§ 394. Drivers' schools. 1. Definitions. As used in this section:

(a) "Drivers' school" means the business of giving instruction for hire in driving motor vehicles or motorcycles.

(b) "Person" includes an individual, firm, corporation, partnership, joint venture, joint adventurer or association.

(c) "Place of business" means a designated location at which the business of a drivers' school is transacted and its records kept.

2. License. No person shall engage in the business of conducting a drivers' school without being the holder of a license for such purpose issued by the commissioner. An application for license under this section shall be filed with the commissioner and shall contain such information as he shall prescribe. Every such application shall be accompanied by an application fee of fifty dollars, which shall in no event be refunded. If an application is approved by the commissioner, the applicant upon the payment of an additional fee of five dollars for each month or fraction thereof from the date of issuance to the date of expiration prescribed by the commissioner, but in no event more than a total of fifty dollars, shall be granted a license which shall be valid until such date of expiration. The annual fee for renewal thereof shall be fifty dollars. Upon renewal, the commissioner may in his discretion issue a license which shall be valid for up to a two-year period. The fee for a two-year renewal shall be one hundred dollars. Fees for renewal of a license valid for a period of less than two years shall be prorated on a quarterly basis and any portion of a quarter shall be considered a quarter. The commissioner shall issue a license certificate to each licensee, which certificate shall be conspicuously displayed in the place of business of the licensee. In case of the loss, mutilation or destruction of a license certificate, the commissioner shall issue a duplicate thereof upon proof of the facts and payment of a fee of two dollars.

3. Place of business. (a) No license shall be issued, nor shall any renewal of a license be made, for conducting a drivers' school in a city having a population of two hundred fifty thousand or more according to the latest federal census, unless the place of business of such school is located in a store, office or portion of a building devoted

exclusively to nonresidential use.

(b) No license shall be issued, nor shall any renewal of a license be made for conducting a drivers' school in a city having a population of fifty thousand or more according to the latest federal census, if the place of business of such school or branch thereof, is within fifteen hundred feet of a building owned or leased by the state, the county or a city, in which motor vehicle registrations or licenses to drive motor vehicles are issued to the public. The said distance of fifteen hundred feet shall be measured along the public streets by the nearest route from such place of business, or branch thereof, to such building.

4. Refusal to issue a license. The commissioner may deny the application of any person for a license, if, in his discretion, he determines that:

(a) Such applicant has made a material false statement or concealed a material fact in connection with his application;

(b) Such applicant, any officer, director, stockholder or partner, or any other person directly or indirectly interested in the business was the former holder, or was an officer, director, stockholder or partner, in a corporation or partnership which was the former holder of a drivers' school license which was revoked or suspended by the commissioner;

(c) Such applicant or any officer, director, stockholder, partner, employee, or any other person directly or indirectly interested in the business has been convicted of a felony, or of any crime involving violence, dishonesty, deceit, indecency, degeneracy or moral turpitude;

(d) Such applicant has failed to furnish satisfactory evidence of good character, reputation and fitness;

(e) Such applicant does not have a place of business as required by this section;

(f) Such applicant is not the true owner of the drivers' school.

5. Suspension, revocation and refusal to renew a license. The commissioner, or any employee of the department of motor vehicles deputized by him, may suspend or revoke a license or refuse to issue a renewal thereof for any of the following causes:

(a) the conviction of the licensee or any partner, officer, agent or

employee of such licensee, of a felony, or of any crime involving violence, dishonesty, deceit, indecency, degeneracy or moral turpitude; (b) where the licensee has made a material false statement or concealed a material fact in connection with his application for a license or a renewal thereof; (c) where the licensee has failed to comply with any of the provisions of this section or any of the rules and regulations of the commissioner made pursuant thereto: (d) where the licensee or any partner, officer, agent or employee of such licensee has been guilty of fraud or fraudulent practices in relation to the business conducted under the license, or guilty of inducing another to resort to fraud or fraudulent practices in relation to securing for himself or another a license to drive a motor vehicle or motorcycle. The term "fraudulent practices" as used in this section shall include, but shall not be limited to, any conduct or representation on the part of the licensee, or any partner, officer, agent, or employee of a licensee, tending to induce another or to give the impression that a license to operate a motor vehicle or motorcycle, or any other license, registration or service granted by the commissioner, may be obtained by any means other than the ones prescribed by law, or furnishing or obtaining the same by illegal or improper means, or requesting, accepting, exacting or collecting money for such purpose.

