service was more likely to have been made at a different address than at the address which was used. Waddell v. Mamat, 271 W 176, 72 NW (2d) 763.

In certifying the address plaintiff can rely on the police report unless he has actual knowledge of a different address. Skinner v. Mueller, 1 W (2d) 328, 84 NW (2d) 71.

Jurisdiction of the nonresident tort-feasor in personam rests on his contract with the state through his use of the highway and the injury he inflicts while using it, and such jurisdiction may be asserted and exercised without the intermediation of a fictitious agent. Service on the commissioner of motor vehicles is good, not because he has been appointed or has otherwise become the agent of the defendant nonresident motorist, but because the commissioner is the person whom the legislature has designated as the person who shall receive the service and mail the papers to the defendant at his last-known address, which is a means reasonably calculated to bring home to him notice of the pendency of the suit. Steffen v. Little, 2 W (2d) 350, 86 NW (2d) 622.

See note to 262.06, on natural persons, including those under disability, citing Edwards v. Gross, 4 W (2d) 90, 90 NW (2d) 142.

Substituted service can be made under 345.09 upon a foreign corporation which operated a leased truck in Wisconsin through an employe acting within the scope of his employment. Herchelroth v. Mahar, 24 W (2d) 444, 129 NW (2d) 140.

Jurisdiction by implied consent. O'Melia, 29 MLR 31.

Nonresident motorists statute. Peck, 37 MLR 321.

345.11 History: 1967 c. 292; Stats. 1967 s. 345.11; 1969 c. 500 s. 30 (3) (h).

345.115 History: 1969 c. 383; Stats. 1969 s. 345.115.

345.12 History: 1957 c. 260; Stats. 1957 s. 345.12.

345.13 History: 1957 c. 260, 674; Stats. 1957 s. 345.13; 1961 c. 143; 1969 c. 336 s. 176.

Legislative Council Note, 1957: This is a restatement of s. 85.40 (4). A person may not be found guilty on a criminal charge in absentia unless a statute such as this one specifically so provides. 41 Atty. Gen. 166 (1952). [Bill 99-S]

A verified uniform traffic citation filed with any court in this state is sufficient to give the court jurisdiction over the subject matter of the action. There is no need to swear out a complaint establishing probable cause until an arrest warrant is sought. 55 Atty. Gen. 110.

345.135 History: 1967 c. 292; Stats. 1967 s. 345.135.

345.14 History: 1957 c. 260; Stats. 1957 s. 345.14; Sup. Ct. Order, 14 W (2d) viii.

The designated official receiving a penalty from the person signing a stipulation of guilt is not required to pay it into court. The ordinance may provide for direct deposit in the municipal treasury. 47 Atty. Gen. 292.

345.15 History: 1957 c. 260; Stats. 1957 s. 345.15.

345.16 History: 1957 c. 260; Stats. 1957 s. 345.16; 1969 c. 500 s. 30 (3) (f).

345.17 History: 1963 c. 515; Stats. 1963 s. 345.17; 1969 c. 500 s. 30 (3) (g), (h), (i).

345.18 History: 1969 c. 469; Stats. 1969 s. 345.18.

345.61 History: 1957 c. 178; Stats. 1957 s. 954.44; 1959 c. 19 s. 62; 1963 c. 68; 1965 c. 521; 1969 c. 255 s. 56; Stats. 1969 s. 345.61.

CHAPTER 346.

Rules of the Road.

On exercises of police power see notes to sec. 1, art. I.

346.01 History: 1957 c. 260; Stats. 1957 s. 346.01.

346.02 History: 1957 c. 260, 615; Stats. 1957 s. 346.02.

Legislative Council Note, 1957: There is no provision in the present law similar to sub. (1). However, the proposed provision is consistent with the case law which is to the effect that the rules of the road apply only on highways. In Peterson v. Jansen, 236 W 292, 295 NW 30 (1940) it was held that the statutory rules of the road are not applicable to newly laid state highways not yet opened to the public, and in Patterson v. Edgerton Sand & Gravel Co., 227 W 11, 277 NW 636 (1938) it was held that rules of the road are not applicable on private property, in this case a gravel pit. Certain sections, notably those relating to accidents and accident reports and those relating to reckless and drunken driving are expressly given a somewhat broader application than the other sections in the chapter. Note also sub. (8) relating to pedestrian ways.

Subsection (2) is the counterpart of present s. 85.12 (6). One change has been made. The reference in the present provision to persons "leading any animal upon a roadway" has been deleted. Such a person should be treated as a pedestrian rather than as the operator of a vehicle.

Subsection (3) is new and appears to be necessary because streetcars have been included within the definition of "vehicle." There are some rules applicable to vehicles which by their very nature would not apply to vehicles operating upon tracks. Among these are the rules relating to turning.

Subsection (4) restates part of s. 85.12 (6).

Subsection (5) restates s. 85.12 (4).

Subsection (6) is not in the present law. Its purpose is to protect highway workers from technical violations of the rules of the road while doing construction or maintenance work on roads not closed to traffic. The new subsection is based upon s. 11-105 of the UVC but is not as broad as the UVC section. Highway workers and vehicles, while actually engaged in maintenance or construction work, would be exempt from provisions requiring driving in certain lanes, regulating meeting or passing, regulating standing or walking on

the highway and regulating turning movements and parking. The provisions relating to traffic signs and signals and reckless and drunken driving and accident reporting still would apply. Moreover, the exceptions set forth in sub. (6) do not apply when otherwise expressly provided in ch. 346. For example, s. 346.05 (2) makes s. 346.05 (1) applicable to highway maintenance vehicles unless the vehicle is equipped with proper warning flags or warning lights.

Subsection (7) is largely new, though it states present law with regard to stop signs. Among the sections in ch. 346 which require posting or marking and therefore would be affected are 346.09 (3) (no passing zones); 346.10 (passing at railroad crossing or intersection); 346.13 (lanes for traffic moving in particular directions); 346.31 (lanes for specific turning movements); 346.46 (stopping at stop signs); 346.52 to 346.54 (local modification of certain parking rules and restrictions); 346.57 (state or local modification of statutory speed limits).

Subsection (8) is a restatement of s. 85.10 (21) (g). [Bill 99-S]

The driver of a motor vehicle may operate his vehicle on the assumption that other drivers will use due care in the operation of theirs, and especially that they will not violate a safety statute. DeKeyser v. Milwaukee Auto. Ins. Co. 236 W 419, 295 NW 755.

The motor vehicle code does not apply to private roads; hence the common law and not the statutory rules applicable to highways governs in determining whether the owner of property has negligently breached its duty owed an invitee in maintaining a private road thereon. Stamberger v. Matthaidess, 37 W (2d) 186, 155 NW (2d) 88.

346.03 History: 1957 c. 260; Stats. 1957 s. 346.03.

Legislative Council Note, 1957: Operators of emergency vehicles at times must exercise privileges which are not granted to other drivers. At the same time, such privileges should be hedged with adequate safeguards to protect the public from any abuse thereof. The present law relative to the operation of authorized emergency vehicles is vague and incomplete. This is a clarification of present law with some changes to be noted.

Subsections (1) and (2) are based upon s. 85.12 (5) but are considerably more precise in their statements of what operators of authorized emergency vehicles can and cannot do than is the present law.

Subsection (3) is based upon s. 85.12 (5) and 85.40 (5), but revises and clarifies the present law. Under present law, an authorized emergency vehicle may exceed the speed limit only if it gives both audible and visual signal while it may violate other rules of the road by giving either the audible or the visual signal. New sub. (3) is based on the assumption that both audible and visual signals should be given whenever rules relating to moving traffic are violated while the visual signal is sufficient if the emergency vehicle merely is stopped in violation of statutory restrictions on stopping, standing or parking. The only exception is stated in sub. (4). Police vehicles may exceed the speed limit when clocking a speeder without being required to sound the siren or show the flashing red light. They could not, however, violate other rules such as the running of a stop sign or traffic control signal without the siren or red light being in use.

Subsection (5) makes clear that the operator of an authorized emergency vehicle is not relieved of the duty to drive with due care. This is the rule applicable under the present law with respect to violation of the speed law [see s. 85.40 (5)] but s. 85.12 (5) seems to make the operator of an authorized emergency vehicle liable for his negligence in the case of disregard of other rules of the road only if such negligence amounts to a reckless disregard of the safety of others. The Supreme Court so held in Montalto v. Fond du Lac County, 272 W 552, 76 NW (2d) 279 (1956). There is no logical basis for this distinction, and it has been eliminated. Running an arterial often is more dangerous than exceeding the speed limit and should be done only with caution even in the case of an authorized emergency vehicle on an emergency run. [Bill 99-S]

Plaintiff policeman, although operating a motorcycle as an emergency vehicle at the time of colliding with the defendant's turning automobile, would not come under one of the exceptions in 85.40 (5), Stats. 1951, if his siren was not in operation prior the collision. Pedek v. Wegemann, 271 W 461, 74 NW (2d) 198.

To be guilty of actionable negligence as to speed, the operator of an emergency vehicle (county ambulance) on an emergency errand may be found guilty of a lack of due regard for the safety of others, which is ordinary negligence, or of reckless disregard. The defendant driver, through his negligence as to speed, forfeited any right of way which he may otherwise have had over the 2 child pedestrians crossing the street. Montalto v. Fond du Lac County, 272 W 552, 76 NW (2d) 279.

The standard of care required of operator of emergency vehicle. 41 MLR 88.

346.04 History: 1957 c. 260; Stats. 1957 s. 346.04; 1965 c. 187.

In an action for injuries sustained when the defendant motorist, directed by a traffic officer to proceed on the same street instead of making a left turn into an intersecting street, turned his car to the right so as to return to his proper lane of travel, and his car then skidded, and crossed to the left side of the street over a safety island and up onto the sidewalk, where it struck the plaintiff pedestrian standing there, the defendant's evidence in explanation of the accident was sufficient to render the doctrine of res ipsa loquitur inapplicable thereto, and the evidence was sufficient to support the jury's finding that the defendant was not negligent. Churchill v. Brock, 264 W 23, 58 NW (2d) 200.

346.05 History: 1957 c. 260; Stats. 1957 s. 346.05.

Legislative Council Note, 1957: Subsection (1) states the general rule that the operator of a vehicle shall drive on the right half of the roadway and in the right-hand lane of a 3-

lane roadway and then lists the various exceptions to this rule. It is a reorganization and restatement of present s. 85.15 (1) with several clarifications to be noted.

Paragraph (a) lists the first exception. The rules for making left turns are stated in s. 346.31. In the absence of signs or markers placed by the local authorities directing the approach for a left turn to be made to the left of the center of the roadway, the only time such approach is required or permitted is when approaching on an unevenly laned highway, such as a 3-lane or 5-lane highway or when the lane to the left of the center of the roadway has been allocated to traffic moving in the direction of the vehicle about to turn left. Paragraph (a) is consistent with s. 85.15 (1) which makes an exception to the rule requiring operating on the right half of the roadway "when preparing to make a left turn from a 3-lane highway" and is similar in substance to s. 11-301 (a) 3 of the UVC.

The left half of the roadway generally must be used in overtaking and passing. Paragraph (b) states this exception. A similar exception is contained in present s. 85.15 (1) and s. 11-301 (a) 1 of the UVC. The limitations on overtaking and passings appear in ss. 346.07 to 346.10.

Paragraphs (c) and (d) are based upon the phrase in present s. 85.15 (1) which requires driving on the right side of the roadway "unless it is impractical to travel on such side of the roadway." The language of the present law was considered too broad. The new language is more specific yet should be adequately flexible to meet all contingencies. Paragraph (c) is identical to s. 11-301 (a) 2 of the UVC but the UVC contains no provision similar to par. (d).

Motorists are of course accustomed to obeying highway signs or pavement markings even though such signs or markings may be inconsistent with general rules relating to operation of vehicles. Paragraph (e) takes that situation into account. An example would be a roadway marked for a greater number of lines of vehicles moving simultaneously in one direction than in the other. Such signs or markers are often used to expedite flow of traffic into a metropolitan area in the morning and away from the metropolitan area in the afternoon. Paragraph (e) is based upon the provision in s. 85.15 (1) which states that "the foregoing provisions shall not be deemed to prevent the marking of lanes for traffic upon any roadway and the allocation of designated lanes to traffic moving in a particular direction or at designated speeds." The power of state and local authorities to mark turns and lanes has been restated in s. 349.10.

Paragraph (f) replaces the phrase in s. 85.15 (1) which permits driving on the left side "upon one-way highways." The revised language is consistent with s. 11-301 (a) 4 of the UVC. In addition, it makes clear that, even upon one-way roadways a slow-moving vehicle should be driven on the right-hand side of the roadway.

Subsection (2) is a restatement of the exception contained in s. 85.18 (12). The reference to method of marking or lighting promulgated by the motor vehicle department has been changed so as to incorporate the correct statutory reference. Lighting requirements for highway maintenance vehicles no longer are promulgated by the motor vehicle department.

In subsection (3) the language of s. 11-301 (b) of the UVC has been substituted for the statement in present s. 85.15 (1) that "the operator of a slow-moving vehicle shall operate such vehicle as closely as practical to the right-hand edge or curb of the roadway." The present provision is defective because "slow-moving vehicle" is defined in s. 85.10 (10) as any vehicle being operated or moved upon a highway "at a speed less than the maximum speed then and there permissible." Under one interpretation, this would mean that a large truck traveling 45 miles per hour or a metal-tired vehicle traveling 15 miles per hour is not a slow-moving vehicle even though the normal flow of traffic at the time and place in question might be 60 miles per hour. Under another interpretation, all vehicles traveling less than 65 miles per hour where the speed limit is 65 would be slow-moving vehicles even though the normal flow of traffic might be only 55 miles per hour at the time and place in question. The purpose of the provision requiring slow-moving vehicles to use the right-hand lane is to avoid obstructing the normal flow of traffic as little as possible. New sub. (3) is worded so as to make this clear. [Bill 99-S]

Evidence tending to show that an automobile by which a pedestrian was injured was at the time on the left side of the center of the street made the question of negligence of the driver a question for the jury. United States C. Co. v. Superior H. Co. 175 W 162, 184 NW 694.

