

<i>Stats. 1955</i>	<i>Stats. 1957</i>
85.62	Repealed <sup>45</sup>
85.63	347.47 (1)
85.64	348.10 (1)
85.65	348.09
85.66	347.20
85.665 (first sentence)	348.10 (3)
(2nd sentence)	348.11 (1)
85.67 (1)	347.35
	347.36
(2) (first sentence)	347.38 (1), (2)
(2nd sentence)	347.25 (1)
	347.38 (4)
(3)	347.38 (4)
(4)	347.40
(5)	347.35 (3)
	347.36
(6)	347.47 (2)
(7)	347.41
85.68	349.07 (1), (2),
	(3)
85.69	346.46
85.70	346.02 (7)
85.71	349.08 (1), (2)
85.72	349.08 (5)
85.73	349.08 (3)
85.74	349.08 (4)
85.75 (1)	346.37
(2)	346.39
(3)	346.37 (2)
(4)	346.40
85.76	349.10 (1)
85.77	349.10 (2)
85.78	349.10 (2)
85.79	349.10 (3)
85.80	345.06
85.801	349.25
85.81 (1)	346.64 (1)
(2)	346.64 (2)
(3)	346.62 (2)
	346.63 (2)
	346.65 (3)
(4)	340.01 (73)
85.82	349.24
85.83	345.12
85.831	345.14
85.84 (first sentence)	349.03
(2nd sentence)	349.06
(3rd, 4th sentences)	345.15
85.845	349.14
85.85	349.03 (1) (a),
	(2)
85.86	349.03 (1)
85.90 (1)	348.21 (4)
	348.22
(2) (a)	Repealed <sup>46</sup>
(2) (b)	348.21 (4)
(2) (c)	348.21 (4)
(3)	348.20
85.91 (1)	346.17 (1)
	346.22 (1)
	346.30 (1)
	346.36
	346.43 (1)
	346.49 (1)

<i>Stats. 1955</i>	<i>Stats. 1957</i>
	346.56 (1)
	346.60 (1)
	346.74 (1)
	346.82 (2)
	346.95 (1)
	348.21 (1)
(2)	346.17 (2)
	346.22 (2)
	346.30 (2)
	346.43 (2)
	346.49 (2)
	346.56 (2)
	346.60 (2)
	346.82 (3)
	346.95 (2)
	347.30 (2)
	348.11 (1)
(2a)	348.11 (2)
	348.21 (2)
(2b)	348.21 (3)
(3)	346.30 (3)
	346.43 (3)
	346.60 (3)
	346.65 (1)
(4)	346.56 (1)
(5)	346.74 (2)
85.915	345.16
85.92 (1) (first sentence)	346.44 (1)
(2nd sentence)	Repealed <sup>47</sup>
(2)	346.45
85.93	204.30 (4)
85.94	345.07
85.95	345.08
86.35 (2)	86.35 (3)
110.09 (4)	341.47 to
	341.56

<sup>47</sup>See note to s. 346.44 in Bill 99-S.

**CHAPTER 340.**

**General Provisions.**

**340.01 History:** 1957 c. 260, 514, 554; 615, 684; Stats. 1957 s. 340.01; 1959 c. 244, 249, 542, 558; 1961 c. 240, 387; 1963 c. 209, 320, 503; 1965 c. 334, 344, 354, 485; 1967 c. 92 s. 22; 1967 c. 292; 1969 c. 276 s. 602 (1); 1969 c. 464, 500.

1. Authorized emergency vehicle.
2. Automobile.
3. Business district.
4. Crosswalk.
5. Dealer.
6. Distributor.
7. Divided highway.
8. Farm truck.
9. Gross weight.
10. Highway.
11. Hours of darkness.
12. Implement of husbandry.
13. Intersection.
14. Manufacturer.
15. Mobile home.
16. Motor truck.
17. Motor vehicle.
18. Pedestrian.
19. Private road or driveway.
20. Residence district.
21. Right of way.
22. Roadway.
23. Safety zone.

<sup>45</sup>The repealed provision is unnecessary in view of the definition of "axle" in ss. 348.15 and 348.16.

