. 102.

SUBCHAPTER VI**MOBILE HOME DEALERS**

218.10 Definitions. In this subchapter:

(1) "Delivery date" means the date on which a mobile home is physically delivered to the site chosen by the mobile home owner.

(2) "Mobile home" means a vehicle designed to be towed as a single unit or in sections upon a highway by a motor vehicle and equipped and used, or intended to be used, primarily for human habitation, with walls of rigid uncollapsible construction. "Mobile home" includes the mobile home structure, including the plumbing, heating and electrical systems and all appliances and all other equipment carrying a manufacturer's warranty.

(3) "Mobile home dealer" means a person who, for a commission or other thing of value, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale or exchange of an interest in mobile homes or who is engaged wholly or in part in the business of selling mobile homes, whether or not the mobile homes are owned by him, but does not include:

(a) A receiver, trustee, administrator, executor, guardian or other person appointed by or acting under the judgment or order of any court.

(b) Any public officer while performing his official duty.

(c) Any employe of a person enumerated in par. (a) or (b).

(d) Any lender as defined in s. 421.301 (22).

(e) A person transferring a mobile home registered in his own name and used for his personal, family or household purposes, if the transfer is an occasional sale and is not part of the business of the transferor.

(4) "Mobile home manufacturer" means any person within or without this state who manufactures or assembles mobile homes for sale in this state.

(5) "Mobile home owner" means any person or lessee thereof who purchases a mobile home primarily for use for personal, family or household purposes.

(6) "Mobile home salesperson" means any person who is employed by a mobile home manufacturer or dealer to sell or lease mobile homes.

(7) "New mobile home" means a mobile home which has never been occupied, used or sold for personal or business use.

(8) "Primary housing unit" means a mobile home exceeding the statutory size under s. 348.07.

(9) "Used mobile home" means a mobile home which has previously been occupied, used or sold for personal or business use.

History: 1973 c. 116, 132.

218.11 Mobile home dealers regulated.

(1) No person shall engage in the business of selling mobile homes to the ultimate consumer or to the retail market in this state unless first

licensed to do so by the department as herein provided.

(2) Application for license and renewal license shall be made to the department on such forms as it shall prescribe and furnish and shall be accompanied by the annual license fee of \$50. License shall expire on December 31 of each year and applications for renewal licenses shall be made on or before December 15 next preceding expiration of the current license year.

(3) A license shall be issued only to persons whose character, fitness and financial ability, in the opinion of the licensing agency, is such as to justify the belief that they can and will deal with and serve the buying public fairly and honestly, will maintain a permanent office and place of business and an adequate service and parts department during the license year, and will abide by all the provisions of law and lawful orders of the department.

(5) A licensee shall conduct the licensed business continuously during the license year.

(5m) Any person who shall violate any provision of this section shall be fined not less than \$25 nor more than \$100 for each offense.

(6) The department may deny, suspend or revoke a license on the following grounds:

(a) Proof of unfitness.

(b) Material misstatement in application for license.

(c) Filing a materially false or fraudulent income tax return as certified by the department of revenue.

(d) Wilful failure to comply with any provision of this section or any rule promulgated by the department under this section.

(e) Wilfully defrauding any retail buyer to the buyer's damage.

(f) Wilful failure to perform any written agreement with any retail buyer.

(g) Failure or refusal to furnish and keep in force any bond required.

(h) Having made a fraudulent sale, transaction or repossession.

(i) 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.

(j) Employment of fraudulent devices, methods or practices in connection with compliance with the requirements under the statutes of this state with respect to the retaking of goods under retail instalment contracts and the redemption and resale of such goods.

(k) Having indulged in any unconscionable practice relating to said business.

(l) Having charged a finance charge at a rate in excess of the rate permitted by s. 422.201.

(m) Having sold a retail instalment contract to a sales finance company not licensed hereunder.

(n) Having violated any law relating to the sale, distribution or financing of mobile homes.

(7) (a) The licensor may without notice deny the application for a license within 60 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Within 30 days after such notice, the applicant may petition the transportation commission to conduct a hearing to review the denial, and a hearing shall be scheduled with reasonable promptness.