An automobile driver becoming enveloped in a cloud of dust raised by a passing car that completely obscured his view, threw off his power, applied his brakes, and stopped his car in 36 feet; and while advancing those 36 feet he unconsciously swerved slightly to the left of the center of the road where he was struck by another car. He was not chargeable with negligence. Johnson v. Prideaux, 176 W 375, 187 NW 207.

A traveler may make reasonable use of the left side of the road in special circumstances; and in a case involving use of the left side of the road the evidence required an instruction that the deceased, who was killed while stopping and examining his engine on the left side, was not guilty of contributory negligence. Schacht v. Quick, 178 W 330, 190 NW 87.

The provisions of 85.15, Stats. 1929, relate to highways of sufficient width so that 2 lanes of traffic in the same direction can be maintained, and its purpose is to keep the slow traffic to the right and allow the faster traffic to maintain a maximum permitted speed at the same time. Wilke v. Milwaukee E. R. & L. Co. 209 W 618, 245 NW 660.

85.15 (1), Stats. 1943, requiring the operator of a vehicle to operate the same on the right half of the roadway, has for its design and purpose the keeping of cars on the right-hand side of the highway and is not a general management-control statute, and it does not apply to a situation where the operator of a car is operating the car on the right-hand side

and the car goes into the ditch on that side. Baars v. Benda, 249 W 65, 23 NW (2d) 477.

The right of a driver of an automobile to proceed on the right half of a highway is restricted to travel within a designated lane where such lanes have been marked. O'Leary v. Buhrow, 249 W 559, 25 NW (2d) 449.

A custom or agreement which involved driving on the wrong side of the highway could not supplant the statutory rules of the road on a public highway entirely open for public travel. Stephens v. Cutsforth, 256 W 256, 40 NW (2d) 389.

Where a boy, although inexperienced and traveling in a zigzag manner, was operating his bicycle on his own side of the road, his negligence, if any, operated remotely and not proximately to cause collision with the defendant's automobile approaching from the opposite direction. Where 2 vehicles proceeding on a highway in opposite directions collide, the fact that one of them was traveling in a zigzag fashion will not of itself support a claim of negligence on the part of the driver of such vehicle, unless it is shown that such manner of driving contributed proximately to cause the accident. Leiner v. Kohl, 261 W 159, 52 NW (2d) 154.

The rule, that the presence of a vehicle on the wrong side of the road establishes a prima facie case of negligence on the part of the operator, did not apply where the tractor-trailer unit encroaching partly on the pavement was overturned and at rest, and its presence was observable to an approaching driver, and it lay in such position as to enable other users of the highway to proceed on an unobstructed portion of the highway without danger of collision. Olson v. Milwaukee Auto. Ins. Co. 266 W 106, 62 NW (2d) 549, 63 NW (2d) 740.

Although skidding may occur without fault and the mere fact of its occurrence will not support a finding or inference of negligence, the presence of a skidding automobile on the wrong side of the roadway is evidence of negligence unless it is also shown that the presence on the wrong side was due to skidding. Poole v. State Farm Mut. Auto. Ins. Co. 7 W (2d) 65, 95 NW (2d) 799.

A contention that proof of skidding alone relieved the driver who invaded the wrong lane of the inference of negligence was without merit since such an inference is a vigorous one which is not dissipated unless the driver so invading the wrong lane proves he was without fault. Voigt v. Voigt, 22 W (2d) 573, 126 NW (2d) 543.

346.06 History: 1957 c. 260; Stats. 1957 s. 346.06.

The rule that persons with vehicles meeting on the highway shall seasonably drive to the right of the middle of the traveled part does not excuse a wanton injury when a change of position might avoid a collision. O'Malley v. Dorne, 7 W 236.

Where the evidence showed that plaintiff's horse was being driven as far as possible to the right-hand side of the street, and that defendant's horses were about the center of the street, there being a traveled track on each side of the middle of the street, the questions of negligence and contributory negligence were for the jury. Luedtke v. Jeffery, 89 W 136, 61 NW 292.

A driver of an automobile who turned to the left instead of to the right when approaching another automobile, was guilty of negligence per se. Every automobile driver is entitled to assume that another automobile coming toward him will keep to the right. John v. Pierce, 172 W 44, 178 NW 297.

Negligence on the part of a driver of an automobile in getting slightly over the center line of the highway does not render him liable for a collision if such deviation cannot be said to have been the proximate cause. Jeffries v. Streit, 183 W 298, 197 NW 706.

The undisputed fact that the defendant's car, colliding with the plaintiff's car approaching from the opposite direction, was on the wrong side of the road established a prima facie case of negligence on the part of the defendant, and the defendant then had the burden of producing evidence which would overcome the inference of negligence arising from the fact that her car was on the wrong side of the road. Kempfer v. Bois, 255 W 312, 38 NW (2d) 483.

A motorist traveling in the center of the road must seasonably turn to the right on encountering a vehicle approaching from the opposite direction, and his speed, lookout and management and control must be such that he can turn to his proper side of the road to avoid an accident. Gimbel v. Goldman, 256 W 28, 39 NW (2d) 768.

In an action arising out of a collision between an automobile and a truck approaching from opposite directions on a curve in a slippery road on which the main-traveled portion was in the center of the road and consisted only of a path or rut, the evidence sustained the findings that the driver of the truck, who did not diminish his speed or stop when it was apparent that the other driver was not able to get the rear wheels of his car out of the rut, was causally negligent as to speed and management and control, contributing 22½% to the collision, although he succeeded in yielding one half of the traveled portion of the road and was found not negligent in that respect. (Clark v. McCarthy, 210 W 631, distinguished.) Thelen v. Machotka, 268 W 1, 66 NW (2d) 684.

346.07 History: 1957 c. 260; Stats. 1957 s. 346.07.

Legislative Council Note, 1957: This section contains the general rules applicable to overtaking and passing. Additional limitations, exceptions and special rules are stated in ss. 346.08 to 346.11.

Subsection (1) is a restatement of s. 85.16 (1). There is no similar provision in the UVC. Because overtaking and passing on the right will be permitted under certain circumstances if proposed s. 346.08 is adopted, sub. (1) has expressly been limited to cases where a vehicle is being overtaken and passed on the left.

Subsection (2) is a restatement of s. 85.16 (3) and is identical to s. 11-303 (a) of the UVC.

Subsection (3) is a substantial restatement of s. 85.16 (4), with the exception of the reference to situations where passing on the

right is permitted, and is identical to s. 11-303 (b) of the UVC. [Bill 99-S]

1. Audible warning.
2. Pass safely to left.
3. Overtaken vehicle.

1. Audible Warning.

Automobiles and vehicles drawn by horses have equal rights on public highways. It was the custom for a driver coming up behind another vehicle to turn to the left when passing, and for the driver of the vehicle ahead to turn to the right, but that rule or custom was not inflexible and could be varied by circumstances. The vehicle about to pass another one should properly signal the fact to the vehicle to be passed. Koenig v. Sproesser, 161 W 8, 152 NW 473.

Where the undisputed evidence showed that defendant sounded his horn as he was about to pass plaintiff, who without signaling suddenly turned to the left across the highway to enter a private driveway, a verdict for the defendant should have been directed. Spice v. Kuxman, 206 W 293, 239 NW 497.

In an action for injuries sustained in a collision when the defendant's truck attempted to pass the plaintiff's truck proceeding in the same direction, testimony of 2 occupants of the plaintiff's truck that they heard no horn or other warning was purely negative and was insufficient to raise a jury question as to alleged failure of the defendant's driver to give audible warning of intention to pass where it did not appear that the witnesses were directing their senses and attention to determine whether the event was about to occur. Hunter v. Sirianni Candy Co. 233 W 130, 228 NW 766.

Although 85.16 (1), Stats. 1941, does not require that a motorist within a business or residence district shall give warning before passing a vehicle proceeding in the same direction, a motorist may nevertheless be found negligent in failing to give an audible warning on approaching and passing a vehicle within a business or residence district. Straub v. Schadeberg, 243 W 257, 10 NW (2d) 146.

Where the collision occurred outside the city limits, the burden of proof rested on the driver of the overtaking car to establish that the accident occurred in a residence district, in order to relieve him from the duty to blow his horn before overtaking and passing a preceding vehicle. Ellison v. National Cas. Co. 254 W 117, 35 NW (2d) 300.

Where the plaintiff knew that the defendant's truck was approaching from the rear and would pass his farm tractor when he drove onto the roadway from a parked position, the omission from the special verdict of a quesiton asking whether the defendant had failed to blow his horn was not error, since the blowing of the horn could not have warned the plaintiff of anything he did not already know, and hence the failure to blow it could not have been a cause of the ensuing collision. Engsberg v. Hein, 265 W 58, 60 NW (2d) 714.

To comply with 85.16 (1), Stats. 1949, the warning must be given in volume and at a time and place sufficient to inform a reasonably attentive driver that an overtaking motorist intends to pass him and is about to do so. Frankland v. Peterson, 268 W 394, 67 NW (2d) 865.

If the driver of an overtaking vehicle gives a signal capable of being overheard by occupants of the overtaken vehicle it is not necessary for the overtaking driver to show that the signal was actually heard by the occupants. Whether a signal was given is for the jury. Werner Transfer Co. v. Zimmerman, 201 F (2d) 687.

2. Pass Safely to Left.

In an action by a wife for injuries sustained when the left wheels of an automobile driven by her husband went off the pavement onto the soft, snow-covered shoulder of the highway in passing a preceding car, and then crossed the pavement and went into the ditch on the right side of the highway, without the 2 cars colliding or touching in any manner, the evidence supported the jury's findings that neither the defendant husband nor the defendant driver of the other car was negligent. Stikl v. Williams, 261 W 426, 53 NW (2d) 440.

The jury's finding of negligence on the part of the plaintiff in respect to deviating from his lane of traffic at the time of the accident was not inconsistent with its finding of negligence on the part of the defendant in passing too close to the tractor. Engsberg v. Hein, 265 W 58, 60 NW (2d) 714.

3. Overtaken Vehicle.

In an action by a motorist for injuries sustained when his overtaking automobile left the highway while passing a bus traveling to the left of the center of the highway, under evidence showing that such situation existed to the knowledge of the motorist before he attempted to pass, the position of the bus was a condition rather than a cause. The failure of the bus driver to give way to the right when the overtaking motorist signaled to pass, where the bus driver did not hear the signal, was insufficient to show that such driver was negligent. The driver of an overtaken vehicle owes no duty to give way to an overtaking vehicle until he hears its signal to pass or is otherwise advised or informed of its approach and its desire to pass. Negligence on the part of the driver of an overtaken vehicle cannot be predicated upon a mere increase of speed unless the overtaken driver heard a signal or otherwise knew of the intention of the overtaking driver to pass. Swinkels v. Wisconsin Michigan P. Co. 221 W 280, 267 NW 1.

346.08 History: 1957 c. 260; Stats. 1957 s. 346.08.

Legislative Council Note, 1957: This section is new. There is no provision in the present statutes authorizing passing on the right. It is a well-known fact that this is common practice on certain streets and highways, however, and is permitted by the laws of the majority of states. This section states the condition under which passing on the right is permitted. The section is consistent with s. 11-304 of the UVC. [Bill 99-S]

The driver of an automobile overtook a heavy truck loaded with long iron beams and driven near the center of the street, and attempted to pass the truck on the right after

failing to secure any attention to his signals by the truck driver. At the same moment the truck driver turned to the left into a cross street and swung the iron beams into the automobile. The attempt to pass on the right was not conclusive proof of contributory negligence. Maher v. Lochen, 166 W 152, 164 NW 847.

The requirement of audible warning in overtaking or attempting to pass another vehicle was not applicable to a driver who was not attempting to pass a preceding automobile but who was attempting to avoid a collision with it by swerving to the right when it turned back into his path after turning to the left apparently to enter a side road. Kleckner v. Great American Ind. Co. 257 W 574, 44 NW (2d) 560.

A driver passing on the right by driving partly on the shoulder does not have the right of way over another driver turning left across his path into a driveway. Reyes v. Lawry, 33 W (2d) 112, 146 NW (2d) 510.

A driver passing on the right by driving partly on the shoulder cannot justify his conduct by proving that other drivers customarily did so at that place. Reyes v. Lawry, 33 W (2d) 112, 146 NW (2d) 510.

346.09 History: 1957 c. 260; Stats. 1957 s. 346.09; 1959 c. 542.

Legislative Council Note, 1957: This section sets forth certain limitations on passing on the left and constitutes some of the additional restrictions and limitations mentioned in s. 346.07.

Subsection (1) is basically a restatement of s. 85.15 (2). The second and third sentences of sub. (1) have been substituted for the statement in the present law to the effect that "the provisions of this subsection shall not apply upon . . . highways laned for traffic; and . . . vehicles traveling in marked lanes shall move in the direction permitted in such lanes." At first glance, this statement reads like an exception to the requirement that the left side of the roadway must be free of oncoming traffic before driving on the left of the center of the roadway is permitted in passing another vehicle, but such a construction would of course be ridiculous. It is believed that it was intended to prohibit absolutely driving on the left side of the center of a 4-lane highway when overtaking and passing.

The first sentence of sub. (1) is similar to s. 11-305 of the UVC. In addition, the UVC contains a requirement that the passing vehicle must return to the right half of the roadway before coming within 100 feet of a vehicle approaching from the opposite direction.

