Any form of instruction, for compensation, in the driving of motor vehicles constitutes a drivers' school and such school is required to be licensed. 47 Atty. Gen. 177.

**343.62 History:** 1957 c. 674; Stats. 1957 s. 343.62; 1969 c. 500 s. 30 (3) (h).

Anyone who gives instruction, for compensation, in the driving of a motor vehicle must be licensed as an instructor. 47 Atty. Gen. 177.

**343.63 History:** 1957 c. 674; Stats. 1957 s. 343.63; 1969 c. 500 s. 30 (3) (i).

**343.64 History:** 1957 c. 674; Stats. 1957 s. 343.64; 1969 c. 500 s. 30 (3) (h).

**343.65 History:** 1957 c. 674; Stats. 1957 s. 343.65; 1969 c. 500 s. 30 (3) (h).

**343.66 History:** 1957 c. 674; Stats. 1957 s. 343.66; 1969 c. 500 s. 30 (3) (h).

**343.67 History:** 1957 c. 674; Stats. 1957 s. 343.67; 1969 c. 500 s. 30 (3) (h).

**343.68 History:** 1957 c. 674; Stats. 1957 s. 343.68; 1969 c. 500 s. 30 (3) (h).

**343.69 History:** 1957 c. 674; Stats. 1957 s. 343.69; 1969 c. 500 s. 30 (3) (h), (i).

**343.70 History:** 1957 c. 674; Stats. 1957 s. 343.70; 1969 c. 500 s. 30 (3) (i).

**343.71 History:** 1957 c. 674; Stats. 1957 s. 343.71; 1969 c. 500 s. 30 (3) (i).

**343.72 History:** 1957 c. 674; Stats. 1957 s. 343.72; 1969 c. 500 s. 30 (3) (h), (i).

Use of words "Wisconsin," "state" or the name of the city in which a school is located, in any sign, firm name or other medium of advertising in connection with operation of drivers' schools is a criminal violation under 343.72 (9) and can be punished by both fine or imprisonment even though the school may have operated under a name using such designation prior to enactment of the statute. 47 Atty. Gen. 177.

**343.73 History:** 1957 c. 674; Stats. 1957 s. 343.73.

**343.75 History:** 1969 c. 298; Stats. 1969 s. 343.75.

## CHAPTER 344.

### Financial Responsibility.

**344.01 History:** 1957 c. 260; Stats. 1957 s. 344.01; 1969 c. 165.

**Legislative Council Note, 1957:** Among the pertinent definitions which sub. (1) incorporates into this chapter by reference are "commissioner," "conviction," "department," "license," "operating privilege" and "traffic officer."

The definitions in sub. (2) are substantially as in the present law. The definition of "vehicle" is from s. 85.10 and is incorporated by reference in present s. 85.09 (1). The definitions of "motor vehicle," "judgment," "operator," "proof of financial responsibility" and "state" are from s. 85.09 (1). The definition of "registration" in present s. 85.09 (1) has been modified so as to refer to the actual registration of a vehicle rather than the evidence of registration and so as to include the privilege to register a vehicle and the reciprocal privilege granted to nonresidents. This is the concept involved when "registration" is revoked or suspended. The actual evidence of registration in this state (registration plates and certificate of registration) must be surrendered upon revocation of a person's "registration." This revision of the definition of registration is a clarification of rather than a change in the law as presently administered.

The definition of "person" in present s. 85.09 (1) (i) has been omitted because of the generally applicable definition of that word in s. 990.01. The definition of "safety responsibility" has been omitted because it is covered by s. 344.22. [Bill 99-S]

**344.03 History:** 1957 c. 260; Stats. 1957 s. 344.03; 1961 c. 662; 1967 c. 118; 1969 c. 500 s. 30 (3) (h).

**Legislative Council Note, 1957:** This is a restatement of s. 85.09 (2) (b). The provision stating that the filing of a petition for review does not suspend the commissioner's act or order unless a stay is ordered by the court has been omitted from this section on the ground that it is adequately covered by s. 227.17 of the statutes. [Bill 99-S]

**Legislative Council Note, 1967:** This bill amends the present law relating to judicial review of commissioner's orders to provide for a greater length of time to file a petition. Under the statutory scheme, notice is sent to the driver informing him that his privilege will be suspended in 10 days unless he complies with the commissioner's order. The 10 days begins to run 5 days after the notice is mailed because of the general mailing statute. Under this bill, the driver, in addition to 15 days prior to suspension is given 30 days after suspension. In effect, a petition can be filed within 45 days after the order is mailed by the commissioner. It should also be noted that s. 344.14 (1), at the request of the driver, provides for a 20-day extension for filing a petition for postponement of the effective date of suspension.