Notwithstanding the renewal of a license, the commissioner may revoke or suspend such license for causes and violations, as prescribed by this section, occurring during the two license periods immediately preceding the renewal of such license.

The commissioner, or any person deputized by him, in addition to or in lieu of revoking or suspending a license to conduct a driving school in accordance with the provisions of this section, may by order require the licensee to pay to the people of this state a penalty in a sum not exceeding five hundred dollars for each violation, and upon the failure of such licensee to pay such penalty within twenty days after the mailing of such order, postage prepaid, registered or certified, and addressed to the last known place of business of such licensee, unless such order is stayed by a court of competent jurisdiction or in accordance with the provisions of article three-A of this chapter, the

commissioner may revoke the license of such licensee or may suspend the same for such period as he may determine. Civil penalties assessed under this subdivision shall be paid to the commissioner for deposit into the state treasury, and unpaid civil penalties may be recovered by the commissioner in a civil action in the name of the commissioner. In addition, as an alternative to such civil action, and provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county in which the licensee is located a final order of the commissioner containing the amount of the penalty assessed. The filing of such final order shall have the full force and effect of a judgment duly docketed in the office of such clerk and may be enforced in the same manner and with the same effect as that provided by law in respect to executions issued against property upon judgments of a court of record.

6. Hearing. Except where a refusal to issue a license or renewal, or revocation or suspension, is based solely on a court conviction or convictions, a licensee or applicant shall have an opportunity to be heard, such hearing to be held at such time and place as the commissioner shall prescribe. Provided, however, upon a written notice of temporary suspension delivered by certified mail to the licensee, a license may be temporarily suspended pending a hearing. Any such notice of temporary suspension shall provide that the suspension is effective seventy-two hours after mailing of such notice and shall provide that a hearing be scheduled within ten days after the effective date of the temporary suspension.

A licensee or applicant entitled to a hearing shall be given due notice thereof. The sending of a notice of a hearing by registered mail to the last known address of a licensee or applicant ten days prior to the date of the hearing shall be deemed due notice. The commissioner, or the person deputized by him to conduct a hearing, shall have power to subpoena witnesses, administer oaths to witnesses and take testimony of any person or cause his deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules. Officers or employees in the department of taxation and finance, making

service of such subpoenas are not entitled to fees and mileage.

7. Supervision; records. The commissioner shall approve the form of contract used by all licensees, and may prescribe reasonable rules governing the terms which may be included in such contracts. Every licensee shall keep such records as the commissioner may by regulation require. The records of the licensee shall be open to the inspection of the commissioner or his representatives at all times during reasonable business hours. The commissioner shall prescribe such reasonable rules and regulations as he may deem necessary to carry out the provisions of this section.

7-a. Certification of driving time. The commissioner shall establish by regulation a certification process by drivers' schools of the amount of time a holder of a learner's permit has spent operating a motor vehicle or motorcycle while under the immediate supervision of a driving instructor holding an instructor's certificate issued pursuant to subdivision eight of this section. A certificate issued pursuant to this section shall be deemed to be proof of all or a portion of the supervised driving experience required under certification pursuant to paragraph (d) of subdivision two of section five hundred two of this chapter.