<sup>46</sup>The repealed provision has never served any purpose because of a modification in the original bill creating s. 85.90. See Bill 522-S, 1951 session, and amendments thereto.

- 24. Sidewalk.
- 25. Trailer.
- 26. Transporter.
- 27. Vehicle.

#### 1. Authorized Emergency Vehicle.

**Legislative Council Note, 1957:** This definition is important primarily from the standpoint of s. 346.03 which grants special privileges to authorized emergency vehicles. The term also appears in ch. 347 on equipment of vehicles. The definition is similar to the one contained in s. 85.10 (14) except that it has been made clear that authorized emergency vehicles of state departments are to be designated by the heads of such departments. This conforms to practice, but the present law is ambiguous and could be construed to mean that such vehicles are to be designated by the local authorities. It also has been made clear that police vehicles, conservation warden vehicles, and forester trucks may be authorized emergency vehicles whether they are publicly or privately owned. [Bill 99-S]

#### 2. Automobile.

**Legislative Council Note, 1957:** The definition is important primarily from the standpoint of the sections relating to registration. Present ss. 85.01 (1a) (a) and 85.10 (3) define an automobile as a vehicle designed for transporting not more than 7 persons including the driver. This would seem to take the station wagons with 3 seats out of the "automobile" category, yet the practice is to register them as automobiles. The new definition will conform to practice. If the vehicle seats fewer than 10 persons, based on total seating space measured in inches, it will be treated as an automobile. If not, it will be treated as a motor bus. See the definition of "motor bus." [Bill 99-S]

An auto hearse is classed as an automobile. 6 Atty. Gen. 811.

An ordinary passenger automobile used to haul a trailer is not a motor truck or a motor delivery wagon. 10 Atty. Gen. 815.

An ordinary automobile equipped with runners in front and caterpillar attachment in rear, called "snowmobile," is an automobile. 14 Atty. Gen. 26.

#### 3. Business District.

An instruction that a collision occurred in a "business district" of an unincorporated village is error, there being no evidence as to the amount of frontage occupied by the 4 or 5 business places within 300 feet of the place of collision. *Spice v. Kuxman*, 206 W 293, 239 NW 497.

#### 4. Crosswalk.

**Legislative Council Note, 1957:** This term is important with respect to certain of the rules of the road in ch. 346, particularly those prescribing the respective rights and duties of pedestrians and drivers. The definition of crosswalk in the present law has been revised. Section 85.10 (23) provides simply that a crosswalk means "that portion of the highway ordinarily included within the prolongation of the curb and property lines at intersections or any other portion of a highway clearly

indicated for pedestrian crossing by lines or other marking on the surface." The present definition is difficult or impossible to apply to offset or multistreet intersections. Use of the word "prolongation" simply does not work in those situations. The word "prolongation" therefore has been reserved for T intersections and the phrase "connection of the curb and property lines" has been used with reference to other intersections such as the standard right angle intersection as well as the offset and multistreet intersections. The new definition makes clear that there are no crosswalks at alleys unless such crosswalks are marked. Of course if crosswalks are marked by lines on the surface of the street, the space within the marked lines is the crosswalk regardless of the curb or property lines. This is consistent with the Supreme Court's interpretation of the present definition in the case of *Smith v. Superior & Duluth Transfer Co.* 243 W 292, 10 NW (2d) 153 (1943), and the new definition affirms this interpretation. The new definition also makes clear that there are no crosswalks where local authorities have erected signs indicating that no crossing is permitted. The latter provision makes the definition of crosswalk coincide with the new power granted to local authorities by s. 349.18 (4). [Bill 99-S]

**Editor's Note:** Amendment 1, A to Bill 99-S, prepared by the same author, substantially revised the wording of the definition of unmarked crosswalk and carried the note: "Revise the definition of unmarked crosswalk to remove ambiguities and deficiencies."

There was no "unmarked crosswalk" and a pedestrian was required to yield the right of way at the intersection of state trunk and county trunk highways, where there was no curb and no sidewalk or path of which there could be a continuation. *Burke v. Tesmer*, 224 W 667, 272 NW 857.