Sub. (2) has been added to provide for an extension of time allowed for petition for review in the case where a person may be incapacitated due to an accident. [Bill 4-A]

A proceeding commenced under 344.03, by petition to the circuit court for review of an order of the commissioner of motor vehicles suspending the vehicle registrations of the petitioner under 344.15 (4), is a special proceeding as to which, by its very nature, the commissioner is a party, and the circuit court can acquire jurisdiction therein over the person of the commissioner by service of the petition and order to show cause. (Madison v. Pierce, 266 W 303, distinguished.) Burk v. Commissioner of Motor Vehicles, 8 W (2d) 620, 99 NW (2d) 726.

The remedy provided in 344.03 is the exclusive remedy for review of the commissioner's suspension of a driver's operating privilege, and mandamus will not lie to compel rein-

statement. Underwood v. Karns, 21 W (2d) 175, 124 NW (2d) 116.

**344.04 History:** 1957 c. 260; Stats. 1957 s. 344.04; 1969 c. 500 s. 30 (3) (e), (h).

**Legislative Council Note, 1957:** This is a restatement of s. 85.09 (2) (c). The reference to convictions has been omitted because suspension of registration is not authorized in such cases. Sub. (3) is new but merely clarifies the law. [Bill 99-S]

**344.05 History:** 1957 c. 260; Stats. 1957 s. 344.05; 1963 c. 77; 1969 c. 500 s. 30 (3) (h).

**Legislative Council Note, 1957:** This is a restatement of s. 85.09 (12) with 2 changes. The first change is purely correctional. Present s. 85.09 (12) refers to judgments in excess of $50 but present s. 85.09 (13) (restated in s. 344.25) calls for revocation only if the judgment exceeds $100. Hence, the amount referred to in this section also has been changed to $100. The second change makes clear that the unpaid judgment is not to be reported until it has become final. Present practice is for the courts to report an unpaid judgment 60 days after it has been entered and the department revokes operating privilege and registration upon receiving the report. If a subsequent appeal is taken and the judgment reversed, the department must reinstate the revoked operating privilege and registration. In such case, the operating privilege and registration never should have been revoked in the first place. [Bill 99-S]

**344.06 History:** 1957 c. 260; Stats. 1957 s. 344.06; 1969 c. 500 s. 30 (3) (h).

**344.07 History:** 1957 c. 260; Stats. 1957 s. 344.07.

**344.08 History:** 1957 c. 260; Stats. 1957 s. 344.08; 1969 c. 500 s. 30 (3) (h), (i).

**344.09 History:** 1957 c. 260; Stats. 1957 s. 344.09; 1969 c. 500 s. 30 (3) (h), (i).

**Legislative Council Note, 1957:** This is a new section. There is nothing in the present law which expressly provides for reinstatement of an operating privilege or registration suspended under the safety or financial responsibility law. The new section, however, conforms to present practice. [Bill 99-S]

**344.12 History:** 1957 c. 260; Stats. 1957 s. 344.12; 1959 c. 542; 1969 c. 439.

**Legislative Council Note, 1957:** This section sets the general scope of the provisions relating to deposit of security following accidents. It restates part of s. 85.09 (5) (a) and is comparable to s. 7-201 of the UVC. The term "motor vehicle" has a special definition for the purpose of this chapter. See s. 344.01. There are many exceptions to the requirement that security must be deposited even though the accident comes within the terms of this section. The exceptions are listed in s. 344.14. [Bill 99-S]

The purpose of the safety responsibility law is to see that damages to others incurred in a past accident occurring through the negligence of the operator of a motor vehicle are compensated for as a condition of not suspending the driver's license and the vehicle registration. Laughnan v. Aetna Cas. & Surety Co. 1 W (2d) 113, 83 NW (2d) 747.

Motor vehicle safety responsibility act. Steensland, 1947 WLR 146.

**344.13 History:** 1957 c. 260; Stats. 1957 s. 344.13; 1959 c. 542; 1961 c. 662; 1967 c. 118; 1969 c. 500 s. 30 (3) (h).

**Legislative Council Note, 1957:** Subsection (1) is based upon the department's interpretation of s. 85.09 (5) (a) and attempts to clarify the law as to who must deposit security and how much.

Subsection (2) restates s. 85.09 (5) (am).

Subsection (3) is based upon s. 85.09 (5) (a) as administered by the department, except that the last sentence is new. It would authorize the notice of required security and suspension order to be combined in one document, thereby avoiding the necessity of mailing a separate suspension order when the 60-day period has elapsed. If security is deposited within the 60-day period, the suspension order of course does not take effect. [Bill 99-S]

85.141 (6) (a) and 85.09 (5) (a), Stats. 1951, are not in direct conflict. Both are enforceable if security is required in all cases of apparent damage over $50 which come to the commissioner's knowledge. 41 Atty. Gen. 80.