(b) 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. Matters involving suspensions and revocations brought before the department shall be heard and decided upon by the transportation commission.

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

History: 1971 c. 239; 1973 c. 116; 1977 c. 29 ss. 1373, 1654 (7) (a), (e).

218.12 Mobile home dealer salesmen regulated. (1) No person shall engage in the business of selling mobile homes to the ultimate consumer or to the retail market in this state without a license therefor from the department. If a mobile home dealer acts as a mobile home salesman the dealer shall secure a mobile home salesman's license in addition to the license for engaging as a mobile home dealer.

(2) Applications for mobile home salesman's license and renewals thereof shall be made to the department on such forms as the department prescribes and furnishes and shall be accompanied by the annual license fee of \$4. The application shall require such pertinent information as the department requires. Licenses shall expire, unless sooner revoked or suspended, on December 31 of each year and application for renewal licenses shall be made by December 15

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next preceding expiration of the current license year.

(3) Every licensee 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.

(5) The provision of s. 218.01 (3) relating to the denial, suspension and revocation of a motor vehicle salesman's license shall apply to the denial, suspension and revocation of a mobile home salesman's license so far as applicable.

(6) The provisions of s. 218.01 (3) (g) and (5) shall apply to this section, mobile home sales practices and the regulation of travel trailer or mobile home salesmen, as far as applicable.

History: 1973 c. 116; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273; 1979 c. 221.

218.14 Warranty and disclosure. (1)

A one-year written warranty is required for every new primary housing unit sold or leased by a mobile home manufacturer, dealer or salesperson in this state, and for every new primary housing unit sold by any person who induces a resident of the state to enter into the transaction by personal solicitation in this state or by mail or telephone solicitation directed to the particular customer in this state. The warranty shall contain the following terms:

(a) That the primary housing unit meets those standards prescribed by law or administrative rule of the department of industry, labor and human relations, which are in effect at the time of its manufacture.

(b) That the primary housing unit is free from defects in material and workmanship and is reasonably fit for human habitation if it receives reasonable care and maintenance as defined by rule of the department of industry, labor and human relations.

(c) 1. That the primary housing unit manufacturer and dealer shall take corrective action for defects which become evident within one year from the delivery date and as to which the primary housing unit owner has given notice to the manufacturer or dealer not later than one year and 10 days after the delivery date and at the address set forth in the warranty; and that the primary housing unit manufacturer and dealer shall make the appropriate adjustments and repairs, within 30 days after notification of the defect, at the site of the primary housing unit without charge to the primary housing unit owner. If the dealer makes the adjustment, the manufacturer shall fully reimburse the dealer.

2. If a repair, replacement, substitution or alteration is made under the warranty and it is

discovered, before or after expiration of the warranty period, that the repair, replacement, substitution or alteration has not restored the primary housing unit to the condition in which it was warranted except for reasonable wear and tear, such failure shall be deemed a violation of the warranty and the primary housing unit shall be restored to the condition in which it was warranted to be at the time of the sale except for reasonable wear and tear, at no cost to the purchaser or his assignee notwithstanding that the additional repair may occur after the expiration of the warranty period.

(d) That if during any period of time after notification of a defect, the primary housing unit is uninhabitable, as defined by rule of the department of industry, labor and human relations, that period of time shall not be considered part of the one-year warranty period.

(e) A list of all parts and equipment not covered by the warranty.

(2) Action by a lessee to enforce his rights under this subchapter shall not be grounds for termination of the rental agreement.

(3) The warranty required under this section shall apply to the manufacturer of the primary housing unit as well as to the dealer who sells or leases the primary housing unit to the customer, and shall be in addition to any other rights and privileges which the customer may have under any instrument or law. The waiver of any remedies under any law and the waiver, exclusion, modification or limitation of any warranty, express or implied, including the implied warranty of merchantability and fitness for a particular purpose, is expressly prohibited. Any such waiver is unenforceable and void.