Subsection (2) is a restatement of s. 85.16 (5). The present law is not expressly limited to 2-way roadways, but the operator of a vehicle on a one-way highway or divided highway should not be required to anticipate that someone might unlawfully approach in the opposite direction in his lane of travel. Subsection (2) is consistent with s. 11-306 (a) 1 and (b) of the UVC.

Subsection (3) is new. It would give the force of law to no-passing zones. Prior to this time, they have been merely advisory. [Bill 99-S]

The responsibility of avoiding collision with a vehicle ahead rests on the overtaking driver, and he must avail himself of opportunities to obtain information of the speed of such preceding vehicle and must so regulate his speed as to be able to stop in time to avoid collision in an effort to return to his lane of travel. Beck v. Flasch, 206 W 431, 240 NW 190.

In an action for damages where plaintiff's automobile passing trucks on a curve collided with defendant's truck, which skidded on wet pavement into plaintiff's car when defendant approaching from the opposite direction applied his brakes to avoid the collision, the verdict for plaintiff required reversal in the interests of justice, under 251.09, because of absence of evidence establishing the distance between a knoll and the place of collision, which, in view of 85.16 (5), Stats. 1929, was of controlling importance on the issues of negligence and contributory negligence. Schuyler v. Kernan, 209 W 236, 244 NW 575.

The negligence of the driver of a noncolliding northbound bus, who traveled in the west lane of the highway abreast of a northbound automobile in a second unsuccessful attempt to pass the automobile, and then, traveling at top speed and creating a cloud of dust, took to the west gravel shoulder to avoid colliding with an approaching southbound truck, was a proximate cause of the collision between the truck and the automobile, and a request of his attorney for an instruction to the jury on "intervening cause" was properly refused under the facts. Eliason v. Northland Greyhound Bus Lines, Inc. 263 W 435, 57 NW (2d) 675.

It is the duty of a motorist to stay in his lane of travel behind a preceding car or, on pulling out to pass, to keep such a position on the road as will allow him enough space to return to his lane safely so as to avoid collision with a car approaching from the opposite direction. Raddant v. Tamminen, 266 W 49, 62 NW (2d) 428.

346.10 History: 1957 c. 260; Stats. 1957 s. 346.10.

Legislative Council Note, 1957: This is a restatement and clarification of s. 85.16 (6). With reference to when passing at intersections or railroad crossings is not prohibited, the present law uses the phrase "highways which are properly marked by traffic lanes." The requirement of marked lanes has been eliminated in the case of railroad crossings and passing is not prohibited if the roadway is of sufficient width to permit 2 or more lines of vehicles lawfully to proceed in the same direction at the same time, whether or not lanes have been marked. In regard to passing at intersections, the requirement of marked lanes has been retained but clarified.

With reference to the exception contained in sub. (3) "outside of a business or residence district" has been substituted for "rural highways" on the ground that it is more definite. For the same reason "official traffic sign or signal, regardless of whether such sign or signal was intended to guide, direct, warn or regulate traffic" was substituted for "proper sign."

The UVC differs substantially from Wisconsin law. Section 11-306 (a) 2 prohibits driving on the left side of the roadway when

approaching within 100 feet of an intersection or railroad crossing, except on one-way roadways. [Bill 99-S]

85.16(2), Stats. 1933, applies at intersections, although 85.16 (6) prohibits passing at intersections and is not intended solely to prevent injuries to vehicles, but imposes a duty to all persons in vehicles who are likely to be injured by violation of the statutory mandate. Cherney v. Simonis, 220 W 339, 265 NW 203.

The defendant was entitled to an instruction that it was unlawful for the operator of any vehicle to overtake and pass another at an intersection of highways, where there was evidence in the case that the collision occurred as the plaintiff was attempting to overtake and pass the defendant's automobile at an intersection. Geason v. Schaefer, 229 W 8, 281 NW 681.

A collision took place at an intersection in the open country on a highway properly marked by traffic lanes when defendant was making a left turn. Under 85.16 (6) the defendant did not have the right to assume that no one would pass; further, the plaintiff had blown his horn to warn that he expected to pass. Even though the trial court found the plaintiff negligent in attempting to pass at the intersection it was not required to hold that the plainiff's causal negligence was at least equal to that of the defendant. (J. W. Cartage Co. v. Laufenberg, 251 W 301, distinguished.) Kaestner v. Preferred Accident Ins. Co. 257 W 6, 42 NW (2d) 260.

At common law, there was no limitation on a driver's right to pass at an intersection, but 85.16 (6) limits that right by making it unlawful for the operator of a vehicle to overtake and pass another vehicle proceeding in the same direction at an intersection of highways, unless permitted to do so by a traffic officer or on highways properly marked by traffic lanes. Topham v. Casey, 262 W 580, 55 NW (2d) 892.

In an action for injuries sustained in a collision at an intersection of a 3-lane highway, properly marked by the traffic lanes, and a side road, when the plaintiff truck driver was attempting to pass and the defendant automobile driver was attempting to make a left turn into the side road, the evidence warranted the jury's findings that the plaintiff was not causally negligent in any respect, and that the defendant was causally negligent in deviating from his traffic lane, in turning to the left without giving a timely signal of intention to turn, and in failing to maintain a proper lookout. Topham v. Casey, 262 W 580, 55 NW (2d) 892.

85.16 (6), declaring it unlawful for the operator of a vehicle to overtake and pass another vehicle "proceeding" in the same direction at an intersection of highways, does not contemplate that the driver of a following car must wait for an indefinite period before attempting to pass a vehicle stopped and blocking a lane of traffic. Funk v. Woyak, 264 W 437, 59 NW (2d) 431.

The driver of a car on an arterial, hit by a car which did not stop for the sign at an intersection where vision was obscured, was negligent in passing another car at the intersection, but such negligence was not causal, since the driver on the intersecting highway would have hit him regardless of his position on the highway. Roeske v. Schmitt, 266 W 557, 64 NW (2d) 394.

It was not error for the trial court to refuse to instruct in language of 346.10 (2), Stats. 1967, that a motorist should not overtake another vehicle at any intersection unless the roadway is marked or posted for 2 or more lanes, it appearing that there were in fact 2 lanes of traffic proceeding in a northerly direction. Menge v. State Farm Mut. Auto. Ins. Co. 41 W (2d) 578, 164 NW (2d) 495.

346.11 History: 1957 c. 260; Stats. 1957 s. 346.11.

Editor's Note: This section was derived from 85.16 (11), Stats. 1955, and the latter provision was derived from sec. 4, ch. 355, Laws 1905. The 1905 legislation was applied in McCummins v. State, 132 W 236, 112 NW 25.

346.12 History: 1957 c. 260; Stats. 1957 s. 346.12.

Legislative Council Note, 1957: This is a restatement of s. 85.22 (1) and is consistent with s. 11-1304 of the UVC.

Subsection (2) of s. 85.22 has been dropped. It provided that a vehicle could pass on either side of a safety zone on a highway having 2 street car tracks or on a one-way highway. Passing to the left of a safety zone is not prohibited in any event unless it involves driving to the left of the center of a roadway and even then it is not prohibited on one-way highways. Hence, this provision did not add anything to the law except a positive statement of what could be done. [Bill 99-S]

346.13 History: 1957 c. 260; Stats. 1957 s. 346.13.

Legislative Council Note, 1957: This section sets forth certain rules to be followed when driving on highways laned for traffic. It is practically the same as s. 11-309 of the UVC and restates Wisconsin law with certain changes to be noted.

Subsection (1) is a revision of s. 85.16 (2) which provides that "the operator of a vehicle upon a roadway shall not deviate from the traffic lane in which he is operating without first ascertaining that such movement can be made with safety to other vehicles approaching from the rear." "Traffic lane" is defined as "that portion of a roadway paralleling the center line of the roadway having a width of not less than seven feet and not more than ten feet, whether or not such portion is indicated by marks or markers." The difficulty of applying present s. 85.16 (2) stems from the definition of traffic lane and is illustrated by the case of Balzer v. Caldwell, 220 W 270, 263 NW 705 (1936). The case involved a 50-foot roadway without marked lanes. The vehicle alleged to have deviated from its traffic lane was operated slightly more than 14 feet from the near curb. The court found it impossible to apply the definition of traffic lane. Briefly, it concluded that it was impossible to say whether there were 5 10-foot lanes (in which case the vehicle in question did not deviate) or whether there were 7 7-foot lanes (in which case the vehicle did deviate) or whether there was some other combination of lanes. The definition of "traffic lane" there-

fore has been dropped and sub. (1) (present s. 85.16 (2)) is applicable only where lanes are clearly indicated, whether by actual markings or by the longitudinal tar strips which sometimes are used to divide concrete roadways into lanes. This does not mean, however, that a person operating on a roadway on which lanes are not marked may indiscriminately deviate from his lane of travel. If he does, he will be liable under s. 346.34 which provides that "no person shall . . . turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. In the event any other traffic may be affected by such movement, no person shall so turn any vehicle without giving an appropriate signal . . . ." This section applies whether or not the roadway is laned.

Subsection (2) is a restatement of s. 85.15 (5). The provision has expressly been limited to 2-way roadways. This is the obvious intent of the present law also.

Subsection (3) directs vehicles to proceed according to directions given by particular signs or markings, such as the allocation of a lane to slow-moving traffic or the allocation of 2 lanes of a 3-lane highway for vehicles moving in one direction and only one lane for vehicles moving in the opposite direction. It is a substantial restatement of the directive in s. 85.15 (2) that "vehicles traveling in marked lanes shall move in the direction permitted in such lanes." [Bill 99-S]

Editor's Note: Amendment 1-A to Bill 99-S, by the same author, substituted "clearly indicated longitudinal joints" for "longitudinal tar strips" and carried the following note: "Amendment clarifies the language. Longitudinal joints often are indicated in other ways than by tar strips."

85.16 (2), Stats. 1931, prohibiting the operator of a vehicle from deviating from a traffic lane without first ascertaining that such movement can be made with safety to vehicles approaching from the rear, together with 85.10 (34), defining a traffic lane, does not require an automobile to keep precisely within the limits of unmarked traffic lanes, and does not intend that the liability of a driver for deviation from the path along which he is traveling shall depend solely upon whether in so doing he crosses an unmarked lane; and does not limit the liability of a driver which would exist independently of statute. Balzer v. Caldwell, 220 W 270, 263 NW 705.

The requirement that a driver shall not deviate from his traffic lane without first ascertaining that such movement can be made with safety to other vehicles approaching from the rear, is applicable at intersections as well as at points other than intersections. Stenson v. Schumacher, 234 W 19, 290 NW 285.

85.16 (2), prohibiting deviating from a traffic lane without ascertaining that such movement can be made with safety, applies to the entire roadway, including intersections. J. W. Cartage Co. v. Laufenberg, 251 W 301, 28 NW (2d) 925.

While defendants were still in the right traffic lane a bus had moved over to the left lane of traffic and was about to pass the defendants' car, when, in accordance with the car driver's intention to turn into a park, there was a sudden turn of his car on an angle of at least 45 degrees invading the left traffic lane just ahead of the bus. Defendant improperly deviated from the proper traffic lane, that is, the one in which he was driving when the bus undertook to pass, because he turned without first ascertaining that such movement could "be made with safety to other vehicles approaching from the rear," and hence was liable for damages sustained by the bus in running off the road to avoid a collision. Green Bay-Wausau Lines, Inc. v. Mangel, 257 W 92, 42 NW (2d) 493.

It is the intent of the statutes that, where highways are laned for traffic, vehicles must stay in the lanes, subject to the rights given by the "turning statutes," and that other users of the highways have a right to rely on such conduct. Topham v. Casey, 262 W 580, 55 NW (2d) 892.

The provisions of 85.16 (2) that the operator of a vehicle on a roadway shall not deviate from the traffic lane in which he is operating without first ascertaining that such movement can be made with safety to other vehicles approaching from the rear, apply to the entire roadway. Schweidler v. Caruso, 269 W 438, 69 NW (2d) 611.

Negligence in deviating from the traffic lane in which he was operating without first ascertaining that such movement could be made with safety to other vehicles approaching from the rear, together with failing to give an appropriate signal of intention to turn, was causal as a matter of law. Swartz v. Sommerfeldt, 272 W 17, 74 NW (2d) 632.

A driver of a motor vehicle on a laned highway may proceed on the assumption that other drivers will stay in their lanes until it is reasonably foreseeable that his path will be invaded. Ballas v. Superior Mut. Ins. Co. 13 W (2d) 151, 108 NW (2d) 192.

A driver going downhill where two lanes are marked for slow and fast moving traffic coming uphill, and intending to turn left, should remain in his right-hand lane until he reaches the intersection, instead of angling into the center lane, even if no traffic is coming uphill in that lane. Niedbalski v. Cuchna, 13 W (2d) 308, 108 NW (2d) 576.

346.14 History: 1957 c. 260; Stats. 1957 s. 346.14.

Legislative Council Note, 1957: Subsection (1) is a restatement of the first sentence of s. 85.32 (1) and is identical to s. 11-310 (a) of the UVC. The last sentence of s. 85.32 (1), providing that "the provisions of this subsection shall not prevent overtaking and passing nor does it apply to funeral processions," has been dropped. This provision was enacted at a time when the law specified a fixed distance of 300 feet between vehicles, but it has no place in a section which merely provides that one vehicle shall not follow another more closely than is reasonable and prudent. Certainly, there is no intention to make an exception to that requirement.

Subsection (2) is a restatement of s. 85.32 (2), with the exception that the statutory

prima facie case has been added. This should aid in enforcement of the law. [Bill 99-S]

The fact that the driver of a gravel truck, because of the unexpected conduct of the driver of a yellow truck, was required to act suddenly and in the face of imminent danger, raised a jury question as to whether his following a malt truck in the manner he did was a cause of the collision and injury, or whether the evidence established a new and intervening cause. Meyer v. Neidhoefer & Co. 213 W 389, 251 NW 237.