**344.14 History:** 1957 c. 260, 545; Stats. 1957 s. 344.14; 1959 c. 600; 1967 c. 92 s. 22; 1969 c. 500 s. 30 (3) (e), (h).

**Legislative Council Note, 1957:** Subsection (1) is based upon the provisions of s. 85.09 (5) (a) relative to suspension for failure to deposit security and the department's interpretation of that provision. All the exceptions to the security requirement have been collected in sub. (2).

Paragraphs (a) through (d) restate respectively subdivisions 1 through 4 of s. 85.09 (5) (b). Paragraph (a) is a revision of the language of present s. 85.09 (5) (b) 1 so as to make clear that an owner's policy of liability insurance does not exempt the nonowner operator from the security requirement unless he is operating the vehicle with the owner's consent.

Paragraphs (e) through (h) restate respectively paragraphs (a) through (d) of s. 85.09 (6). Paragraph (a) of s. 85.09 (6) has been revised so that it conforms to present administration of the law. A person's license and registration is not suspended even though there may have been some damage to property of other persons, provided such other persons involved in the accident were not injured and damage to property of any one of them did not exceed $100. The last sentence of par. (c) of s. 85.09 (6) was dropped on the ground that sub. (1) of the new section indicates adequately that the commissioner is authorized to require proof satisfactory to him that a person who claims to be exempt actually is exempt.

Paragraphs (i) and (j) are based upon s. 85.09 (33). The exemption has been broadened to include government vehicles which

are leased as well as those which are owned. The exemption relative to taxicabs in the city of Milwaukee which have complied with the financial responsibility ordinance of that city has been dropped on the ground that the privilege to enact such ordinances ought to be extended to all cities if it is to be extended to one. The motor vehicle laws committee was of the opinion that there is no reason why all taxicabs should not be subject to the state financial responsibility laws. [Bill 99-S]

When the conditions imposed by the legislature in 85.09 (5), Stats. 1951, have been fulfilled by acts or omissions of a driver so as to require the commissioner of motor vehicles to suspend his driver's license, the commissioner's duty to suspend is mandatory and his function in carrying out the will and mandate of the legislature is purely ministerial. The provision in 85.09 (9) authorizing the commissioner of motor vehicles to fix an amount of security less than the maximum is solely for the benefit of persons required to post security, and they cannot be heard to complain that this is a denial of due process. State v. Stehlek, 262 W 642, 56 NW (2d) 514.

Under 344.14 (1), (2) (c), 344.15 (4), where an automobile involved in an accident was being driven at the time by a son of the owner, and the liability policy on the car covered only the operator and not the owner, and the owner did not produce a policy or bond covering his own liability, and did not deposit security for financial responsibility within a specified required time, suspension of the owner's vehicle registrations by the commissioner was then mandatory and, since the commissioner's act was purely ministerial, it was not subject to judicial review. Burk v. Commissioner of Motor Vehicles, 8 W (2d) 620, 99 NW (2d) 726.

It is the duty of the commissioner of the motor vehicle department to suspend the license and registration of the owner and operator of a motor vehicle described in 85.09 (5) (a), Stats. 1945, within 60 days after the receipt of a report of accident coming within the class of accidents described in the statute quoted. If, for any reason, he is prevented from suspending, fails or neglects to suspend within the 60-day period, his duty continues after that period until fulfilled. "Automobile liability policy" as used and referred to in 85.09 (5) (b) and (d) means any policy which may lawfully be written and issued in Wisconsin. It may contain so-called "policy defenses" not otherwise prohibited by law; it does not mean a policy of "absolute coverage." 35 Atty. Gen. 210.

The federal soldiers' and sailors' civil relief act of 1940 does not apply to suspension of drivers' licenses and automobile registrations by the state motor vehicle commissioner under 85.09, Stats. 1945. 35 Atty. Gen. 221.

**344.15 History:** 1957 c. 260, 545, 674; Stats. 1957 s. 344.15; 1967 c. 118; 1969 c. 165; 1969 c. 500 s. 30 (3) (e), (h).

**Legislative Council Note, 1957:** This is a restatement of s. 85.09 (5) (c) and (d) with 2 changes: (a) An out-of-state bond or policy of insurance which complies with the law of the state where issued will be acceptable in this state if the coverage is adequate to take care of any injury or damage in the accident in question. The present law frequently creates unwarranted hardship to nonresidents involved in accidents in this state because Wisconsin requires the $10,000-$20,000-$5,000 liability limits in a policy or bond while many states require only $5,000-$10,000-$1,000 limits. (b) Subsection (3) has been amended so as to require the filing of one copy of the process papers for the commissioner's records. This conforms to present practice. [Bill 99-S]