The crosswalk at a street intersection, where there are surface markers, is the space between the markers, regardless of whether the resulting crosswalk is of greater width or of lesser width than that portion of the highway included within the prolongation of the curb and property lines. *Smith v. Superior & Duluth Transfer Co.* 243 W 292, 10 NW (2d) 153.

In an action for injuries sustained by the plaintiff when struck by the defendant's automobile while crossing a street in the vicinity of a 5-point intersection, there was a jury question whether the plaintiff was on a statutory crosswalk when struck, and the jury's finding in the affirmative was sustained by the evidence. Instructions given to the jury in this case in respect to the statutory crosswalk, and in respect to the rights and duties of pedestrians and drivers of automobiles in situations both where a pedestrian is crossing a street on a marked or unmarked crosswalk and where he is crossing at a point other than such a crosswalk, were complete and adequate, so that it was not error to refuse to instruct that a pedestrian crossing along the usual and practical sidewalk is not tantamount to crossing on the statutory crosswalk. *Van Galder v. Snyder*, 254 W 120, 35 NW (2d) 187.

#### 5. Dealer.

**Legislative Council Note, 1957:** This definition is important primarily in chs. 341 and 342 relating to registration and title of vehicles. The definition is based upon the definition of "motor vehicle dealer" in s. 218.01, which present s. 85.02 imports by reference. The new definition takes into account the fact that "motor vehicle" is defined in s. 218.01 to include a "trailer type vehicle" and the fact that s. 218.01 (2) (i) makes sales finance companies subject to all the rights and duties which the law imposes on motor vehicle dealers, apparently notwithstanding the exclusion contained in s. 218.01 (1) (b) 4. [Bill 99-S]

**Editor's Note:** Ch. 554, Laws 1957, amended this subsection by deleting a clause from the introductory paragraph including sales finance companies and created paragraph (d).

#### 6. Distributor.

**Legislative Council Note, 1957:** This definition is important primarily in chs. 341 and 342 relating to registration and title of vehicles. It is based upon the definition of "distributor" in s. 218.01 which present s. 85.02 incorporates by reference and takes into account the fact that "motor vehicle" in s. 218.01 is defined to include a "trailer type vehicle." [Bill 99-S]

#### 7. Divided Highway.

**Legislative Council Note, 1957:** The definition is important primarily in ch. 346 on rules of the road. The definition is the same as the one in present s. 85.10 (21) (f) except that "not intended for the use of vehicular traffic" has been substituted for "not used by vehicular traffic." The real test of whether or not a highway is a divided highway is whether or not there is a center strip not intended for the use of vehicular traffic. [Bill 99-S]

Safety islands, located within the highway for the express use and protection of pedestrians crossing it, were merely elevated "safety zones" and did not create a "divided highway." *Augustin v. Milwaukee E. R. & T. Co.* 259 W 625, 49 NW (2d) 730.

#### 8. Farm Truck.

See note to 341.26, citing *Holton v. Hunkel Greenhouse Co. v. State*, 274 W 337, 80 NW (2d) 371.

The question of whether a given truck is being used primarily for farm purposes under 85.19 (5a), Stats. 1955, is one of fact. 46 Atty. Gen. 51.

#### 9. Gross Weight.

**Legislative Council Note, 1957:** The definition is the same in substance as the one set forth in s. 85.10 (36). It is important from the standpoint of the registration law and also is used occasionally in chs. 346 and 349. A different definition of "gross weight" is used in ch. 348. [Bill 99-S]