In an action for injuries sustained when a hearse at the head of a funeral procession came to a stop on the highway, and the second, third and fifth following cars came to a stop without contacting the vehicles respectively ahead of them, but the fourth following car, in which the plaintiff was riding, failed to stop and collided with the rear of the third following car, the evidence established that the stopping of the hearse on the highway, without leaving the required statutory clearance for other vehicles to pass, was not a proximate cause of the collision of the fourth following car with the third following car, and that the negligence of the driver of the fourth following car as to lookout, following too closely and management and control was an intervening and the sole cause of such collision. Retzlaff v. Soman Home Furnishings, 260 W 615, 51 NW (2d) 514.

It is the duty of the driver of a following car, under circumstances where he has ample opportunity to do so, to have his car under such control or to maintain such a distance behind the preceding vehicle as will enable him to stop his car and avoid a collision. Phillips v. Haring, 262 W 174, 54 NW (2d) 200.

In an action for injuries sustained when the left side of the plaintiff's following automobile struck the tail gate of the defendant's left-turning tractor-trailer unit within an intersection, the evidence established that the slowing down of the truck was gradual and was apparent to the plaintiff for some distance before the left turn was made, and that the plaintiff could have stopped completely or safely passed the truck on the right if he had not followed so closely and had maintained adequate control of his car, and that, as a matter of law, the plaintiff's causal negligence in respect thereto was as great as the defendant's causal negligence in failing to give a signal of intention to turn. Phillips v. Haring, 262 W 174, 54 NW (2d) 200.

The driver of a dump truck, coming up close behind a slow-moving road grader with the intention of passing as soon as he could do so with safety, did not thereby violate the statute as to distance between vehicles proceeding in the same direction; and in such situation he was not negligent for failing to provide space between his truck and the road grader for the driver of an overtaking semitrailer when such driver discovered that he could neither pass nor get back into his own lane of travel in time to avoid collision with an automobile approaching from the opposite direction. Schmidt v. C. Schlei Dray Line, 7 W (2d) 374, 97 NW (2d) 194.

In order properly to perform his duty not to follow too closely the driver of a motor vehicle may not always safely assume that a vehicle ahead of him will not stop instantaneously but will slow down and travel a short distance before coming to a complete stop, and each case will depend on its own circumstances. Hibner v. Lindauer, 18 W (2d) 451, 118 NW (2d) 873.

346.14 is directed against "tailgating"; it does not necessarily apply simply because there is a rear-end collision. Milwaukee & S. T. Corp. v. Royal Transit Co. 29 W (2d) 620, 139 NW (2d) 595.

346.14 (2), Stats. 1967, providing that a truck having a gross weight of more than 10,000 pounds must follow other vehicles at a distance of no less than 500 feet unless it is in process of overtaking and passing, is applicable to double-lane highways. Sylvester v. Meditz, 278 F Supp. 810.

346.15 History: 1957 c. 260, 615; Stats. 1957 s. 346.15; 1961 c. 205.

346.16 History: 1957 c. 260, 294; Stats. 1957 s. 346.16.

346.17 History: 1957 c. 260; Stats. 1957 s. 346.17; 1965 c. 187; 1967 c. 292.

Legislative Council Note, 1957: This is a restatement of penalties applicable to the comparable sections in the present law, with the exception that the following penalties have been made applicable to sections which presently are not in the law or which do not carry a penalty:

Section 346.08, passing on the right when not permitted, has been made subject to the penalty in sub. (2).

Section 346.09 (3), passing in a marked no-passing zone, has been made subject to the penalty in sub. (2).

Section 346.13 (2), unlawfully driving in the center lane of a 3-lane highway, has been made subject to the penalty in sub. (2).

Section 346.13 (3), failing to drive in the lane designated by signs or markings, has been made subject to the penalty in sub. (1). To the extent that s. 346.13 (3) is included in present s. 85.15 (2), this is a reduction in penalty, for the penalty stated in sub. (2) presently is applicable to s. 85.15 (2). [Bill 99-S]

Penalties for subsequent conviction imposed by 85.91 (2a), created by sec. 2, ch. 161, Laws 1949, apply only where the offense takes place after prior conviction. 38 Atty. Gen. 259.

346.18 History: 1957 c. 260; Stats. 1957 s. 346.18; 1959 c. 69; 1961 c. 205; 1963 c. 189.

Legislative Council Note, 1957: When 2 vehicles approach each other on such a course and at such a speed that there would be a collision if both continue their same course and speed, it is obvious that the driver of one of the vehicles should be required to yield the right of way to the other. This section states the general rules as to which driver must yield. The right of way rules probably are involved in more automobile accident litigation than any of the other rules of the road. The Supreme Court has held that there are no rules of right of way other than the statutory rules. Reynolds v. Madison Bus Co.

250 W 294, 26 NW (2d) 653 (1947). The statutory rules, however, have been elaborated by judicial interpretation. Some of the points which have been decided will be discussed in connection with the pertinent statutory provisions.

The first sentence of sub. (1) is a restatement of the first sentence of s. 85.18 (1). Two vehicles enter or approach an intersection "at approximately the same time" when there would be imminent hazard of collision if both continued the same course at the same speed. Vogel v. Vetting, 265 W 19, 60 NW (2d) 399 (1953).

The last sentence of sub. (1) is a restatement of the last sentence of s. 85.18 (1). There is no similar provision in the UVC. Even though a driver's right of way may be forfeited as a result of excessive speed, the other driver does not thereby gain the right of way. Schill v. Meers, 269 W 653, 70 NW (2d) 234 (1955).

Subsection (2) is a revision of s. 85.18 (5). The present law relating to right of way of left-turning vehicles seems to prescribe a shifting right of way. The operator of a vehicle intending to turn left must give the operator of a vehicle approaching from the opposite direction a reasonable opportunity to avoid a collision. Having so done, the law seems to place upon the approaching vehicle the duty to yield to the left-turning vehicle. This is inconsistent with the popular notion that the driver of the left-turning vehicle must yield to through traffic. It is true that the UVC and the laws of several other states are phrased in terms of the shifting right of way concept, but the result seemingly is an unduly complicated rule to administer in civil litigation. Moreover, placing the burden of yielding upon the operator of the left-turning vehicle does not relieve the driver of the other vehicle from the duty to exercise due care. As was said in Vogel v. Vetting, 265 W 19, 60 NW (2d) 399 (1953), the driver entitled to the right of way may rely on the assumption that the other driver will yield him the right of way, but that assumption disappears when it appears or should appear to him as a person of ordinary and reasonable prudence that the other driver will not or cannot yield. It then becomes the duty of the favored driver to exercise ordinary care in the management and control of his automobile.

Subsection (3) is a restatement of s. 85.18 (4). The comparable UVC section is 11-403 which again employs the shifting right of way concept.

Subsection (4) is a restatement of s. 85.18 (9). "Point of access other than another highway" was substituted for "garage or private driveway" as being more inclusive. The provision is consistent with s. 11-404 of the UVC. In connection with s. 85.18 (9), restated in sub. (4), it has been held that the fact that a statute requires a driver to yield the right of way to all vehicles approaching on a particular highway does not mean that he can never enter such highway as long as there is a vehicle approaching. It means that he has a duty to look a sufficient distance to ascertain that anyone approaching upon the highway at a lawful rate of speed would not interfere with his entering upon and reaching his proper position upon the roadway and then exercise reasonable judgment as to the time it will take him to reach such position. Heinecke v. Hardware Mutual Casualty Co. 264 W 89, 58 NW (2d) 442 (1953).

Subsection (5) is a restatement of s. 85.18 (10). [Bill 99-S]

1. General rule at intersection.
2. Turning left at intersection.
3. Rule at intersection with through highway.
4. Entering from alley or nonhighway.
5. Moving from parked position.
6. Rule where yield sign installed.

1. General Rule at Intersection.

Although defendant had the right of way at a street crossing, if plaintiff, approaching from the defendant's left, was justified in believing from his observation at some distance from the crossing that he had ample time to cross ahead of defendant's cab, he was not negligent, as a matter of law, in not making subsequent observations. Werner v. Yellow C. Co. 177 W 592, 188 NW 77.

An instruction to a jury respecting the right of way of vehicles at highway crossings, although given in the language of the statute, was made erroneous by the addition of this: "The rule has no application where the driver of the vehicle approaching another from the left is, in the exercise of ordinary care, already crossing the place of intersection before the other vehicle has arrived at the intersection." This construed the statute as fixing the controlling intersection point at the crossing of the center lines of the highways, and implied that when the vehicle approaching from the left has passed the center line the statutory duty of yielding the right of way has also passed, whereas the determining point is the point of intersection of the paths of the respective vehicles. Bertschy v. Seng, 181 W 643, 195 NW 854.

Negligent failure to observe the right of way rule is negligence in law. Bratonja v. Wisconsin I. & C. Co. 182 W 206, 196 NW 244.

While a truck driver, well acquainted with a dangerous crossing, was not bound to stop before crossing, he was required to look and listen within the zone imposing that duty, and his failure so to do, without sufficient cause, constituted more than a slight want of ordinary care. Sweeo v. Chicago & Northwestern R. Co. 183 W 234, 197 NW 805.

The fact that an automobile driver has the right of way at a street intersection does not absolve him from the duty to use ordinary care for his own safety. Lozon v. Leamon B. Co. 186 W 84, 202 NW 296.

Failure to keep a lookout for cars approaching from the left at a street intersection does not necessarily prevent recovery on the part of one who is on the proper side of the intersecting highway and has the right of way hereunder. Balvoll v. Pinnow, 189 W 535, 208 NW 466.

A truck driver, concluding on entering a street intersection that he had ample time to cross ahead of the approaching automobile,

was not bound to keep continuous lookout. Trautmann v. Charles Schefft & Sons Co. 201 W 113, 228 NW 741.

Where a motorist entering a street intersection first took no thought of whether a motorist approaching rapidly from the right would slow down, even though it was manifest that a collision would occur if both kept on in their lines of travel at their respective rates, neither had the right of way. Where, under the circumstances, neither of the motorists had the right of way at the street intersection, each was bound to use due care to avoid collision. To justify a motorist's reliance on judgment in proceeding across a street intersection when no emergency exists, judgment must be a reasonable one under the circumstances existing. If, from the circumstances, collision was not reasonably to be anticipated as probable by a motorist entering a street intersection before a motorist approaching from the right, then the motorist entering the intersection first was not negligent in proceeding. Wallace v. Papke, 201 W 285, 229 NW 58.

A motorist approaching an intersection may rightfully proceed if he can see a sufficient distance to ascertain that anyone coming from beyond at a lawful rate will not interfere. Olk v. Marquardt, 203 W 479, 234 NW 723.

Both parties must be vigilant at street intersections to avoid collision. A motorist who enters a street intersection without looking to the right at a point where looking would be effective, and whose car is struck by another car entering the intersection from the right is guilty of negligence as a matter of law. Thieme v. Weyker, 205 W 578, 238 NW 389.

Highland boulevard has a parkway 40 feet wide which separates the 2 roadways. In determining the right of way and proper control and outlook each roadway is to be considered a separate street. Geyer v. Milwaukee E. R. & L. Co. 230 W 347, 284 NW 1.

Where the jury found that the drivers of both automobiles involved in an intersection collision were negligent in failing to yield a right of way, the probability that the jury's findings as to comparative negligence were based upon an erroneous premise required a new trial. Rosenow v. Schmidt, 232 W 1, 285 NW 755.

Where the jury found on sufficient evidence that the defendant was negligent as to speed in entering the intersecting highway on which the deceased motorist was coming from the left, the refusal of the court to submit to the jury a question inquiring whether the deceased was negligent under 85.18 (1) for not yielding the right of way to the defendant's truck, was not prejudicial error, since, in view of such finding, the defendant had forfeited the right of way and the deceased was under no statutory duty to yield it. Eberdt v. Muller, 240 W 341, 2 NW (2d) 367.

Where the plaintiff's eastbound automobile and the defendant's southbound automobile, colliding within a street intersection, did not approach or enter the intersection at about the same time, the defendant, although approaching from the plaintiff's left, owed no duty to yield the right of way to the plaintiff. Anderson v. Potts, 250 W 510, 27 NW (2d) 495.

In an action for injuries sustained in a collision at an intersection, the evidence established that the defendant's truck entered the intersection appreciably before the plaintiff's car and that the collision took place when defendant's truck had nearly passed out of the intersection, so that the plaintiff did not have the right of way by reason of approaching on the defendant's right. Himebauch v. Ludtke, 256 W 1, 39 NW (2d) 684.

In the exercise of ordinary care, the plaintiff driver, approaching an intersection and observing the defendant's automobile approaching on the right at about the same distance from the intersection, should have had his own car under such control as to be able to yield the right of way, in the absence of any indication that the defendant driver would slow down or stop, and in such case he was negligent in relying on any assumption that the defendant driver would stop and allow him to pass. Wagner v. Home Mut. Cas. Co. 262 W 673, 56 NW (2d) 539.

As used in 85.18 (1), the word "unlawful" does not necessarily mean contrary to some statute or ordinance, but means unauthorized by law. Johnson v. Firemen's Fund Ind. Co. 264 W 358, 59 NW (2d) 660.

The driver of a motor vehicle having the right of way at a nonarterial intersection, over a driver coming from the left, is not required to stop, look, and listen but, having exercised ordinary care in all the required particulars, including not knowing or having reason to know that the oncoming car will not or cannot stop, he may reasonably conclude that he will be protected in his use of the right of way. Kreft v. Charles, 268 W 44, 66 NW (2d) 618.