**Editor's Note:** The following are cases in which the effect of filing a notice of policy of insurance in effect, on SR-21 under earlier forms of this statute, were considered: Laughnan v. Griffiths, 271 W 247, 73 NW (2d) 587; Prisuda v. General Cas. Co. 272 W 41, 74 NW (2d) 777; Pulvermacher v. Sharp, 275 W 371, 82 NW (2d) 163; Behringer v. State Farm Mut. Auto. Ins. Co. 275 W 586, 82 NW (2d) 915; Laughnan v. Aetna Cas. & Sur. Co. 1 W (2d) 113, 83 NW (2d) 747; Prisuda v. General Cas. Co. 1 W (2d) 166, 83 NW (2d) 739; Henthorn v. M. G. C. Corp. 1 W (2d) 180, 83 NW (2d) 759; and Pinkerton v. United Services Auto. Asso. 5 W (2d) 54, 92 NW (2d) 256.

On waiver of "no action" and "household exclusion" clauses by a foreign insurance company see Perlick v. Country Mut. Cas. Co. 274 W 558, 80 NW (2d) 921.

Where a foreign automobile liability insurer, not licensed in Wisconsin, voluntarily filed with the department in 1948 a never-withdrawn company resolution to the effect that any policy which it should thereafter certify by an SR-21 statement should be deemed varied to comply with the laws of Wisconsin, the company could not set up the no-action clause in the policy as a defense in an action brought directly against it for injuries sustained in an accident occurring in Wisconsin in September of 1957; the company's filed resolution and resulting waiver of defense were not affected by the new 344.15 (5), as enacted in July of 1957, and limiting the effect of filing an SR-21 except as to any obligation "otherwise assumed" by an insurer. Pinkerton v. United Services Auto. Asso. 5 W (2d) 54, 92 NW (2d) 256.

The decisions in Behringer v. State Farm Mut. Auto. Ins. Co. 275 W 586, and Henthorn v. M. G. C. Corp. 1 W (2d) 180, determining the legal effect of the filing of a notice on form SR-21 under then existing 85.09 (5) to (16) (c), are reaffirmed; and such decisions controlled in a case where a collision occurred on June 27, 1956, and an automobile liability insurer filed an SR-21 report on July 10, 1956, even though ch. 545, Laws of 1957, published August 20, 1957, may have changed the effect of the filing of an SR-21 report and amounted to a legislative repudiation of the court's prior interpretations of the statutes relating to the filing of an SR-21. Challoner v. Pennings, 6 W (2d) 254, 94 NW (2d) 654.

Where the insurer did not know or have any reason to know of the falsity of any statements made by its insured prior to filing an SR-21 report and further false statements were made by insured after such filing, the filing of the SR-21 report will not bar insurer on the trial from relying on its defense of

breach of the co-operation condition of the policy. Kurz v. Collins, 6 W (2d) 538, 95 NW (2d) 365.

See note to 344.14, citing Burk v. Commissioner of Motor Vehicles, 8 W (2d) 620, 99 NW (2d) 726.

344.15 (5) does not require an automobile liability insurer, in case of accident, to notify the state motor vehicle commissioner of an exclusion clause contained in its policy, and permits the insurer to rely on such exclusion without notifying the commissioner of its intention to do so. Bean v. Kovacik, 10 W (2d) 646, 103 NW (2d) 899.

Under 344.15 (5), providing that, if no correction is made within a certain time by the liability insurer in the accident report (here made to the state motor vehicle department by the insured), the insurer is estopped from using as a defense to its liability the insured's failure to give permission to the operator of the automobile, the estoppel thus created removed only the element of reliance from equitable estoppel and did not make it merely a matter of evidence, and the statute did not create an estoppel as a matter of law to which the rules of pleading estoppel do not apply. Schneck v. Mutual Service Cas. Ins. Co. 18 W (2d) 566, 119 NW (2d) 342.

Failure of an insurance company to deny that it had a policy in effect at the time of the accident by notifying the commissioner within 30 days does not make it liable. Hain v. Biron, 26 W (2d) 377, 132 NW (2d) 593.

Where an insured obtained the policy by false representations as to his identity and as to his physical condition, the accident happened 4 months later, suit was not brought for nearly 3 years, and the company asserted the defense of fraud within weeks after discovering it, the company was not estopped by waiver, laches or estoppel from asserting no coverage. Bade v. Badger Mut. Ins. Co. 31 W (2d) 38, 142 NW (2d) 218.

A foreign insurance company which has not complied with 201.32 is not authorized to do business in this state within the meaning of 85.09 (5) (c), Stats. 1949. The motor vehicle department may not accept notice of insurance forms from such companies. 39 Atty. Gen. 151.

The new SR-21 look in Wisconsin. Bjork, WBB, Feb. 1958.

The new safety responsibility law. Taussig, 1959 WLR 552.