#### 10. Highway.

**Legislative Council Note, 1957:** This definition is important in setting the scope of the entire vehicle code because most provisions

of chs. 341 to 349 apply only upon "highways." The new definition clarifies in various respects the definition in present s. 85.10 (21). The present definition does not state that highway means the entire width between the boundary lines yet that clearly is the sense in which it is commonly used and understood. The term "highway" includes the entire right of way as distinguished from the "roadway" which is only a limited part of the highway. As in the present definition, roadways upon grounds of public institutions are excluded, except those upon grounds of the state colleges. Roadways in county and municipal parks have been expressly included within the definition of highway to settle a doubt raised by the case of *Kernan v. Eau Claire*, 232 W 587, 288 NW 198 (1939). That case involved a question of the liability of a municipality under s. 81.15 of the statutes for injury caused by a defect in a park roadway. The court held that the park roadway was not a highway within the meaning of s. 81.15 since it had not been laid out by those authorities to whom the laying out of roads and streets is delegated by statute. The attorney general in an opinion in 1950 ruled that the *Kernan* case did not alter the definition of highway in ch. 85 and that the rules of the road were applicable to roads in municipal parks. 39 Atty. Gen. 454 (1950). The language in the proposed definition affirms the attorney general's opinion. Aside from the clarifications noted above, the new definition makes one substantive change in the definition of highway. Roads in state parks and state forests have been included within the definition of highway so as to make the rules of the road applicable to such roads and so as to make local enforcement officials and traffic officers responsible for enforcing the rules of the road upon state park and state forest roads. Such officials are better trained and equipped to handle traffic problems than the employes of the conservation commission. There is no intent to effect any change in the distribution of highway aids or allotments. [Bill 99-S]

A toll bridge is a public highway. *Weirich v. State*, 140 W 98, 121 NW 652.

Statutory rules of the road for public highways were inapplicable to a newly laid state highway not yet opened to the public. The duty of both parties driving on a road other than a public highway is to use "due care" and this requires that the drivers keep a proper lookout, maintain proper management and control, and when meeting each other drive on the right-hand side of the road. *Petersen v. Jansen*, 236 W 292, 295 NW 30.

#### 11. Hours of Darkness.

It is matter of common knowledge that when weather conditions are clear at the time of year (November 24) when this accident occurred, visibility sufficient to render clearly visible a person or vehicle on the highway a distance of 500 feet continues until approximately 30 minutes after sunset. *Dahl v. Harwood*, 263 W 1, 56 NW (2d) 557.

#### 12. Implement of Husbandry.

**Legislative Council Note, 1957:** The definition of "implement of husbandry" is not in

the present law. However, the definition conforms to an interpretation placed upon that phrase by the attorney general. In 28 Atty. Gen. 311 (1939) the attorney general stated that a truck load of loose hay or straw may be an implement of husbandry within the meaning of s. 85.45 (2) (a) if the truck is temporarily used on a highway for that purpose by a farmer. It is immaterial that the vehicle used is a wagon pulled by horses or tractor or is a self-propelled vehicle. A vehicle is not an implement of husbandry unless it is used exclusively in the business of farming, according to 30 Atty. Gen. 312 (1941). In line with the latter opinion, it was held that a motor truck or a trailer used by a dealer to transport new farm machinery from his place of business to a farm for delivery to the farmer purchaser does not thereby become an implement of husbandry exempt from the size limitations. 44 Atty. Gen. 103 (1955). The term is used in chs. 341, 343, 347 and 348. [Bill 99-S]

### 13. Intersection.

**Legislative Council Note, 1957:** This definition is important primarily from the standpoint of certain of the rules of the road contained in ch. 346. The definition differs from the one set forth in s. 85.10 (22) only in that it contains a special reference to highways which do not join at right angles. In such a case the intersection is defined flexibly to mean the area within which vehicles traveling upon different highways may come in conflict. The difficulty of attempting to apply a definition which fits a right angle intersection to an oblique angle intersection is illustrated in the case of *Eberdt v. Muller*, 240 W 341, 2 NW (2d) 367 (1942). [Bill 99-S]

The definition of "street intersection" was applied in *Geason v. Schaefer*, 229 W 8, 281 NW 681.

As to difficulty in interpreting, see note to 346.31, citing *Eberdt v. Muller*, 240 W 341, 2 NW (2d) 367.

The driver of a motor vehicle intending to turn left in the middle of a block to enter a private driveway is not in an "intersection." *McCauley v. Balsley*, 242 W 528, 8 NW (2d) 299.