(4) The transfer of a primary housing unit from one owner or lessee to another during the effective period of the warranty does not terminate the warranty, and subsequent owners or lessees shall be entitled to the full protection of the warranty for the duration of the warranty period as if the original owner or lessee had not transferred the primary housing unit.

History: 1973 c. 116; 1973 c. 132 s. 5; 1973 c. 336.

218.15 Sale or lease of used primary housing units.

In the sale or lease of any used primary housing unit, the sales invoice or lease agreement shall contain the point of manufacture of the used primary housing unit, the name of the manufacturer and the name and address of the previous owner.

History: 1973 c. 116; 1973 c. 132 s. 5.

218.16 Departmental rules. The department of industry, labor and human relations shall promulgate rules and establish standards

necessary to carry out the purposes of ss. 218.14 and 218.15.

History: 1973 c. 116

218.165 Jurisdiction and venue over out-of-state manufacturers. (1) The importation of a primary housing unit for sale in this state by an out-of-state manufacturer is deemed an irrevocable appointment by such out-of-state manufacturer of the secretary of state to be his true and lawful attorney upon whom may be served all legal processes in any action or proceeding against such manufacturer arising out of the importation of such primary housing unit into this state.

(2) The secretary of state upon whom processes and notices may be served under this section shall, upon being served with such process or notice, mail a copy by registered mail to the out-of-state manufacturer at the nonresident address given in the papers so served. The original shall be returned with proper certificate of service attached for filing in court as proof of service. The service fee shall be \$4 for each defendant so served. The secretary of state shall keep a record of all such processes and notices, which record shall show the day and hour of service.

History: 1973 c. 116; 1973 c. 132 s. 5

218.17 Penalties. (1) Any person who violates ss. 218.14 to 218.16, or any rule promulgated under ss. 218.14 to 218.16, may be fined not more than \$1,000 or imprisoned for not more than 6 months, or both.

(2) In any court action brought by the department of industry, labor and human relations for violations of this subchapter, the department may recover all costs of testing and investigation, in addition to costs otherwise recoverable, if it prevails in the action.

(3) Nothing in this subchapter prohibits the bringing of a civil action against a mobile home manufacturer, dealer or salesperson by an aggrieved customer. If judgment is rendered for the customer based on an act or omission by the manufacturer, dealer or salesperson, which constituted a violation of this subchapter, the plaintiff shall recover actual and proper attorney's fees in addition to costs otherwise recoverable.

History: 1973 c. 116

SUBCHAPTER VII

MOTOR VEHICLE SALVAGE DEALERS

218.20 Motor vehicle salvage dealers to be licensed. (1) No person may purchase and resell motor vehicles for wrecking, processing, scrapping, recycling, or dismantling purposes

and no person may carry on or conduct the business of wrecking, processing, scrapping, recycling, or dismantling any motor vehicle or selling parts thereof unless licensed to do so by the department. Any person violating this section may be fined not less than \$25 nor more than \$200 or imprisoned not more than 60 days or both.

(2) This section shall not apply to:

(a) Motor vehicle dealers licensed under s. 218.01 (2) who remove, but do not sell, as such, parts of motor vehicles prior to sale of such vehicles to motor vehicle salvage dealers or scrap metal processors.

(b) Scrap metal processors and portable scrap metal crushers who accept motor vehicles from only:

1. Licensed motor vehicle dealers;
2. Licensed motor vehicle salvage dealers; or
3. Municipalities, all of whom shall submit titles and reports to the department and retain records.

(c) Any person who acquires a motor vehicle for salvage purposes for his or her own use and then sells the remainder to a motor vehicle salvage dealer or to another person who will further use that motor vehicle for salvage purposes for his or her own use before selling it to a motor vehicle salvage dealer.

(d) Collectors of special interest vehicles who purchase or sell parts cars in compliance with s. 341.266.

History: 1971 c. 40; 1975 c. 288; 1977 c. 29 s. 1654 (7) (a); 1977 c. 415

218.21 Application for salvage dealer's license. (1) Application for license shall be made to the department, at such time, in such form and contain such information as the department requires and shall be accompanied by the required fee. Except as provided in sub. (1m), the department may require in the application, or otherwise, information relating to the applicant's solvency, financial standing or other pertinent matter commensurate with the safeguarding of the public interest in the locality in which the applicant proposes to engage in business, all of which may be considered by the department in determining the fitness of the applicant to engage in business as set forth in this section.