Where a driver stopped his automobile behind a bus discharging passengers, and then, when the bus turned right at the intersection, made a single observation for traffic approaching on the intersecting street and proceeded into and across the intersection without ever seeing a car approaching from the right until the collision, although there was no stationary obstruction to his view to the right, he was negligent as to lookout as a matter of law. Bailey v. Zwirowski, 268 W 208, 67 NW (2d) 262.

The operator of an automobile is obliged to make efficient lookout to avoid striking an approaching vehicle, whether moving toward him or crossing his path, and this is his duty even though the dominant cause of ensuing collision may be the conduct of other driver. Crye v. Mueller, 7 W (2d) 182, 96 NW (2d) 520.

The driver of an eastbound automobile had the duty of making an efficient observation with respect to southbound traffic approaching on an intersecting arterial street, and he could not enjoy the right of way over the driver of an approaching southbound automobile unless he made such observation. Rensink v. Wallenfang, 8 W (2d) 206, 99 NW (2d) 196.

The jury's finding that the westbound driver was not negligent as to yielding the right of way was inconsistent with the finding that

the southbound driver was not negligent as to speed. Baier v. Farmers Mut. Auto. Ins. Co. 8 W (2d) 506, 99 NW (2d) 709.

It is not necessary that negligent speed be found causal in order to deprive a driver of his statutory right of way. Van Wie v. Hill, 15 W (2d) 98, 112 NW (2d) 168.

The directional right of way afforded a vehicle on the right over one on the left when both approach or enter an intersection at approximately the same time is not forfeited because the favored vehicle unnecessarily stops at the uncontrolled intersection. Brunette v. Dade, 25 W (2d) 617, 131 NW (2d) 340.

2. Turning Left at Intersection.

Where plaintiff had stopped at a highway intersection, and then, after he had turned to his left and while on the intersection, observed defendant's car approaching and accelerated his speed in an effort to pass the point of convergence of the 2 cars, the question of contributory negligence is clearly for the jury. Cheesman v. Werner, 191 W 330, 210 NW 820.

An automobilist traveling at a lawful speed has no duty to anticipate that an automobile approaching from the opposite direction would suddenly turn to the left to enter a private driveway. In this case the driver so turning to the left was guilty of negligence as a matter of law. Lardeau v. Johnson, 203 W 509, 234 NW 710.

85.18 (5) has no application where a vehicle making a left turn within an intersection becomes involved in a collision with a vehicle approaching the intersection from the left. Stylow v. Milwaukee E. R. & T. Co. 241 W 211, 5 NW (2d) 750.

3. Rule at Intersection With Through Highway.

In an action for injuries resulting from a collision of automobiles within a highway intersection, the evidence did not sustain a finding of contributory negligence of the plaintiff, who had the right of way on a county trunk highway, in failing to slow down or stop, although he saw the other car approaching, but apparently slowing to a stop 50 feet away, on the crossroad. Huber v. Hinzpeter, 206 W 456, 240 NW 157.

It is the duty of one approaching an arterial highway to stop at a point where he may efficiently observe traffic approaching on the arterial highway. Gumm v. Koppke, 227 W 635, 278 NW 447.

A motorist on an arterial highway, with knowledge of the location of a stop sign, has the right to rely, when crossing an intersection, on the assumption that a motorist approaching on the intersecting street will observe the stop sign; and the right to make this assumption cannot be taken away because the stop sign, without the knowledge of the driver on the arterial highway, has been accidentally turned so as to fail to conform with the requirements of law. Schmit v. Jansen, 247 W 648, 20 NW (2d) 542.

Plaintiff's right to enter the intersection in the path of the approaching car depended, not on his conclusion that he could do so safely, but on the quality of the lookout on which his conclusion was founded, and a conclusion which was the product of deficient lookout would confer no rights on him. (Trautmann v. Charles Schefft & Sons Co. 201 W 113, distinguished.) Thoms v. Gunnelson, 263 W 424, 57 NW (2d) 678.

Stopping a car at an arterial as required by 85.69 does not give the driver the right of way over a car approaching from the left; part of the purpose of requiring the stop is to enable the driver to observe traffic to determine whether he can safely enter the intersection. The driver on the arterial can act on the assumption that such observation will be made. Kraskey v. Johnson, 266 W 201, 63 NW (2d) 112.

It was the duty of the driver, after stopping for the arterial, not to enter the intersection until he had made an efficient observation as to traffic approaching from either direction and particularly from his right. The evidence did not sustain the jury's finding that the deceased driver of an automobile, found causally negligent as to lookout in failing to see the approach of a truck until, apparently, too late to have taken any effective measure to avoid a collision, was also causally negligent as to management and control. Weber v. Mayer, 266 W 241, 63 NW (2d) 318.

The term "entering" means "going or moving into," and the term "approaching" the intersection involves a concept of drawing near in space and time, and under such statute, a vehicle on an arterial highway may properly be said to be approaching the intersection when it is not so far distant therefrom that, considering the rate of speed at which it is traveling, it would be reasonable to assume that a collision would occur were a vehicle, stopped at the intersection, to start in motion and move into the path of the vehicle on the arterial highway. Plog v. Zolper, 1 W (2d) 517, 85 NW (2d) 492.

One operating a vehicle on an arterial highway, when entering or approaching an intersection, has an absolute right of way over an operator of a vehicle on a nonarterial highway who is obliged to stop, observe, and calculate before entering the arterial highway. In cases of arterial intersection accident, questions as to both lookout and failure to yield the right of way should be submitted to the jury. Plog v. Zolper, 1 W (2d) 517, 85 NW (2d) 492.

Since the jury could conclude, from plaintiff's own testimony, that his truck could not be seen when defendant made his observation for approaching traffic, it was error for the trial court to find defendant negligent as a matter of law in respect to lookout. Theisen v. Bock, 6 W (2d) 515, 95 NW (2d) 379.

While unlawful speed on an arterial may be an element of negligence, it does not work a forfeiture of the right-of-way as it would on a nonarterial highway. Magin v. Bemis, 17 W (2d) 192, 116 NW (2d) 129.

A driver of a motor vehicle on an arterial highway has no duty to anticipate that the user of an intersecting highway will not yield the right-of-way. Schlueter v. Grady, 20 W (2d) 546, 123 NW (2d) 458; Hollie v. Gilbertson, 38 W (2d) 245, 156 NW (2d) 462.

While one who travels on an arterial high-

way may rightfully rely on an assumption that his right-of-way will be respected, this does not excuse a driver who has the right-of-way from maintaining a proper lookout. Henden v. Passow, 39 W (2d) 119, 158 NW (2d) 551; Schmiedeck v. Gerard, 42 W (2d) 135, 166 NW (2d) 136.

See note to 895.045, (general), citing Meissner v. Papas, 124 F (2d) 720.

4. Entering From Alley or Nonhighway.

Where the fact that the driver approaching on a private driveway was not going to stop before crossing the near limits of the roadway, and was not going to yield the right of way, could not have become apparent to the driver of the truck approaching from the right until the automobile emerged from behind bushes that extended to within 5 feet of the roadway, it was only then that any negligence on the part of the driver of the truck as to lookout, speed, or control and management could be deemed to have become operative; and in the circumstances the causal negligence of the driver of the automobile in the respects mentioned was greater, as a matter of law, than the causal negligence of the driver of the truck. Kasper v. Kocher, 240 W 629, 4 NW (2d) 158.

The evidence sustained the jury's finding that the defendant was causally negligent as to lookout for traffic approaching on the highway and was consequently under a duty to yield the right of way in entering the highway from a private driveway. Landskron v. Hartford Acc. & Ind. Co. 241 W 445, 6 NW (2d) 178.

5. Moving From Parked Position.

In an action for injuries sustained when a car, in which the plaintiff was a passenger, moved from a parking place and started across the highway, and collided with a car approaching on the highway, wherein the jury found that the driver of the approaching car, cross-complaining against the other driver for contribution and for property damage, was causally negligent, and to a greater degree than was the other driver, the refusal to instruct the jury on the right of the driver of the approaching car to assume that the other driver, emerging from a parking place off the highway, would comply with the rules of the road and yield the right of way, was prejudicial error under the evidence. Gibson v. Streeter, 241 W 600, 6 NW (2d) 662.

6. Rule Where Yield Sign Installed.

The duty imposed upon a driver at a yield sign is less than the duty to stop at a stop sign—the latter obligation to stop being absolute, followed by a duty of lookout, including a calculation of interference with the right of way of other vehicles, whereas the former duty to stop arises after the required efficient lookout, including calculation. Sailing v. Wallestad, 32 W (2d) 435, 145 NW (2d) 725.

346.19 History: 1957 c. 260, 615; Stats. 1957 s. 346.19; 1959 c. 542, 641.

On applicability of rules of the road to authorized emergency vehicles see notes to 346.03.

346.20 History: 1957 c. 223, 260; Stats. 1957 s. 346.20; 1959 c. 27.

Legislative Council Note, 1957: This is a restatement and clarification of ss. 85.18 (6) and 85.25. The word "bright" has been added before the word "headlights" to indicate that parking lights are not sufficient. The statement in the present law that vehicles in a funeral procession have the right of way at intersections "excepting in case of an emergency" has been modified to state expressly that operators of vehicles in funeral processions must yield the right of way to authorized emergency vehicles making use of their sirens. The requirement that the leading vehicle in the procession must stop at stop signs is new. The present law refers only to traffic control signals but there obviously is just as much reason to require the lead vehicle to stop at stop signs. [Bill 99-S]

346.21 History: 1957 c. 260; Stats. 1957 s. 346.21.

346.22 History: 1957 c. 260; Stats. 1957 s. 346.22; 1967 c. 292.

346.23 History: 1957 c. 260; Stats. 1957 s. 346.23; 1959 c. 19; 1965 c. 62.

An infant pedestrian who made an observation of traffic before entering a city street intersection with the traffic lights in his favor, and another observation when he reached the center of the street, but who failed to see a truck until immediately before it struck him, although it was approaching in plain view within 200 feet at the time of his first observation, was not guilty of contributory negligence, as a matter of law, for failure to keep a proper lookout, in view of 85.44 (2), Stats. 1929, giving a pedestrian the right of way in all cases where he has started to cross on the "Go" signal, and 85.75 and 85.12 (3), dealing with a similar right. A pedestrian who crosses a busy street with the signal lights in his favor is entitled to entertain some feeling of security that his right to cross will not be contested by those to whom the traffic signals have closed the highway, and that others will respect the right of way given him by the statute. Baumann v. Eva-Caroline H. Laundry, 213 W 78, 250 NW 773.

The rights and duties of pedestrians. Magee, 18 MLR 229.

346.24 History: 1957 c. 260; Stats. 1957 s. 346.24.

The failure of a driver of a motor vehicle to observe the law of the road does not absolve a pedestrian from the duty to exercise ordinary care for his own safety. Becker v. West Side Dye Works, 172 W 1, 177 NW 907.

A pedestrian crossing a street must exercise the same care to avoid being struck by passing auto that drivers of vehicles are required to exercise to avoid such collisions. Brickell v. Trecker, 176 W 557, 186 NW 593.

The mere fact that a pedestrian has been injured by a moving auto does not prove the driver negligent. Koperski v. Hoeft, 179 W 281, 191 NW 571.

While the look-and-listen doctrine does not extend to streets, persons crossing a road much traveled must make observations and

take care for their own safety. Bentson v. Brown, 186 W 629, 203 NW 380.

A pedestrian crossing a street has a right to assume that an automobile which he sees approaching is proceeding with ordinary care, and may act on the assumption that he may safely proceed. West v. Day, 193 W 187, 212 NW 648.

Whether a pedestrian crossing a street and stopping to let an approaching automobile pass was guilty of contributory negligence was for the jury. Peter v. Hopp, 199 W 549, 227 NW 38.

One proceeding across a street at an unregulated regular crossing, who looks to right and left a sufficient distance to ascertain whether automobiles traveling lawfully are within threatening distance, cannot be held negligent as a matter of law, and he has a right to proceed in expectation that approaching motorists will observe the rule of law governing in such cases. McDonald v. Wickstrand, 206 W 58, 238 NW 820.

85.44 (1), Stats. 1929, is a safety statute, and imposes an absolute duty on automobile drivers to yield the right of way to pedestrians on crosswalks, not merely an obligation to use ordinary care. Edwards v. Kohn, 207 W 381, 241 NW 331.

85.44 (1) imposes on drivers of automobiles the absolute duty of yielding the right of way to pedestrians on crosswalks as defined. But the statute does not relieve the pedestrian of all duty of care in crossing a street on a crosswalk, but the fact that the pedestrian has the right of way over vehicles by virtue of the statute is a circumstance to be considered by the jury in determining whether his conduct was negligent. Callahan v. Rando, 240 W 417, 3 NW (2d) 688.

Where the movement of traffic at the intersection involved was not regulated by traffic officers or by traffic signals, if a pedestrian crossing the street was on the crosswalk when struck by the defendant's truck, the defendant's driver was negligent as a matter of law in respect to yielding the right of way, but if the pedestrian was not on the crosswalk when struck, the pedestrian was negligent as a matter of law in respect to yielding the right of way. Smith v. Superior & Duluth T. Co. 243 W 292, 10 NW (2d) 153.

The rights and duties of pedestrians. Magee, 18 MLR 229.

346.25 History: 1957 c. 260; Stats. 1957 s. 346.25.

Legislative Council Note, 1957: This is a restatement of s. 85.44 (4) with "roadway" having been substituted for "highway." The term "highway" includes the entire right of way and its use in this section is inaccurate. Pedestrians on the shoulder or sidewalk should not be required to yield the right of way to vehicular traffic. [Bill 99-S]

A pedestrian crossing a highway elsewhere than at a crosswalk must yield the right of way to vehicles, and a pedestrian violating such absolute duty is negligent as a matter of law. Engstrum v. Sentinel Co. 221 W 577, 267 NW 536.