See note to 346.57, on reasonable and prudent limit and reduced speed, citing *Mayville v. Hart*, 14 W (2d) 292, 110 NW (2d) 923.

It was the legislative purpose in amending 340.01 (25) by ch. 260, Laws 1957, to provide a more flexible definition of "intersection" so as to include within that term not only highways which join at right angles but areas within which vehicles traveling upon different highways may come into conflict. *Gustin v. Johannes*, 36 W (2d) 195, 153 NW (2d) 70.

### 14. Manufacturer.

**Legislative Council Note, 1957:** This definition is important primarily in chs. 341 and 342 relating to registration and title of vehicles. The definition is based upon the definition of "manufacturer" in s. 218.01, which present s. 85.02 imports by reference. It takes into account the fact that "motor vehicle" is defined in s. 218.01 to include a "trailer type vehicle." [Bill 99-S]

### 15. Mobile Home.

**Legislative Council Note, 1957:** The definition is based upon s. 85.10 (45). The word "primarily" has been added so as to make clear that cabin trailers used only incidentally for eating or sleeping or living purposes (such as those used for various commercial purposes) are not subject to the special registration fees and other rules applicable only to mobile homes. [Bill 99-S]

### 16. Motor Truck.

A touring car remodeled and used as a commercial truck must pay the license required for motor trucks. 9 Atty. Gen. 246.

One test to determine whether a touring car with a box temporarily affixed for the carriage of goods is to be registered as a motor delivery wagon rather than automobile is whether the attachment is made to serve a commercial purpose or merely the owner's convenience. 10 Atty. Gen. 588.

A Ford runabout upon which is placed a delivery box and which is used for bringing poultry and calves into the city for purposes of the owner's business is a motor delivery wagon. No additional registration or license is needed for the use of such auto for pleasure on Sundays, at which times the delivery box is removed. 10 Atty. Gen. 663.

Use of a truck to haul milk over regular route for compensation is use for a commercial purpose. 20 Atty. Gen. 1184.

### 17. Motor Vehicle.

**Legislative Council Note, 1957:** The definition is from s. 85.10 (2). The exact meaning of the term depends of course on the meaning given to the term "vehicle." The term "motor vehicle" is used when the purpose is to exclude animal drawn vehicles and vehicles propelled by human power. [Bill 99-S]

### 18. Pedestrian.

The plaintiff, when struck by a westbound car after stepping out of his own car and walking westerly a distance of about 8 feet to speak to the driver of a car who had assisted in pulling the plaintiff's car out of the ditch, was not a "pedestrian." *Carlsen v. Hardware Mut. Cas. Co.* 255 W 407, 39 NW (2d) 442.

### 19. Private Road or Driveway.

**Legislative Council Note, 1957:** This term is a substitute for the present definition of "private highway, alley or driveway" which is defined as "every highway, alley or driveway not open to the use of the public for the purposes of vehicular traffic." See s. 85.10 (21) (d). The new definition is more precise and is similar to the comparable definition in the UVC. The term is important in ch. 346 because, in general, the rules of the road do not apply on private roads or driveways. [Bill 99-S]

### 20. Residence District.

Occupancy of at least over 50% of the frontage by dwellings or by dwellings and business buildings is required in order to constitute the territory a "residence district." *McGill v. Baumgart*, 233 W 86, 288 NW 799.

Mere general testimony that the area was built up with houses was insufficient to establish that it was a residence district. *Ellison v. National Cas. Co.* 254 W 117, 35 NW (2d) 300.

#### 21. Right of Way.

**Legislative Council Note, 1957:** The definition is the same as in s. 85.10 (35) except that "roadway" was substituted for "highway." Rules of right of way are concerned with use of the roadway, not with the use of the entire highway. The revised definition is consistent with the UVC. [Bill 99-S]

#### 22. Roadway.

**Legislative Council Note, 1957:** This is perhaps the most important of all definitions from the standpoint of understanding the rules of the road. The first sentence is substantially the same as the definition in s. 85.10 (21) (e). The last sentence is new. A divided highway has 2 roadways. Therefore, when a section speaks in terms of one-way roadways or roadways upon which traffic is restricted to one direction of movement, divided highways are included. This is consistent with the present definition of divided highway, as set forth in s. 85.10 (21) (f), as well as the new definition in sub. (15). [Bill 99-S]

#### 23. Safety Zone.

A line merely marking the center of the street is not a "safety zone" for pedestrians. *Post v. Thomas*, 240 W 519, 3 NW (2d) 344.