(1m) The department may not require information relating to the applicant's solvency or financial standing if the applicant provides a bond in the amount provided in sub. (4) and under conditions specified in s. 218.01 (2) (h).

(2) Application for a motor vehicle salvage dealer's license shall be made upon the form prescribed by the department and shall contain:

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(a) The name under which the applicant is transacting business within the state.

(b) The place or places where the business is to be conducted, which must be an established place of business.

(c) If the applicant is a sole-proprietorship, the personal name and address of the applicant.

(d) If the applicant is a partnership, the name and address of each partner.

(e) If the applicant is a corporation, the names and addresses of its principal officers.

(f) Such other pertinent information as may be required by the department for the purpose of determining the eligibility of the applicant to be licensed.

(3) Every application shall be executed by the applicant, if an individual, or in the event the applicant is a partnership or corporation, by a partner or officer thereof. Every such application shall be accompanied by the fee required by law.

(4) Unless the applicant furnishes a bond, or other adequate collateral as security, of not less than \$25,000 under conditions provided by s. 218.01 (2) (h), every application shall be accompanied by a current financial statement to determine the applicant's solvency as required under sub. (1).

(5) When a motor vehicle salvage dealer has an established place of business in more than one municipality in this state, he or she shall make separate application and submit a separate license fee remittance for each such municipality. A motor vehicle salvage dealer who fails to apply for each such separate license may be required to forfeit not more than \$200.

(6) A bond may be required under conditions as provided by s. 218.01 (2) (h).

(7) Any person who knowingly makes a false statement in an application for a motor vehicle salvage dealer license may be fined not more than \$5,000 or imprisoned not more than 5 years or both.

History: 1975 c. 288; 1977 c. 29 s. 1654 (7) (a); 1977 c. 272, 415, 447; 1979 c. 32.

See note to 19 21, citing 66 Atty. Gen. 302.

218.22 When department to license salvage dealers. (1) The department shall issue a license to the applicant for a motor vehicle salvage dealer's license upon the receipt of a properly completed application form accompanied by a fee of \$75, upon being satisfied that the applicant is financially solvent or that the applicant has furnished a bond, or other adequate collateral as security, of not less than \$25,000 under conditions provided by s. 218.01 (2) (h), and of good character and:

(a) If the application is for renewal of an existing license, upon being satisfied that the

applicant has complied with and will comply with this subchapter;

(b) If the application is for an original license, upon being satisfied that:

1. The applicant will comply with this subchapter; and

2. The proposed site or operation will comply with all laws, the rules promulgated by the department and the locally applicable zoning or permit requirements, before beginning operations, including all laws, rules and local requirements already enacted as promulgated as of the date of application and scheduled to take effect at a later date.

(2) A motor vehicle salvage dealer's license entitles the licensee to carry on and conduct the business of a motor vehicle salvage dealer during the calendar year in which the license is issued. Such license expires on December 31 of the calendar year for which it was issued and may be renewed upon application therefor and upon payment of the annual license fee of \$75.

(2m) License fees collected under this subchapter shall be deposited in the transportation fund.

(3) The department may deny, suspend or revoke a license on any of the following grounds:

(a) Proof of unfitness.

(b) Material misstatement in application for license.

(c) Filing a materially false or fraudulent income tax return as certified by the department of revenue.

(d) Wilful failure to comply with any provision of this section or any rule promulgated by the department under this section.

(e) Wilfully defrauding any retail buyer to the buyer's damage.

(f) Wilful failure to perform any written agreement with any retail buyer.

(g) Failure or refusal to furnish and keep in force any bond required.

(h) Having made a fraudulent sale, transaction or repossession.

(i) 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.

(j) Employment of fraudulent devices, methods or practices in connection with compliance with the requirements under the statutes of this state with respect to the retaking of goods under retail instalment contracts and the redemption and resale of such goods.