**344.16 History:** 1957 c. 260; Stats. 1957 s. 344.16; 1969 c. 500 s. 30 (3) (h).

Self-insurers are not required to establish an insurance reserve. The commissioner of the motor vehicle department, acting in good faith and in honest exercise of judgment, is not liable for damages for the erroneous issuance of a certificate of self-insurance. 35 Atty. Gen. 374.

**344.17 History:** 1957 c. 260; Stats. 1957 s. 344.17; 1963 c. 158; 1969 c. 500 s. 30 (3) (h).

Under 85.09 (9), Stats. 1945, the commissioner of the motor vehicle department has discretion to determine form of "security" therein required, and is not bound by 85.09 (24) and (25) which relate to altogether different circumstances. 35 Atty. Gen. 200.

**344.18 History:** 1957 c. 260; Stats. 1957 s. 344.18; 1961 c. 662; 1969 c. 241; 1969 c. 500 s. 30 (3) (h).

An order or judgment of a court dismissing an action upon the merits should be treated as an adjudication that the defendant is not liable, even though entered on stipulation. 39 Atty. Gen. 517.

Ch. 658, Laws 1951, may be applied to restoration of motor vehicle operators' licenses forthwith regardless of the fact that an accident resulting in suspension of license occurred prior to effective date of the act. A party to an accident does not have a "vested right" in the suspension of his adversary's license. For the same reasons, deposits may be refunded after 13 months if no notice of suit is given to the commissioner, notwithstanding the accident occurred prior to effective date of ch. 658. 41 Atty. Gen. 89.

See note to sec. 13, art. I, on exercises of police power, citing 41 Atty. Gen. 214.

**344.19 History:** 1957 c. 260; Stats. 1957 s. 344.19; 1969 c. 500 s. 30 (3) (f), (h), (i).

**Legislative Council Note, 1957:** This is a restatement of s. 85.09 (8) with one change: It has been made clear that the department may accept a combined notice of required security and suspension order issued by another state. Present law seems to prohibit it. No suspension will take place in this state, however, until 30 days after the time for depositing security in such other state. That will give the other state time to notify this state if the person in question has complied with the law of such other state.

The language of the section also has been modified to make clear that it applies to suspension of registration as well as operator's license. This conforms to departmental interpretation of the present law. [Bill 99-S]

**344.20 History:** 1957 c. 260; Stats. 1957 s. 344.20; 1961 c. 662; 1969 c. 500 s. 30 (3) (e), (h), (i).

**Legislative Council Note, 1957:** This section is based upon present s. 85.09 (10) but differs from the present law in the method of application of the security deposit to the payment of judgments or assignments. The present law places the application of the security deposit to payment of judgments on a "first come, first served" basis while this section would give effect to the designations in the commissioner's security memorandum.

In regard to payment on assignments, the present law contains provisions to protect the interests of the different parties in interest. This section would continue that protection but under the same rules as will apply to judgments.

By way of illustration, suppose A, B and C are involved in an auto accident. The commissioner determines that B is damaged to the extent of $1,000 and C to the extent of $2,000. A must therefore deposit security in the amount of $3,000 and $1,000 will be designated as having been deposited on account of B's damages and $2,000 on account of C's

damages. Then, suppose C recovers a judgment for $3,000. Under present law, if C recovers his judgment and obtains a court order first, the entire deposit will go toward payment of his judgment and B will be left without any security. Under this section, C could get only the $2,000 designated as deposited on account of his damages unless A had been released from all further liability to B, whether by a judgment or otherwise. [Bill 99-S]

The state treasurer is a mere custodian of security deposits placed with him under 85.09, Stats. 1945. The form and amount of the security deposited is determinable by the commissioner of motor vehicles. Return of the security is to be made by the treasurer upon proper authorization by said commissioner. Application of the deposit to payment of judgments is to be effected through ordinary court processes. 36 Atty. Gen. 4.

Upon claim for refund of a deposit of security, the claimant must satisfy the commissioner that no action was instituted to which the claimant was made a party within the period of limitation. 39 Atty. Gen. 462.

**344.21 History:** 1957 c. 260; Stats. 1957 s. 344.21; 1969 c. 500 s. 30 (3) (h).

**344.22 History:** 1957 c. 260; Stats. 1957 s. 344.22.

**Legislative Council Note, 1957:** This section preserves the title "Safety responsibility law" for whatever value it may have. The phrase "safety responsibility law" has been abandoned as a chapter subtitle because it is completely lacking in descriptive qualities insofar as indicating the content of the law is concerned. [Bill 99-S]

**344.24 History:** 1957 c. 260; Stats. 1957 s. 344.24.

Motor vehicle safety responsibility act. Steensland, 1947 WLR 146.

**344.25 History:** 1957 c. 260; Stats. 1957 s. 344.25; 1959 c. 600; 1961 c. 662; 1967 c. 92 s. 22; 1969 c. 500 s. 30 (3) (h).