A change of traffic at a street intersection to the direction in which a pedestrian contemplated proceeding did not give the pedestrian the right of way at a place 12 feet from the marked crosswalk. Mauch v. Chicago, M., St. P. & P. R. Co. 228 W 322, 280 NW 307.

It is not negligence as a matter of law for a pedestrian to cross a street at a point other than a crosswalk, but it is negligence as a matter of law for a pedestrian so crossing a street to fail to yield the right of way to an approaching vehicle. De Goey v. Hermsen, 233 W 69, 288 NW 770.

The decedent was not entitled to the benefit of the presumption that he was in the exercise of due care for his own safety at the time of the accident where the evidence showed that he was running across the street ahead of the cab with its lights burning and not at a crosswalk. Weber v. Barrett, 238 W 50, 298 NW 53.

The fact that a pedestrian has reached the marked center line of a street does not lessen his absolute duty, under 85.44 (4) to yield the right of way to vehicles. Post v. Thomas, 240 W 519, 3 NW (2d) 344.

Where a pedestrian, although starting to cross the street on the "Go" sign at the intersection, was crossing at a place other than the crosswalk, she was negligent for not yielding the right of way to the automobile which struck her. VanLydegraf v. Scholz, 240 W 599, 4 NW (2d) 121.

A pedestrian crossing a street at a place other than a crosswalk is not barred from recovery for injuries as a matter of law if he was unconscious at the time of being struck by an automobile since one who is unconscious cannot take the action necessary to yield the right of way and cannot be held responsible for the nonperformance of an act that is impossible for him to perform. Kleiner v. Johnson, 249 W 148, 23 NW (2d) 467.

The fact that the place where a pedestrian was crossing a highway at a point other than a crosswalk was outside the city limits did not lessen his duty of yielding the right of way to vehicles on the highway. Crawley v. Hill, 253 W 294, 34 NW (2d) 123.

The evidence supported the jury's findings that a pedestrian who was attempting to cross from the northeast corner to the southeast corner of a street intersection but not on the crosswalk, and who came in contact with a westbound automobile close to the rear of its front fender, was causally negligent as to lookout and failing to yield the right of way. Schlewitz v. London & Lancashire Ind. Co. 255 W 296, 38 NW (2d) 700.

The negligence of the defendant driver did not affect the absolute duty of the pedestrian to yield the right of way when crossing the street at a point other than a crosswalk. Ninneman v. Schwede, 258 W 408, 46 NW (2d) 230.

Under the evidence in an action for the death of a pedestrian crossing a north-south highway from the west when struck by the right front fender of a truck approaching from the south, the jury could find that the truck driver was causally negligent as to management and control, and that the pedestrian was causally negligent in the manner in which he crossed the roadway and in failing to yield the right of way, and that 90% of the total causal negligence was attributable to the

truck driver and 10% to the pedestrian. Johnson v. Viebrock, 263 W 284, 57 NW (2d) 337.

A pedestrian who was jaywalking when struck by an auto was negligent as a matter of law in respect to yielding the right of way, although the automobile was traveling astraddle the center line of the street at the time of the impact. Bassil v. Fay, 267 W 265, 64 NW (2d) 826.

An apron constructed between the curb and the sidewalk proper, constructed for access to a service station by cars and not for pedestrians, must be considered as part of the highway, so that it was the duty of a pedestrian to yield the right of way on it to a car backing out of the station. Brunette v. Bierke, 271 W 190, 72 NW (2d) 702.

The causal negligence of a pedestrian, who was crossing a street from east to west at a point other than a crosswalk and who failed to yield the right of way to a southbound cab, but who was struck by the right side of such cab when he was almost across the street, was not at least equal as a matter of law to the causal negligence of the cab-driver. Wells v. Dairyland Mut. Ins. Co. 274 W 505, 80 NW (2d) 380.

There being no crosswalk at the place of the accident, the pedestrian had an absolute duty to yield the right of way to the defendant driver approaching on the highway, especially where the pedestrian could have seen her headlights at all times while she was traveling 1,200 feet before the point of impact. Greene v. Farmers Mut. Auto. Ins. Co. 5 W (2d) 551, 93 NW (2d) 431.

The evidence sustained a jury finding as to negligence of the decedent in failure to yield the right of way when crossing a country highway. Cherney v. Holmes, 185 F (2d) 718.

Plaintiff struck at the edge of a concrete roadway as he was about to step off after crossing at a point where there was no marked sidewalk had failed to yield the right of way and was negligent as a matter of law. Lang v. Rogney, 201 F (2d) 88.

346.26 History: 1957 c. 260; Stats. 1957 s. 346.26.

Legislative Council Note, 1957: This is a restatement of s. 85.44 (10). The last sentence in sub. (1) is new and makes clear that the duty to stop for blind pedestrians exists whether or not such blind pedestrian is crossing on a crosswalk or with or against the light. The present law leaves this question unanswered. [Bill 99-S]

346.27 History: 1957 c. 260; Stats. 1957 s. 346.27.

Legislative Council Note, 1957: This is a new provision. It is designed to give greater protection to highway maintenance or construction workers who are working on highways where traffic nevertheless is maintained. Ordinarily, the pedestrian must yield the right of way to vehicles on a roadway when he is not on a crosswalk. The new section would reverse that situation in the case of men working on the highway. [Bill 99-S]

346.28 History: 1957 c. 260; Stats. 1957 s. 346.28.

The decedent when attempting to recover his cap which had been thrown from the car in which he was riding ran back along the highway about 200 feet, and while picking up his cap from the center of the highway where it finally lighted, was fatally injured by a car which followed him as he ran to the cap. 85.44 (6), Stats. 1929, was not intended in any way to interfere with one's rights to recover property which accidentally gets into the highway. Under such circumstances the conduct of the actors must be regulated by the rules of ordinary care. Bump v. Voights, 212 W 256, 249 NW 508.

A pedestrian walking on a portion of the highway open to vehicular traffic, must walk on the left side of the highway or be found guilty of negligence, as a matter of law, whether the road be wide or narrow, and whether this increases or diminishes the danger to the pedestrian. Panzer v. Hesse, 249 W 340, 24 NW (2d) 613.

The traveled portion of the highway includes the shoulder. Wojciechowski v. Baron, 274 W 364, 80 NW (2d) 434.

A pedestrian walking on the left half of a highway is not relieved of all duty to keep a lookout to the rear as a matter of law. Mewhorter v. Integrity Mut. Cas. Co. 275 W 77, 80 NW (2d) 782.

A passenger who had gotten out of a car to assist the driver in turning around at a driveway and who was hit by a trailer which the car was pulling was not violating 85.44 (6) nor loitering on the roadway in violation of 85.44 (9). Vanderhei v. Carlson, 275 W 300, 81 NW (2d) 742.

Children riding a toy bicycle, as distinguished from a statutory bicycle, on the sidewalk are "pedestrians". Bey v. Transport Ind. Co. 23 W (2d) 182, 127 NW (2d) 251.

A pedestrian walking against traffic along the edge of the traveled portion of the roadway and not being reasonably aware of any hazard to his rear by reason of car lights, sounding of horn or otherwise, has no duty to maintain a lookout to his rear. Dahl v. Ellis, 35 W (2d) 441, 151 NW (2d) 61.

The rights and duties of pedestrians. Magee, 18 MLR 229.

346.29 History: 1957 c. 260; Stats. 1957 s. 346.29.

Legislative Council Note, 1957: Subsection (1) is a restatement of s. 85.44 (7).

Subsection (2) is a restatement of s. 85.44 (9).

Subsection (3) is new. It is designed to get at the traffic hazard caused by persons who use bridges which are barely wide enough for 2 lanes of traffic for the purpose of fishing or swimming. The authority in charge of maintenance of the highway will be authorized to post such bridges or the approaches thereto. [Bill 99-S]

A driver who has been towing another car and who goes back to stand beside it to talk to its driver does not violate 85.44 (9), Stats. 1949, as a matter of law and the question should be submitted to the jury. Giessel v. Mutual Service Cas. Ins. Co. 265 W 450, 61 NW (2d) 859.

It cannot be said as a matter of law that plaintiff guest's presence on the road was a violation of 85.44 (9), Stats. 1953, when the road was 15 or 20 feet wide, there was no

other traffic, and guest was only a foot or 2 from edge of road so that host-driver had plenty of room to pass by him. Vanderhei v. Carlson, 6 W (2d) 13, 94 NW (2d) 141.

346.30 History: 1957 c. 260, 674; Stats. 1957 s. 346.30; 1967 c. 292.

346.31 History: 1957 c. 260; Stats. 1957 s. 346.31.

Legislative Council Note, 1957: This section is basically a restatement of s. 85.17 (1), (2), (2a) and (3), with certain clarifications to be noted.

Subsection (1) is a restatement and amplification of s. 85.17 (3). The power of state and local authorities to mark the pavement, erect signs or otherwise direct right or left turning traffic to follow a particular course is expressly set forth in s. 349.10. When such signs or markers are in place and sufficiently visible or legible to be seen by an ordinarily observant person, they take precedence over the statutory rules relating to the required position and method of turning at intersections.

Subsection (2) prescribes the method of making right turns. The first sentence is a restatement of s. 85.17 (1). The second sentence of sub. (1) is new. There are occasions where the size of the vehicle or the nature of the intersection or a combination thereof is such that the turn cannot be made next to the right hand edge or curb of the roadway. In such case, it is incumbent upon the operator of the right-turning vehicle to make the turn only with great caution.

Subsection (3) treats left turns in 3 phases: (a) the approach, (b) the turn, and (c) completing the turn into the intersection roadway. This is the only logical method of prescribing the method of making left turns on all the different types of highways in use today. Even so, left turns on unevenly laned highways had to be treated in a separate subsection. Subsection (3) (a) describes the method of making the approach for the left turn and is consistent with present law stated in s. 85.17 (2) and (2a). Subsection (3) (b) also is consistent with present law, except that an element of flexibility has been introduced by insertion of the phrase "whenever practicable." At most intersections, including all intersections of 2-way highways which intersect at right angles, the safe and proper way of making the left turn is to pass immediately to the left of the center of the intersection. This obviously is impracticable, however, when making a left turn from one one-way highway into another or when making a left turn where highways intersect at an oblique angle. The problem of the oblique angle intersection is well illustrated in the case of Eberdt v. Muller, 240 W 341, 2 NW (2d) 367 (1942). Subsection (3) (c) states the proper way to complete a left turn and is consistent with present law stated in s. 85.17 (2) and (2a).

Subsection (4) deals with the special problem caused by 3-lane highways and other unevenly laned highways. The first sentence is consistent with present law. The second sentence is new. The present law does not state which lane is to be entered when making a left turn into a 3-lane highway. While it might be possible at times to enter the center lane in safety, the consensus of the motor vehicle laws committee was that the rule should be definite and certain and that the right-hand lane of a 3-lane highway is the only lane which can be entered in safety at all times.

In general the new section is consistent with s. 11-601 of the UVC and in some respects is more complete. [Bill 99-S]

Where the authorities in charge of public roads acquiesced in the use by the public of 2 diverging traveled tracks across an intersection, which acquiescence together with the failure of the authorities to maintain the entire highway created an abandonment for travel purposes of the space between such tracks, and the southeasterly track could not be used by one going north because of the physical situation without extreme difficulty, the "center of intersection," was a meeting of the medial lines of the intersected highway and the northeasterly traveled track. Weiberg v. Kellogg, 188 W 97, 205 NW 896.

The failure of a driver of an automobile to keep as closely as practicable to the right-hand curb of a highway when turning right at an intersection had no causal relation to a collision in which the automobile was struck in the rear by another automobile proceeding in the same direction and substantially in the same line of travel. Ramsay v. Biemert, 216 W 631, 258 NW 355.

The act of a defendant motorist in suddenly turning his car without warning to the right across the path of a codefendant's car traveling in the same direction but nearer the curb than the defendant's car, forcing the codefendant's car to turn across a sidewalk, striking the plaintiff, constituted actionable negligence. (Young v. Nunn, Bush & Weldon Shoe Co. 212 W 403, and Ramsay v. Biemert, 216 W 631, distinguished.) Balzer v. Caldwell, 220 W 270, 263 NW 705.

Failure of a motorist to pass immediately to the left of the center of the intersection when making a left turn does not render the motorist liable unless the accident in some way results from such failure. Homerding v. Pospychalla, 228 W 606, 280 NW 409.

The requirement of 85.17 (2) that a driver making a left turn at an intersection shall pass to the left of the center of the intersection is impossible of application as to a driver coming from a town road and making a left turn at the intersection where the town road joins a county trunk at a sharp angle. Eberdt v. Muller, 240 W 341, 2 NW (2d) 367.

The causal negligence of the driver of the auto, in not proceeding on his side of the road until he could make a legal left turn by passing immediately to the left of the center of the intersection, but instead cutting the corner short, and in not affording the driver of the bus a reasonable opportunity to avoid a collision, was greater as a matter of law than the causal negligence of the driver of the bus as to lookout and speed. Dinger v. McCoy Transportation Co. 254 W 447, 37 NW (2d) 26.

In an intersection of the "Y" type, where one intersecting highway meets another at a very acute angle in a long, sweeping curve, 85.17 (2) is not to be construed as requiring a car turning left to keep to the left of the

center of the intersection. Blom v. Kumbier, 275 W 227, 81 NW (2d) 528.

A custom which violates a specific statute on turning will not justify the violation. 85.17 (2) is a safety statute, the breach of which is negligence. Paulson v. Hardware Mut. Cas. Co. 2 W (2d) 94, 85 NW (2d) 848.