(k) Having indulged in any unconscionable practice relating to said business.

(l) Having charged interest in excess of 15 per cent per year.

(m) Having sold a retail instalment contract to a sales finance company not licensed under s. 218.01.

(n) Having violated any law relating to the sale, distribution or financing of salvaged parts.

(o) Failure to comply with this subchapter.

(4) PROCEDURE IN DENIAL, SUSPENSION OR REVOCATION. (a) The licensor may without notice deny the application for a license within 60 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Within 30 days after such notice, the applicant may petition the transportation commission to conduct a hearing to review the denial, and a hearing shall be scheduled with reasonable promptness.

(b) 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. Matters involving suspensions and revocations brought before the department shall be heard and decided upon by the transportation commission.

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

(5) No salvage dealer licensed under ss. 218.20 to 218.23 shall be licensed as a dealer under s. 218.01 (2) at his salvage dealer location, provided that nothing herein shall prohibit licensing and transacting of both businesses at the same location where the salvage operations are physically separated.

History: 1975 c. 288; 1977 c. 29 ss. 1373m, 1374, 1654 (7) (a), (e); 1977 c. 415; 1979 c. 110 s. 60 (13)

218.23 Licensee to maintain records; sale of vehicles by licensee. (1) Whenever a licensed motor vehicle salvage dealer acquires a motor vehicle for the purpose of wrecking it, the dealer shall mail or deliver the certificate of title or if the transfer to the salvage dealer was by a bill of sale, the bill of sale, for such vehicle to the department within 30 days after the vehicle is delivered to the salvage yard unless the previous

owner already has done so. If he or she subsequently wishes to transfer such vehicle to another person, he or she shall make such transfer only by bill of sale. In such bill of sale, he or she shall describe the vehicle and shall state that the certificate of title for the vehicle has been mailed or delivered to the department because the vehicle was to have been junked.

(2) Every licensed motor vehicle salvage dealer shall maintain a record of every vehicle which is bought or otherwise acquired and wrecked by the salvage dealer, which record shall state the name and address of the person from whom such vehicle was acquired and the date thereof. The record shall be in the form prescribed by the department.

(3) Any person violating this section may be fined not less than \$25 nor more than \$200 or imprisoned not more than 60 days or both.

History: 1971 c. 164 s. 83; 1975 c. 288; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273

218.24 Salvage dealer license number displayed on trucks and truck-tractors. (1)

Each motor vehicle salvage dealer licensed under this subchapter shall prominently display his or her salvage dealer license number on both sides of each truck or truck-tractor owned by such dealer and operated for hauling, towing or pushing salvage vehicles.

(2) The letters "DMV SAL" shall be placed directly ahead of the assigned license certificate number.

(3) The markings required by this section shall be not less than 2 inches in height and not less than one-fourth inch brush stroke, and in sharp color contrast to the background on which it is applied. Such identification shall be maintained in such manner as to remain legible while the vehicle is in operation.

(4) Any person violating this section may be fined not less than \$25 nor more than \$200 or imprisoned not more than 60 days or both.

History: 1975 c. 288.

218.25 Rules. The department shall make rules under ch. 227 and establish the standards necessary to carry out the purposes of this subchapter and to provide for the orderly operation of motor vehicle salvage sites.

History: 1975 c. 288; 1977 c. 29 s. 1654 (7) (a).

218.26 Transition provision. The department shall not deny, suspend or revoke the license of a motor vehicle salvage dealer for violation of any rule promulgated by the department which requires the fencing of existing salvage dealers' operations or requires the upgrading of or higher standards for salvage dealers' operations prior to January 1, 1979, if, as of

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July 1, 1975, such salvage dealer was the holder of a valid license issued under this subchapter.

History: 1975 c. 288; 1977 c. 29 s. 1654 (7) (a).

SUBCHAPTER VIII**MOTOR VEHICLE AUCTION DEALERS**

218.30 Motor vehicle auction dealers to be licensed. No person shall carry on or conduct the business of auctioning motor vehicles at wholesale unless licensed to do so by the department. Any person violating this section may be fined not less than \$25 nor more than \$200 or imprisoned not more than 60 days, or both.