#### 24. Sidewalk.

**Legislative Council Note, 1957:** The definition is important primarily from the standpoint of certain of the rules of the road in ch. 346. The definition is a revision of the one set forth in s. 85.10 (24) so that the definition will correspond more nearly to the popular notion of the meaning of the term. The present law states that a sidewalk is that portion of a highway between the curb lines and the adjacent property lines unless local authorities designate otherwise. The new definition would require that some type of walk or path be constructed for the use of pedestrians before it can be considered a sidewalk. This does not necessarily mean a concrete walk. It could be a gravelled path, for example. The requirement of a curb line has been dropped. There sometimes are sidewalks in places where no curbs have been constructed. [Bill 99-S]

#### 25. Trailer.

Pulpwood sleds are not trailers. 13 Atty. Gen. 279.

A triangular steel frame mounted upon 4 dual-tired wheels, designed only for carrying a power shovel from place to place, and further designed for attachment to independent motive power, is nevertheless a trailer and subject to registration. 28 Atty. Gen. 382.

#### 26. Transporter.

**Legislative Council Note, 1957:** The definition is based upon s. 85.025. The term "transporter" is a convenient way to refer

to a person who is in the business of transporting vehicles and is therefore entitled to "In Transit" registration plates. [Bill 99-S]

#### 27. Vehicle.

**Legislative Council Note, 1957:** This term is used throughout the vehicle code wherever broad coverage is desired. The definition differs from the one in present s. 85.10 (1) in that it includes trolley busses and streetcars. However, more restricted definitions of "vehicle" are used in some of the chapters of the new vehicle code. [Bill 99-S]

### CHAPTER 341.

#### Registration of Vehicles.

**341.01 History:** 1957 c. 260; Stats. 1957 s. 341.01.

On equality, inherent rights, exercises of police power and exercises of taxing power see notes to sec. 1, art. I.

**341.04 History:** 1957 c. 260; Stats. 1957 s. 341.04; 1961 c. 662; 1969 c. 354, 441.

**Legislative Council Note, 1957:** This is the general penalty section covering operation of unregistered or improperly registered vehicles, including the operation of a vehicle registered on the basis of gross weight when loaded in excess of the maximum gross weight at which it is registered.

Subsection (1) is a restatement of parts of s. 85.01 (1) and (1a) of the present law. The phrase "motor vehicle, mobile home trailer or semitrailer or any other vehicle for which a registration fee is specifically prescribed" replaces the rather incomplete enumeration in s. 85.01 (1). All such vehicles must be registered unless exempted from registration by s. 341.05.

That part of sub. (2) requiring re-registration of a vehicle the construction or use of which has been changed so as to make it subject to a higher fee is not in the present statutes. However, it states past and present practice in the enforcement of the registration law. The provision means, for example, that a non-farmer who purchases a truck currently registered at the special farm truck fee is violating the law if he operates such truck before making application for re-registration of the truck at the regular truck fee. For the method of computing the fee upon registration, see s. 341.32 (1). That part of sub. (2) requiring re-registration of a vehicle carrying a greater load than the gross weight at which it currently is registered is from s. 85.01 (4) (j). The present law enumerates "motor truck, truck tractor, tractor, delivery wagon, passenger automobile bus, or trailer or semitrailer used in connection therewith" but a general reference to vehicles registered on the basis of gross weight seems preferable and less subject to becoming obsolete. For the method of computing the fee upon re-registration, see s. 341.32 (2).

The first sentence of sub. (3) replaces the penalty presently stated in s. 85.01 (12). A uniform statutory penalty has been used throughout the registration law. This consists of a fine of not more than \$200 or imprisonment for not more than 6 months or