**Legislative Council Note, 1957:** The introductory paragraph is a restatement of s. 85.09 (13) (a).

The exceptions in sub. (1) are based on s. 85.09 (33). The exception relating to taxicabs in the city of Milwaukee whose owner has complied with the financial responsibility ordinances of that city has been omitted for the reason stated in the Note to s. 344.14.

Subsection (2) is a restatement of s. 85.09 (13) (b), with the exception that the language stating that proof of financial responsibility must be maintained for 3 years following entry of judgment is new. It makes the law conform to present practice.

Subsection (3) simply makes a cross reference to the provisions of s. 344.27 so as to bring together in one section all exceptions to the requirement that operating privilege and registrations must be revoked for nonpayment of certain judgments.

"Revoke" has been substituted for "suspend" in accordance with the change in terminology made in the drafts of ch. 343. [Bill 99-S]

**344.26 History:** 1957 c. 260; Stats. 1957 s. 344.26.

Discharge of a judgment in bankruptcy and satisfaction under 270.91 (2) does not bar the application of 344.26, and whether or not the satisfaction recites that it is based on a discharge in bankruptcy the commissioner can inquire into the facts. Zywicke v. Brogli, 24 W (2d) 685, 130 NW (2d) 180.

The running of the statute of limitations upon a damage suit judgment based upon a finding of negligent operation of a motor vehicle constitutes a discharge of such obligation as that term is used in 344.26 (1). 48 Atty. Gen. 285.

The encroachment of financial responsibility laws on the policy of the bankruptcy act. Reiter, 47 MLR 402.

**344.27 History:** 1957 c. 260; Stats. 1957 s. 344.27; 1969 c. 500 s. 30 (3) (h).

**344.29 History:** 1957 c. 260; Stats. 1957 s. 344.29.

**344.30 History:** 1957 c. 260; Stats. 1957 s. 344.30.

**344.31 History:** 1957 c. 260; Stats. 1957 s. 344.31; 1969 c. 500 s. 30 (3) (h).

**344.32 History:** 1957 c. 260; Stats. 1957 s. 344.32; 1969 c. 500 s. 30 (3) (h).

Where a resolution of a foreign insurer authorizing its officers to execute a power of attorney appointing the motor vehicle department commissioner its attorney to accept service of notice or process in any action arising out of a Wisconsin accident provided that where a certificate of insurance was filed, the policy was deemed varied to comply with Wisconsin law, and no certificate was filed, the policy was not varied so as to delete a restrictive endorsement, and attempted substituted service was ineffective. Petrowski v. Hawkeye-Security Ins. Co. 226 F (2d) 126.

**344.33 History:** 1957 c. 260; Stats. 1957 s. 344.33; 1963 c. 410; 1969 c. 312.

The provision in 85.09 (21) (h), Stats. 1949, that any motor-vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of such section, considered in connection with 85.09 (23) (a), was intended to operate only for the enforcement of the financial responsibility law under which title both such subsections are carried, and was not intended to supersede or render ineffective 204.30 (3) and 204.34 (1). Olander v. Klaprote, 263 W 463, 57 NW (2d) 734.

The phrase "not owned by him" in 85.09 (21) (c), Stats. 1953, means registered in his name. An exclusion clause in a certified operator's liability policy, excluding coverage as to any automobile owned in full or in part by the insured, conflicts with the requirement of this subsection and the insurer is estopped, by the issuance of the certificate, to deny coverage where the insured was operating a car registered to his wife but of which he was the equitable owner. Van Erem v. Dairyland Mut. Ins. Co. 5 W (2d) 450, 93 NW (2d) 511.

A foreign insurance carrier must be licensed by the insurance commissioner in order to qualify as an "insurance carrier authorized to transact business in this state." Lloyds must be licensed by the commissioner in order to qualify under the same section. Domestic companies are not required to be licensed and hence qualify under said section until such time as the commissioner takes some affirmative action directed at compelling the company to cease doing business. 31 Atty. Gen. 253.

**344.34 History:** 1957 c. 260; Stats. 1957 s. 344.34; 1969 c. 500 s. 30 (3) (h).

**344.35 History:** 1957 c. 260; Stats. 1957 s. 344.35.

**344.36 History:** 1957 c. 260; Stats. 1957 s. 344.36; 1969 c. 285 s. 30; 1969 c. 500 s. 30 (3) (h).

**Legislative Council Note, 1957:** This is a restatement of s. 85.09 (24) with certain minor changes. The requirement that individual sureties must have equities in real estate in an amount at least twice the amount of the bond is new. It conforms to the UVC and was considered to be a desirable standard to use because of the possibility of fluctuating values of land, homestead exemptions and similar factors which might affect the actual value of the lien.