History: 1971 c. 40; 1977 c. 29 s. 1654 (7) (a).

218.31 Application for auction dealer's license. (1) Application for a motor vehicle auction dealer's license shall be made upon the form prescribed by the department and shall contain:

(a) The name and address of the applicant.
(b) When the applicant is a partnership, the name and address of each partner.

(c) When the applicant is a corporation, the names of the principal officers of the corporation and the name of the state in which incorporated.

(d) The place or places where the business is to be conducted and the nature of the business.

(e) Such other pertinent information as may be required by the department for the purpose of determining the eligibility of the applicant to be licensed.

(2) Every application shall be executed by the applicant, if an individual, or in the event the applicant is a partnership or corporation, by a partner or officer thereof. Every such application shall be accompanied by the fee required by law.

History: 1977 c. 29 s. 1654 (7) (a).

218.32 When department to license auction dealer. (1) The department shall issue a license certificate to the applicant for a motor vehicle auction dealer's license upon receipt of a properly completed application form accompanied by a fee of \$50 and upon being satisfied that the applicant is of good character and that, so far as can be ascertained, the applicant has complied with and will comply with the laws of this state with reference to ss. 218.30 to 218.33.

(2) A motor vehicle auction dealer's license entitles the licensee to carry on and conduct the business of a motor vehicle auction dealer during the calendar year in which the license is issued. Such license expires on December 31 of the calendar year for which it was issued and

may be renewed upon application therefor and upon payment of the annual license fee of \$50.

(3) The department may deny, suspend or revoke a license on the following grounds:

(a) Proof of unfitness.

(b) Material misstatement in application for license.

(c) Filing a materially false or fraudulent income tax return as certified by the department of revenue.

(d) Wilful failure to comply with any provision of this section or any rule promulgated by the department under this section.

(e) Wilfully defrauding any retail buyer to the buyer's damage.

(f) Wilful failure to perform any written agreement with any retail buyer.

(g) Failure or refusal to furnish and keep in force any bond required.

(h) Having made a fraudulent sale, transaction or repossession.

(i) 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.

(j) Employment of fraudulent devices, methods or practices in connection with compliance with the requirements under the statutes of this state with respect to the retaking of goods under retail instalment contracts and the redemption and resale of such goods.

(k) Having indulged in any unconscionable practice relating to said business.

(l) Having charged interest in excess of 15 per cent per year.

(m) Having sold a retail instalment contract to a sales finance company not licensed hereunder.

(n) Having violated any law relating to the sale, distribution or financing of motor vehicles.

(o) Failure to comply with ss. 218.30 to 218.33.

(4) (a) The licensor may without notice deny the application for a license within 60 days after receipt thereof by written notice to the applicant, stating the grounds for such denial. Within 30 days after such notice, the applicant may petition the transportation commission to conduct a hearing to review the denial, and a hearing shall be scheduled with reasonable promptness.

(b) 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. Matters involving suspensions and revocations brought before the department shall be heard and decided upon by the transportation commission.

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

History: 1977 c. 29 ss. 1375, 1654 (7) (a), (e); 1977 c. 273; 1979 c. 110 s. 60 (13)

218.33 Motor vehicle auction dealer to be bonded; conduct of auction business. (1)

Each licensee under s. 218.32 shall furnish and maintain a corporate surety bond in the amount of \$25,000 in such form as the department approves, conditioned upon the licensee's complying with the laws applicable to the licensee and as indemnity for any loss sustained by any person by reason of acts of the licensee constituting grounds for refusal or revocation of the auction dealer's license. The bond shall run to the state of Wisconsin for the benefit of aggrieved parties, but the aggregate liability of the surety for all such parties shall not exceed the amount of said bond.

(2) The following rules shall govern the conduct of motor vehicle auction sales:

(a) Sales of motor vehicles shall be confined to those offered by licensed motor vehicle dealers and shall be sold only to licensed motor vehicle dealers.