8. Instructors. (a) No person shall be employed by a licensee as a driving instructor, nor shall any person give instructions for hire in the operation of motor vehicles or motorcycles unless such person is the holder of a driver's license valid for operation in this state and an instructor's certificate issued by the commissioner. Such certificates shall be issued only to persons of good reputation and moral character, whose driving records, as determined by the commissioner, qualify them as instructors in the operation of motor vehicles or motorcycles. An application for an instructor's certificate must identify the driving school or schools in which the applicant is to act as an instructor and shall contain such other information as the commissioner shall prescribe. Each such application shall be accompanied by a fee of ten dollars which shall in no event be refunded. Such certificate shall be issued without payment of any additional fee and shall be limited to use

in connection with the business of the specified driving school or schools. Such certificate shall be valid until the date of expiration prescribed by the commissioner and may be validated for use in connection with the business of other driving schools without payment of any additional fee. The fee for annual renewal thereof shall be ten dollars. Upon renewal, the commissioner may, in his discretion, issue a renewal which shall be valid for up to a two-year period. The fee for a two-year renewal shall be twenty dollars. Fees for renewal of a certificate valid for a period of less than two years shall be prorated on a quarterly basis and any portion of a quarter shall be considered a quarter.

(b) The commissioner or any employee of the department of motor vehicles deputized by him, may suspend or revoke an instructor's certificate for any of the following causes: (1) expiration, suspension or revocation of the required license of such instructor; (2) the commissioner has determined that the driving record of such instructor indicates that such instructor does not possess the qualities or competence necessary or desirable for a driving instructor; (3) such instructor has failed to comply with the rules and regulations prescribed by the commissioner; (4) conviction of such instructor of a felony or any crime involving violence, dishonesty, deceit, indecency, degeneracy or moral turpitude; and (5) such instructor has been guilty of fraud or fraudulent practices.

8-a. Fees; deposited. Fees assessed under this section shall be paid to the commissioner for deposit to the general fund.

9. Employees. A licensee may employ, in connection with a driving school a person who has been convicted of a crime, in accordance with article twenty-three-A of the correction law.

10. Judicial review. The action of the commissioner in refusing to issue or renew, or revoking or suspending a license or instructor's certificate may be reviewed in a proceeding under article seventy-eight of the civil practice law and rules.

11. Penalties. (a) A violation of any of the provisions of this

section shall constitute a misdemeanor.

(b) During the pendency of any criminal prosecution based upon a violation of this section or if any such prosecution has been terminated and the defendant has been sentenced to pay a fine as provided in this chapter, no proceeding to recover civil penalties under this section shall be commenced and any such pending proceeding shall be stayed.

12. Unlicensed operation; procedures and penalties. (a) The commissioner or any person deputized by him shall hear and determine any allegation that a person has operated a drivers' school without being licensed as required by subdivision two of this section. Upon a determination that a person has so operated, the commissioner or person deputized by him shall assess civil penalties as provided in paragraphs (b) and (c) of this subdivision.

(b) Except as provided in paragraph (c) of this subdivision, any person who operates a drivers' school without being licensed shall be required to pay to the people of this state a civil penalty in the sum of one thousand dollars. However, any such person against whom such penalty has been assessed may avoid all but five hundred dollars of such penalty by obtaining a license as required by this section, provided that application for such license is made not more than ten days after the imposition of such penalty.

(c) (i) Any person who operates a drivers' school while his drivers' school license is revoked or suspended, shall pay to the people of this state a civil penalty in the sum of one thousand dollars. Such civil penalty may not be avoided.

(ii) Any person who operates a drivers' school without being licensed as required by subdivision two of this section who has previously had a civil penalty assessed for unlicensed operation shall pay to the people of this state a civil penalty in the sum of one thousand dollars. Such civil penalty may not be avoided.

(d) Civil penalties assessed under this section shall be paid to the commissioner for deposit into the state treasury, and unpaid civil penalties may be recovered by the commissioner in a civil action in the name of the commissioner. In addition, as an alternative to such civil action, and provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have

expired, the commissioner may file with the county clerk of the county in which the licensee is located a final order of the commissioner containing the amount of the penalty assessed. The filing of such final order shall have the full force and effect of a judgment duly docketed in the office of such clerk and may be enforced in the same manner and with the same effect as that provided by law in respect to executions issued against property upon judgments of a court of record.