Subsection (2) has been revised so as to conform to Wisconsin law on recording of instruments affecting interests in real estate and so as to make clear that the bond is a lien only to the extent that the real estate is not exempt by law from execution. [Bill 99-S]

**344.37 History:** 1957 c. 260; Stats. 1957 s. 344.37; 1969 c. 312.

**344.38 History:** 1957 c. 260; Stats. 1957 s. 344.38; 1967 c. 300; 1969 c. 500 s. 30 (3) (h), (j).

**344.39 History:** 1957 c. 260; Stats. 1957 s. 344.39; 1969 c. 500 s. 30 (3) (h).

**344.40 History:** 1957 c. 260, 674; Stats. 1957 s. 344.40; 1969 c. 500 s. 30 (3) (h).

**Legislative Council Note, 1957:** Subsection (1) is new. Section 85.09 (31) requires surrender of operator's license and registration plates upon cancellation or termination of a policy or bond or upon neglect to furnish proof of financial responsibility when requested by the commissioner, but does not mention an order of suspension. Subsection (1) would require such an order. The duty to surrender license and plates would follow automatically under s. 344.45.

Subsection (2) is a restatement of s. 85.09 (28). [Bill 99-S]

**Legislative Council Note, 1957:** This corrects an error in the original draft of ch. 260, laws of 1957, and makes clear that a long-standing policy of the motor vehicle department is to be continued. Under the vehicle code, a suspension means automatic reinstatement of the operating privilege and registration at the end of the period of suspension while revocation means that the person whose license was revoked must make a new application, pay the application fee, take an examination and file proof of financial responsibility. It has been the practice of the department to enforce all these requirements in case of a person who lets his proof of financial responsibility lapse. [Bill 643-S]

A combined notice of expiration of financial responsibility and order of revocation notifying a licensee that revocation will take effect on a future date if proof is not filed is reasonable and adequate notice. 47 Atty. Gen. 286.

A person subject to the financial responsibility law must file proof at all times during the 3-year period after expiration of revocation in order to be entitled to an operator's license or to register a vehicle in his name. Subsequent revocation during such 3-year period does not require financial proof unless a vehicle is registered in his name. 48 Atty. Gen. 219.

**344.41 History:** 1957 c. 260, 674; Stats. 1957 s. 344.41; 1961 c. 662; 1969 c. 500 s. 30 (3) (h), (i).

**Legislative Council Note, 1957:** This is a restatement of s. 85.09 (29). The references in present s. 85.09 (29) to the 3-year period following the date proof is required have been omitted because the periods during which proof is required are expressly set forth in ch. 343, insofar as revocations under that chapter are concerned, and in ss. 344.25 to 344.27, insofar as revocations for nonpayment of judgments are concerned. Subsection (3) has been revised so as to make clear that a person who applies for a license after surrendering it pursuant to sub. (1) (c) must comply with the requirements applicable to reinstatement of a license after revocation, including the taking of an examination and the payment of a reinstatement fee. This conforms to present practice. [Bill 99-S]

**Legislative Council Note, 1957:** Section 344.41 (3) deals with the situation wherein a person voluntarily returns his operator's license and registration plates to the department and then lets his proof of financial responsibility lapse, as contrasted with the preceding section of this bill which deals with the case of a person who unlawfully lets his proof of financial responsibility lapse and continues to drive. Persons going into the armed services and persons who do not desire to drive during the winter months are examples of persons who ordinarily come under s. 344.41 (3). The amendment would provide for automatic reinstatement of the license when such person again furnishes proof of financial responsibility. [Bill 643-S]

**344.45 History:** 1957 c. 260; Stats. 1957 s. 344.45; 1969 c. 500 s. 30 (3) (h), (i).

**Legislative Council Note, 1957:** Subsection (1) is a restatement of s. 85.09 (31), except the reference to surrender of license and registration plates after cancellation or termination of a policy or bond or after failure to furnish proof of financial responsibility upon request of the commissioner has been omitted because those facts have been made grounds for suspension. The order to surrender license and registration plates can be made a part of the order of suspension and the failure to sur-

render them will be subject to the penalty in this section.

The penalty stated in s. 85.09 (32) (b) of the present law has been modified so as to conform to the penalty applicable to a similar provision in proposed ch. 343 (343.35). [Bill 99-S]

Upon the occurrence of the contingencies mentioned in 85.09 (31), peace officers have the right to remove registration plates from automobiles parked on public streets or on private parking lots when requested to "secure possession" of such plates by the commissioner of the motor vehicle department for the purpose of returning them to the custody of the department. 41 Atty. Gen. 223.