(b) Every motor vehicle offered for sale shall be sold with the understanding that a clear title will be furnished, or in lieu of such an agreement, the obtaining of title insurance on each motor vehicle sold. A dealer's reassignment form shall be filed on each motor vehicle sold at the auction.

(c) Payment for motor vehicles bought and sold shall be made immediately after sale.

(3) Any person violating this section may be fined not less than \$25 nor more than \$200 or imprisoned not more than 60 days, or both.

History: 1977 c. 29 s. 1654 (7) (a); 1977 c. 273

SUBCHAPTER IX

MOPED DEALERS

218.40 Definitions. In this subchapter:

(1) "Department" means the department of transportation.

(2) "Moped" means a bicycle-type vehicle with fully operative pedals for propulsion by human power which has an engine certified by the manufacturer at not more than 50 cubic centimeters, and an automatic transmission. The maximum design speed of a moped shall not exceed 30 miles per hour on level ground.

(3) "Moped dealer" means any person, firm or corporation, who is engaged wholly or in part in the business of selling mopeds. Provided, however, that a person, firm or corporation who is also a motor vehicle dealer under s. 218.01 shall be governed and regulated by the provisions of s. 218.01 and not this section.

History: 1977 c. 288.

218.41 Moped dealers regulated. (1) No person may engage in the business of selling mopeds in this state without a license therefor as provided in this section.

(2) (a) Application for license shall be made to the department at such time and in such form, and containing such information, as the department requires.

(b) The application shall be accompanied by the required fee, which shall not exceed \$50.

(c) The department may require in such application, or otherwise, information relating to the applicant's solvency, financial standing or other pertinent matter, commensurate with the safeguarding of the public interest in the locality in which the applicant proposes to engage in business, all of which may be considered by the department in determining the fitness of the applicant to engage in business as set forth in this section.

(d) All licenses shall be granted or refused within 30 days after application therefor, and shall expire, unless sooner revoked or suspended, on December 31 of the calendar year for which they are granted.

(e) Each license shall specify the location of the office or branch for which it is issued and must be available for inspection there. In case such location is changed, the department shall endorse the change of location on the license without charge if it is within the same municipality. A change of license to another municipality shall require a new license.

(3) A license may be denied, suspended or revoked on any of the following grounds:

(a) Proof of unfitness of applicant.

(b) Material misstatement in application for license.

(c) Filing a materially false or fraudulent income tax return as certified by the department of revenue.

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(d) Wilful failure to comply with any provision of this section or any rule or regulation promulgated by the department under this section.

(e) Wilfully defrauding any retail buyer to the buyer's damage.

(f) Wilful failure to perform any written agreement with any retail buyer.

(4) The department 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 transportation commission shall set the time and place of hearing a review of such denial, the same to be heard with reasonable promptness.

(5) (a) No license may be suspended or revoked except after a hearing thereon.

(b) Except as provided in par. (c), the transportation commission shall give the licensee at least 5 days' notice of the time and place of the hearing. The order suspending or revoking the license shall not be effective until after 10 days' written notice thereof to the licensee, after the hearing has been had.

(c) When the department finds that the best interest of the public or the trade demands such action, the department 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.

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

(7) 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 the party as an individual. Each licensee shall be responsible for the acts of any or all salespersons while acting as the licensee's agent, if the licensee approved of or had knowledge of the acts or other similar acts and after such approval or knowledge retained the benefit, proceeds, profits or advantages accruing from the acts or otherwise ratified the acts.

(8) Any department or other person in interest being dissatisfied with an order of the transportation commission may have a review thereof as provided in ch. 227.

History: 1977 c 288.

218.42 Examination by department. No licensee is subject to examination or audit by the department under this subchapter other than as provided in s. 218.41 (6).

History: 1977 c 288.

218.43 Penalty. Any person violating s. 218.41 or a lawful rule or order issued thereunder shall, upon conviction, be subject to a fine of not less than \$25 and not more than \$100.

(1) The department may cancel the license of the convicted licensee.

(2) The license issued to any convicted licensee shall be surrendered to any police officer upon direction of the department without any refund of the fees paid.

(3) Any license canceled under this section may not be renewed for 12 months.

History: 1977 c 288.