The necessity of approaching an intersection in the right lane for a right turn, required by former 85.17 (1), is eliminated in some cases under 85.17 (2). Wintersberger v. Pioneer I. & M. Co. 6 W (2d) 69, 94 NW (2d) 136.

346.31 (3) (c) does not require that a driver, after making a left turn onto a one-way street, continue in the left-hand lane. Gile v. Windholm, 17 W (2d) 275, 116 NW (2d) 249.

346.31, requiring an approach for a left "turn" at an intersection to be made in the traffic lane farthest to the left, did not apply to the driver of a truck which was approaching an intersection at a point where the highway on which the truck was traveling merely curved toward the left and the driver had no intention of making any turn. Donlea v. Carpenter, 21 W (2d) 390, 124 NW (2d) 305.

346.32 History: 1957 c. 260; Stats. 1957 s. 346.32.

Legislative Council Note, 1957: The present law is silent as to the manner of approaching for a right turn into a private road or driveway but s. 85.17 (2) specifies that the approach for a left turn shall be made in the same manner as for a left turn at an intersection. It seems obvious that the approach should be the same, whether the turn is made at an intersection or into a private road or driveway, and the new section so states. There are instances where the size of the vehicle or the nature of the intersecting private road or driveway or a combination thereof will make it impossible to make the right turn from the lane next to the right hand curb or where a left turn from a one-way highway cannot be made from the lane next to the left-hand curb. In such a case, the second sentence of the section admonishes that the turn must be made with caution. Unlike turns at intersections, it seems unnecessary to prescribe the exact manner of making the turn or manner of entering the private road or driveway. The important point is that the approach must be made properly. [Bill 99-S]

346.33 History: 1957 c. 260; Stats. 1957 s. 346.33; 1961 c. 205.

Legislative Council Note, 1957: This is a restatement of s. 85.17 (4) and (5) and part of s. 85.31. The language of the present provisions has been revised so as to state the law more clearly. It is believed that the rather ambiguous phrase "except at an intersection where such turns are permitted" contained in present s. 85.17 (5) was intended as a reference to intersections where turns are not prohibited by s. 85.17 (4) or by the local authorities. In any event the new section states the rules in positive rather than negative terms by referring to prohibition of turns in mid-block. While the U-turn is the most common type of turn coming within the scope of this section, the section is broad enough to cover other methods of turning on a highway so as to proceed in the opposite direction. [Bill 99-S]

346.34 History: 1957 c. 260; Stats. 1957 s. 346.34.

Fluctuation of rays of headlights as a motorist may have turned somewhat toward his right or left preparatory to making a left turn at an intersection was not a "plainly visible signal" within the statute requiring the driver of a vehicle within an intersection who intends to turn to the left to give a plainly visible signal of his intention to turn. Grasser v. Anderson, 224 W 654, 273 NW 63.

The fact that a motorist made a left turn into a private driveway from the traffic lane immediately to the right of and next to the center of the highway did not show as a matter of law that he exercised ordinary care in making the turn. Gauthier v. Carbonneau, 226 W 527, 277 NW 135.

A person who makes a brief signal for a left turn and immediately turns to the left in such manner that an approaching automobile does not have a reasonable opportunity to avoid collision, may not exonerate himself merely by showing that he gave a signal. Hansen v. Storandt, 231 W 63, 285 NW 370.

A motorist, traveling at night, who merely stuck 3 fingers and half of his palm out of an opening at the top of the window of his car as a signal for turning left within an intersection, did not give a "plainly visible" signal of his intention as required in order to make it the duty of a motorist, approaching the intersection from the opposite direction, to yield the right of way to the motorist so turning left. McGill v. Baumgart, 233 W 86, 288 NW 799.

Notwithstanding that a motorist gave a plainly visible signal of his intention to turn left within an intersection, as required by 85.18 (1), his right to invade the left half of the intersection in the path of an auto approaching the intersection from the opposite direction was subject to his duty to afford the driver of that car a reasonable opportunity to avoid a collision. Barkdoll v. Wink, 238 W 520, 300 NW 233.

The driver of an automobile making a left turn within an intersection and colliding with a bus approaching from the opposite direction was negligent as a matter of law for negotiating the left turn by cutting the corner short instead of passing immediately to the left of the center of the intersection without excuse. Dinger v. McCoy T. Co. 251 W 265, 29 NW (2d) 60.

A motorist should exercise the same degree of care as to lookout in turning into a private driveway as in emerging from it and, although one about to turn left into a driveway may not be obliged to stop before invading his left side of the road, he is obliged to make as effective a lookout as stopping would have afforded him, and to make as effective a lookout to avoid interfering with an approaching car as would have been required had he been entering the highway from the driveway. De Baker v. Austin, 233 W 39, 287 NW 720; Hiddessen v. Kuehn, 254 W 214, 36 NW (2d) 82.

The driver of an automobile, if he had seen that the driver of another car approaching an intersection had his head extended out of the car window, would have been under no duty to assume that it was a signal of intention to

make a left turn across the intersection; but even if he did interpret it as a signal, he had a right to rely on the other driver's observance of the law. Schultz v. Miller, 259 W 316, 48 NW (2d) 316.

Where the jury, in finding that the driver of an automobile was not negligent in the manner in which he stopped his car on the highway, accepted the version of the testimony that he did not suddenly stop when the semitrailer was only 40 feet behind, but was approximately 360 feet to his rear, the further finding that his failure to signal intention to turn left was a proximate cause of the accident was properly changed by trial court since, under the version accepted by the jury, the driver of the semitrailer had ample time to stop and avoid the accident if he had been driving with due caution. Greenville Co-op. Gas Co. v. Lodesky, 259 W 376, 48 NW (2d) 234.

In actions for injuries sustained in a nighttime collision which occurred when a car occupied by the plaintiffs turned across the path of an approaching car without signal to enter a farm driveway, evidence establishing that the driver of the approaching car, not negligent as to lookout or speed, had no more than 2 seconds, after the other car turned into his half of the road, in which to decide what, if anything, he had better do, and to do it, warranted the trial court's determination that as a matter of law an emergency was presented in which the driver of the approaching car could not be held responsible for the results of any action which he might take or might fail to take to avoid collision. Roberts v. Knorr, 260 W 288, 50 NW (2d) 374.

One intending to enter a private driveway or otherwise turn a vehicle from a direct course or move right or left on a roadway has a duty of making the movement only on reasonable surety that such turn may be made safely. Firemen's Underwriters Dept. v. Nieman, 263 W 188, 56 NW (2d) 816.

In an action for injuries sustained by guest occupants when the host car slowed down or momentarily stopped because of a parked car and was struck in the rear by a following truck, the real issue under the evidence was whether such preceding driver had suddenly stopped his car without giving appropriate signal to the following driver, and this issue was not submitted to the jury nor inferentially determined in its finding on management and control. Thoresen v. Grything, 264 W 487, 59 NW (2d) 682.

The driver of an automobile parked on the right shoulder of a highway about 50 feet from a crossover between traffic lanes of a divided highway, and then proceeding onto highway and turning left at the crossover, could not comply with the provision that a signal of intention to turn left be given continuously during not less than the last 100 feet traveled by the vehicle before turning, and hence was required to yield the right of way to a vehicle approaching from the rear. Sparling v. Thomas, 264 W 506, 59 NW (2d) 433.

As a matter of law, causal negligence of the plaintiff motorist in failing to blow his horn before attempting to pass a truck did not equal the causal negligence of the defendant driver of the truck in turning left across the highway without a signal and without observing the plaintiff's automobile, although that was then almost abreast of him. Frankland v. Peterson, 268 W 394, 67 NW (2d) 865.

Slowing a car by releasing the accelerator while traveling 50 miles per hour up a slight incline does not result in a sudden decrease in speed within the meaning of 85.175 (3). A driver need not give a signal under 85.175 (3) before beginning to stop or slow down. Wodill v. Sullivan, 270 W 591, 72 NW (2d) 396.

The operator of a motor vehicle should not be relieved from the duty to signal a left turn, if he should have been apprised of the approach of a vehicle from his rear by the exercise of either the sense of sight or of sound. Pedek v. Wegemann, 275 W 57, 81 NW (2d) 49.

Where brake-activated stop lights are used, a driver need not give any other signal of his intention to stop or reduce speed, even though he has time to do so. Tesch v. Wisconsin P.S. Corp. 2 W (2d) 131, 85 NW (2d) 762.

The driver of a milk truck who, without having signaled for a turn, stopped his truck for the purpose of making a left turn into a farm driveway was negligent in such respect as a matter of law, although he was not actually turning his truck when a following vehicle turned toward the left to avoid his stopped truck and collided with a vehicle approaching from the opposite direction. The evidence supported the jury's finding that such negligence was causal. (Bauer v. Bahr, 240 W 129, Greenville Co-op. Gas Co. v. Lodesky, 259 W 376, and Tesch v. Wisconsin P.S. Corp. 2 W (2d) 131, distinguished.) American Fidelity & Cas. Co. v. Travelers Ind. Co. 3 W (2d) 209, 87 NW (2d) 782.

Under the evidence it was for the jury to determine whether a cab driver's stopping in a lane of travel contributed to causing the collision, even though he gave the proper signal of his intention to stop. Cushing v. Meehan, 7 W (2d) 30, 95 NW (2d) 796.

Making a left turn in violation of 346.34 (1) is negligence as a matter of law because such statute is a safety statute, but the breach of such statute is not established from the fact that a collision occurred, nor does a breach of such statute establish as a matter of law the degree of contribution of the negligence to the accident. Grana v. Summerford, 12 W (2d) 517, 107 NW (2d) 463.

A driver meeting a car which is signaling a left turn may in some circumstances assume that the turning driver will wait until it is safe before completing the turn. Walker v. Baker, 13 W (2d) 637, 109 NW (2d) 499.

A driver entering a divided highway from another road cannot complain that another driver on the arterial changed from one lane to another without signalling. Donlea v. Carpenter, 21 W (2d) 390, 124 NW (2d) 305.

It is not correct to say that a preceding driver owes no duty to a following driver. He must signal his intention to deviate from his lane and must use the roadway in the usual manner with proper regard to other users of the highway. Burlison v. Janssen, 30 W (2d) 495, 141 NW (2d) 274.

346.34 (1), Stats. 1965, does not impose absolute liability but establishes a standard of

care that a left turn into a private driveway cannot be made unless and until such turn can be made with reasonable safety, and what is reasonable safety depends upon the facts in the particular case. Bruno v. Biesecker, 40 W (2d) 305, 162 NW (2d) 135.

346.35 History: 1957 c. 260; Stats. 1957 s. 346.35; 1961 c. 662 ss. 17, 18.

A driver who gives timely signal of stopping, by means of brake lights, is not required to give a hand signal in addition. Thompson v. Nee, 12 W (2d) 326, 107 NW (2d) 150.

346.36 History: 1957 c. 260; Stats. 1957 s. 346.36; 1967 c. 292.

346.37 History: 1957 c. 260, 615; Stats. 1957 s. 346.37; 1963 c. 25.

Legislative Council Note, 1957: This is a restatement of s. 85.75 (1) and (3) with a few minor changes to be noted.

In paragraph (a) the reference to s. 346.84 (1) is new. This is the section which requires vehicles overtaking a streetcar stopped at a place other than a safety zone for the purpose of receiving or discharging passengers to stop at the rear of the streetcar. The cross-reference in paragraph (a) merely makes clear that s. 346.84 (1) applies, whether or not a green light is showing. This is considered to be merely a clarification of present law and is consistent with s. 11-202 (a) of the UVC.

In paragraph (c) the phrase "or other signal permitting movement" has been added for the purpose of reconciling an apparent conflict between this paragraph and paragraph (d) and for the purpose of making the law conform to practice. In addition to a green arrow shown with red, a flashing red or flashing yellow sometimes is shown following red to indicate that movement is permitted. In other words, there are signals other than green or "Go" shown following the red which indicate movement.

In paragraph (d) the phrase "shall yield the right of way . . . to other traffic lawfully using the intersection" has been substituted for "and with regard to vehicular traffic the rules of right of way as stated in s. 85.18 shall apply." The present law seems to state that vehicles turning right on a green arrow have the right of way over through traffic approaching from the left. This is inconsistent with the UVC and with popular notions of the rights conveyed by a green arrow signal. Vehicles turning on a green arrow should do so with caution and should yield the right of way to other traffic lawfully using the intersection.

The last sentence of sub. (2) is new but provides a desirable clarification of the law. It is consistent with s. 11-202 (e) of the UVC. [Bill 99-S]

The driver of a truck, who, approaching at a lawful speed, had entered a highway intersection with the lights in his favor, before a truck approaching on the intersecting highway had reached the intersection, had the right of way and was entitled to proceed in accordance with the signals and to assume, in the absence of some indication that the driver of the other truck was about to interfere with his right of way, that the other driver would not continue to proceed in violation of 85.12 (3) and 85.75. Zindell v. Central M. Ins. Co. 222 W 575, 269 NW 327.

Where the driver of a truck stopped at an intersection in obedience to the traffic light, and, before starting when the light changed in his favor, looked both ways, saw the traffic on the intersecting highway within a reasonable distance either stopped or stopping, and also saw the colliding automobile coming from the left a block away, and had no reason to suspect that such automobile would interfere with his crossing by entering the intersection without stopping or slackening speed, the driver of the truck was not negligent as to lookout although he did not again look to his left until he heard the squeak of brakes. Wilson v. Koch, 241 W 594, 6 NW (2d) 659.

346.38 History: 1957 c. 260; Stats. 1957 s. 346.38.

346.39 History: 1957 c. 260; Stats. 1957 s. 346.39.

On duties of drivers approaching flashing signals see Ide v. Wamser, 22 W (2d) 325, 126 NW (2d) 59, and Seitz v. Seitz, 35 W (2d) 282, 151 NW (2d) 86.