**344.46 History:** 1957 c. 260; Stats. 1957 s. 344.46; 1967 c. 300; 1969 c. 500 s. 30 (3) (h).

**344.47 History:** 1957 c. 260, 292; Stats. 1957 s. 344.47.

**344.48 History:** 1957 c. 260, 545; Stats. 1957 s. 344.48.

**344.51 History:** 1957 c. 260; Stats. 1957 s. 344.51; 1969 c. 500 s. 30 (3) (i).

**Legislative Council Note, 1957:** Subsections (1) and (2) restate s. 85.215.

The penalty in sub. (3) is in lieu of the penalty stated in s. 85.91 (1). The attorney general has ruled that the latter penalty is applicable under present law, notwithstanding the civil liability imposed for failure to comply with the law. 30 Atty. Gen. 27 (1941).

The definition in sub. (4) is necessary for a restatement of present law; otherwise, the special definition of "motor vehicle" in s. 344.01 would apply. [Bill 99-S]

Requiring those renting cars for compensation to file a bond covering damages from negligent operation thereof imposes no obligation on a corporation renting a car in another state. Carroll v. Minneapolis Drive Yourself System, 206 W 287, 239 NW 501.

See note to 344.52, citing Herchelroth v. Mahar, 36 W (2d) 140, 153 NW (2d) 6.

**344.52 History:** 1957 c. 260; Stats. 1957 s. 344.52; 1959 c. 562; 1969 c. 500 s. 30 (3) (h).

344.52 is intended to assure response in damages to the injured person and not to decide the question of liability between the parties. The end of the section is met when the judgment is paid. Herchelroth v. Mahar, 36 W (2d) 140, 153 NW (2d) 6.

## CHAPTER 345.

### Rules Relating to Civil and Criminal Liability.

**345.01 History:** 1957 c. 260; Stats. 1957 s. 345.01.

**345.05 History:** 1957 c. 260, 605; Stats. 1957 s. 345.05; 1959 c. 641 s. 36; 1961 c. 550; 1967 c. 92 s. 22.

**Legislative Council Note, 1957:** This is a restatement of s. 85.095. It is not clear in what sense "motor vehicle" is used in the present section. By virtue of the definition of "motor vehicle" in s. 340.01, the new section would apply to municipally-owned trolley busses and streetcars.

The following judicial interpretation of the present law is pertinent because it will also apply to the new section, the old language having been restated. The section has been construed as creating a liability on the part of a governmental body in the discharge of governmental functions. The court rejected the contention that the statute merely was intended to allow a municipality to pay claims if it so wishes. Schumacher v. Milwaukee, 209 W 43, 243 NW 756 (1931). The words "owned and operated" have been construed literally to mean that a municipality is not liable unless the vehicle is both owned and operated by the municipality. Jorgenson v. Sparta, 224 W 260, 271 NW 926 (1937). Hence, it is only in the case of the national guard and air national guard that liability exists if the vehicle is not publicly owned. It has been held that the damage does not proximately result from the negligent operation of a motor vehicle unless the vehicle is in the active exercise of some specific function at the time of the injury. Raube v. Christenson, 270 W 297, 71 NW (2d) 639 (1955). Hence, the county was not liable where an accident resulted from failure of one of the drivers involved in the accident to stop for a stop sign even though his failure to stop allegedly was due to the fact that the sign had been negligently covered by snow as a result of snow plowing by the county highway maintenance workers. [Bill 99-S]

The words "owned and operated", in 66.095, Stats. 1935, were intended by the legislature to have their plain meaning. Jorgenson v. Sparta, 224 W 260, 271 NW 926.

Where a county, in repairing a road, completely blocked it for several minutes with a dump truck, it is liable under 85.095, Stats. 1955, for insufficient warning to users of the highway. The truck, even though stopped, was "in operation" in the performance of the county's business of road maintenance. Schroeder v. Chapman, 4 W (2d) 285, 90 NW (2d) 579.

The state is not liable, under 85.095, Stats. 1947, for damage caused by operation of an automobile unless it is both owned and operated by the state. 37 Atty. Gen. 162.

Governmental tort liability and immunity in Wisconsin. Bernstein, 1961 WLR 486.

**345.06 History:** 1957 c. 260; Stats. 1957 s. 345.06.

**345.07 History:** 1957 c. 260; Stats. 1957 s. 345.07; 1969 c. 500 s. 30 (3) (h).

**345.08 History:** 1957 c. 260; Stats. 1957 s. 345.08; 1961 c. 316.

**345.09 History:** 1957 c. 260; Stats. 1957 s. 345.09; 1959 c. 562; 1963 c. 6, 515; 1965 c. 163; 1969 c. 500 s. 30 (3) (e), (f), (h).

**Legislative Council Note, 1957:** This is a restatement of s. 85.05 (6), (7) and (8) with the following changes:

1. It has been made clear that the notice of injury required by s. 330.19 (5) to be served in personal injury actions may be served on a nonresident by service upon the commissioner. The court has held that this cannot be done under present law because the notice is not legal process within the meaning