346.40 History: 1957 c. 260; Stats. 1957 s. 346.40.

346.41 History: 1957 c. 260; Stats. 1957 s. 346.41; 1969 c. 380.

346.42 History: 1957 c. 260; Stats. 1957 s. 346.42.

346.43 History: 1957 c. 260; Stats. 1957 s. 346.43; 1967 c. 292.

346.44 History: 1957 c. 260; Stats. 1957 s. 346.44.

The provision in 85.92 (1), Stats. 1949, that no operator of a vehicle shall drive on or across a grade crossing with the main-line tracks of any railroad while any warning device signals to stop, does not make a motorist negligent as a matter of law where, although such a warning device is signaling, he does not stop and proceeds onto the crossing because of an invitation to proceed given by a railroad flagman, but in such case the question of the motorist's negligence is for the jury. Pargeter v. Chicago & N. W. R. Co. 264 W 250, 58 NW (2d) 674.

346.45 History: 1957 c. 260; Stats. 1957 s. 346.45; 1959 c. 542.

Legislative Council Note, 1957: This is a revision of s. 85.92 (2). The literal scope of the present section is much too broad while in other respects it is not as complete as it should be.

Subsection (1) (a) would require only common motor carriers of passengers to stop. The present law refers to any motor vehicle described in s. 194.01, which includes common, private, and contract carriers of property as well as common carriers of passengers. By judicial construction, private motor carriers have been excluded from the scope of the present law. Borden Co. v. Minneapolis, St. Paul & Sault Ste. Marie Ry. Co. 270 W 601, 72 NW (2d) 336 (1955). There is no reason why the law should not be further limited so

as to apply only to common carriers of passengers while carrying passengers for hire. This was the intent of the law when first enacted and it is more or less accidental that its scope has been broadened. See 39 Atty. Gen. 165 (1950).

Subsection (1) (b) is based upon the reference in present s. 85.92 (2) to "any motor vehicle described in ss. 40.53 or 40.57." It is almost impossible to state how much this reference was intended to include. Section 40.53 at one place refers to "all vehicles used for transportation of pupils." In general, however, s. 40.53 deals with vehicles operating under contract with the school district or owned by the school district. Section 40.57, on the other hand, excludes vehicles owned or operated by a parent or guardian and transporting only his own children and vehicles operated by certificated common carriers. The new section uses the term "school bus." That term is defined in s. 340.01.

Subsection (1) (c) is a restatement of present law, except that the definition of "flammable liquid" has been added. It is consistent with the definition used in present s. 85.45 (5).

Subsection (2) is a revision of the present law which merely provides that the stop must be made not less than 20 nor more than 40 feet from the crossing. The revision is consistent with s. 11-703 (a) of the UVC.

Subsections (3) and (4) are restatements of parts of present s. 85.92 (2). [Bill 99-S]

Where a driver approached a crossing with an unobstructed view on a clear day, and he had a statutory duty to stop before crossing railroad crossings, his negligence in approaching the crossing and colliding with a train when the whistle had been sounded was, as a matter of law, as great as the negligence of the railroad company in failing only to ring the bell, precluding recovery for death of the driver. Zenner v. Chicago, St. P. M. & O. R. Co. 219 W 124, 262 NW 581.

The driver had an absolute duty to look and listen for an approaching train before attempting to cross the railroad track, and he is also presumed to have seen what was in plain sight. The engine crew of a train have the right to assume that a traveler on a highway will look and listen and not go onto the track into danger when it is apparent that a train is approaching, and to continue under this assumption until the contrary appears or the traveler does something to indicate a contrary intention on his part. Keegan v. Chicago, M. St. P. & P. R. Co. 251 W 7, 27 NW (2d) 739.

A stop is required where the crossing is not protected by crossing gates or by flagmen even though it is protected by automatic electric signals. Glendenning Motorways v. Green Bay & W. R. Co. 256 W 69, 39 NW (2d) 694.

The requirement of 85.92 (2) applies to require a stop at a crossing with main-line tracks even though the railroad company is operating a train or engine on switch or sidetracks, and applies in the case of accident which did not happen on the main-line track but involved a collision on a sidetrack. Where the driver of the vehicle, struck by a switch engine, failed to come to a full stop at the crossing, he was guilty of negligence as a matter of law. Glendenning Motorways v. Green Bay & W. R. Co. 256 W 69, 39 NW (2d) 694.

Failure to stop as required was not excusable on the ground that because the road was icy the vehicle driver proceeded in second gear without attempting to stop until he saw a train approaching on main-line tracks, when he put on his brakes and skidded onto tracks in front of the engine. Lang v. Chicago & N. W. R. Co. 256 W 131, 40 NW (2d) 548.

346.46 History: 1957 c. 260; Stats. 1957 s. 346.46; 1965 c. 357.

Legislative Council Note, 1957: Subsections (1) and (2) are a rather thorough revision of s. 85.69 which merely provides that the stop must be made within 30 feet of the near limits of the intersection. The new section requires the stop to be made at the stop line, if there is one; otherwise, before entering the crosswalk. In addition, a stop must under all circumstances be made at a point where the operator of a vehicle can efficiently observe traffic on the intersecting roadway before entering such intersecting roadway. The latter requirement is consistent with the Supreme Court's decision in Kraskey v. Johnson, 266 W 201, 63 NW (2d) 112 (1954). It also is consistent with the basic purpose of requiring vehicles to stop at stop signs—to avoid conflict with vehicles using the intersecting highway. The result is that stops at 2 points may be necessary at some stop signs, one at the stop line or crosswalk and another at a point where traffic on the intersecting roadway can be efficiently observed.

Subsection (3) is from s. 192.29 (2). [Bill 99-S]

It is the duty of an automobilist approaching an arterial highway to stop at a point where he may efficiently observe traffic approaching on the arterial highway. Svenson v. Vondrak, 200 W 312, 227 NW 240; Gumm v. Koepke, 227 W 635, 278 NW 447.

The mere fact that an intersection is not marked by an official stop sign or traffic signal does not render applicable the provision that when 2 vehicles approach or enter an intersection at approximately the same time the driver of vehicle on the left shall yield the right of way to vehicle on the right. In a collision, at an intersection with an arterial street, between a motorist approaching from the left on the arterial, and a motorist, unfamiliar with the arterial, who entered the intersection from the nonarterial without stopping for the stop sign, which had been turned so that its edge was facing him, neither motorist was negligent in respect to entering the intersection. Schmit v. Jansen, 247 W 648, 20 NW (2d) 542.

A motorist proceeding in the exercise of ordinary care on a nonarterial highway cannot be held negligent in failing to stop at an intersection with an arterial highway with which he is not familiar and which is not properly marked with a lawful stop sign. Schmit v. Jansen, 247 W 648, 20 NW (2d) 542.

An instruction to the jury that the defendant complied with his duty and statutory requirements if he stopped at a point where he could see approaching cars about an equal distance from where he was on the approaching highway, was erroneous, tended to mislead the jury, and was prejudicial to plaintiff, requiring a new trial. Bokelkamp v. Olson, 254 W 240, 36 NW (2d) 93.

The duty to stop before entering an arterial or before entering a highway from a driveway includes the duty of looking out for approaching traffic and making a calculation as to whether the entry can be safely made. Both should be submitted in one question as to lookout with instructions covering both elements. Plog v. Zolper, 1 W (2d) 517, 85 NW (2d) 492.

A driver on an arterial highway has no duty to slow down in anticipation that the user of an intersecting highway will not yield the right of way. Lundquist v. Western Casualty & Surety Co. 30 W (2d) 159, 140 NW (2d) 241.

346.47 History: 1957 c. 260; Stats. 1957 s. 346.47.

Legislative Council Note, 1957: Subsection (1) is a consolidation and restatement of subs. (8) and (9) of s. 85.18. The new section does not absolutely require a stop if no sidewalk or sidewalk area is involved while the present law does. The revision is consistent with s. 11-706 of the UVC.

Subsection (2) will be new law. The motor vehicle laws committee is of the opinion that requiring vehicles using alleys to stop at intersecting alleys will deter their being used for through traffic. [Bill 99-S]

Where there is no sidewalk or sidewalk area a driver need not stop before entering a highway, but he must yield to approaching traffic. Mayville v. Hart, 14 W (2d) 292, 110 NW (2d) 923.

See note to 346.28, citing Bey v. Transport Ind. Co. 23 W (2d) 182, 127 NW (2d) 251.

Vehicles emerging from a driveway, garage or alley are required to stop, without regard to the presence or absence of a stop sign. 45 Atty. Gen. 291.

346.48 History: 1957 c. 260, 514, 674; Stats. 1957 s. 346.48; 1959 c. 542, 558; 1965 c. 386.

A highway having a strip of rough pavement between opposing lanes of traffic, known as a "rumble strip", chatter bar median, or corrugated median, is not a "divided highway" within the meaning of 340.01 (15) and 346.48 (1), Stats. 1967. 57 Atty. Gen. 84.

346.49 History: 1957 c. 260; Stats. 1957 s. 346.49; 1967 c. 292.

346.50 History: 1957 c. 260, 372; Stats. 1957 s. 346.50; 1961 c. 20, 401; 1961 c. 622 s. 63; 1963 c. 332; 1967 c. 148; 1969 c. 389.

Repairing a punctured tire comes within the designation of "absolutely necessary repairs", and it is not negligence to drive a truck to the side of the concrete pavement for the purpose of repairing a tire. Long v. Steffen, 194 W 179, 215 NW 892.

The owner of an automobile wrecked on a highway at night must properly warn travelers and procure means for its removal. The prohibition against parking an automobile on a highway is inapplicable to a wrecked automobile which the owner is diligently proceeding to have removed. The owner of a wrecked automobile procuring a garageman to remove it in the usual and customary manner is absolved from liability for any negligence of the garagemen. Menge v. Manthey, 200 W 485, 227 NW 938.

The driver of a loaded truck and trailer did not violate the parking statute in failing to pull the trailer off the concrete onto the shoulder and temporarily leaving the trailer standing on the highway, where the shoulder was wet so that the truck would lose traction, another turn of the wheel would have caused the wheels to come off, and the driver used all feasible means of securing other tires. Scheffler v. Bartben, 223 W 341, 269 NW 537.

A heavily laden truck on which 2 tires were flat was a disabled vehicle within the parking statute. Callaway v. Kryzen, 228 W 53, 279 NW 702.

Where the driver of an automobile intending to turn left into a private highway, kept a position in the traffic lane immediately to the right of and next to the center of the highway, and there stopped to wait for the passage of cars coming from the opposite direction, he was properly complying with the requirements of right-of-way and left-turn statutes and his stopping was within the permission of 85.10 (30) so that the provision of 85.19 (1) was inapplicable. Bauer v. Bahr, 240 W 129, 2 NW (2d) 698.

Where the lights of a car suddenly went out and the driver could not see or know the position of the car on the highway or the condition of the highway, he properly brought the car to a stop so as to ascertain his situation before attempting to park off the roadway. (Weir v. Caffery, 247 W 70 and Kline v. Johannesen, 249 W 316, modified.) Woodcock v. Home Mut. Cas. Co. 253 W 178, 32 NW (2d) 202.

The driver of an automobile who, when his engine stopped and refused to start, allowed his car to roll backward down a hill and left it on the roadway, when he could have left it on the shoulder of the highway, was negligent as to the position of his car on the highway. Richards v. Pickands-Mather Co. 257 W 365, 43 NW (2d) 359.

The word "temporarily" includes only such lapse of time as will permit the operator to take reasonable steps to remove the vehicle from its position of danger on the highway. Western Cas. & Sur. Co. v. Dairyland Mut. Ins. Co. 273 W 349, 77 NW (2d) 599.

346.51 History: 1957 c. 260; Stats. 1957 s. 346.51; 1959 c. 542.

Legislative Council Note, 1957: Subsection (1) is a restatement of s. 85.19 (1) with the exception that the required sight distance has been increased from 200 to 500 feet. A sight distance of 200 feet is too short in view of the speed of traffic on highways today. Moreover, the 500-foot requirement is consistent with the requirement that lighted lamps with which vehicles are required to be equipped must be visible from a distance of 500 feet and also can be considered in lieu of s. 85.19 (3) (f) which has been dropped. This provision prohibited the parking or standing of vehicles outside of a business or residence district on any curve in the highway or on any hill. This prohibition was considered too broad because of the breadth of the terms "curve" and "hill." The distance from which the standing vehicle can be seen, rather than the exact layout of the highway, is the important criterion.

Subsection (2) is designed to make clear that the exemption granted highway mainte-

nance and construction vehicles by s. 346.02 (6) does not relieve the persons in charge thereof from the duty to comply with this section if the road under consideration is open to traffic, unless the nature of the construction or maintenance work is such as to require the stopping or standing of the vehicles or equipment on the roadway. [Bill 99-S]

A driver, parking an automobile so as to leave 16 feet of concrete highway and 4 feet of usable shoulder, did not violate the statute. United P. Corp. v. Lietz, 198 W 278, 223 NW 843.

A motorist leaving a stalled automobile parked on a highway at night without lights, resulting in an approaching motorist tipping over in attempting to avoid a collision, was negligent. Engebrecht v. Bradley, 211 W 1, 247 NW 451.

Temporarily stopping a truck on a roadway to enable the driver to ascertain the cause of a rumbling was not unlawful, nor negligence constituting a cause of the collision, but stopping there for several hours could be considered a violation of the statute and negligence constituting a proximate cause of the collision, such "stopping" including failure to remove the truck from the roadway. Walker v. Kroger G. & B. Co. 214 W 519, 252 NW 721.

One who left his automobile standing upon the concrete portion of a highway, when he could readily have moved the car off the concrete onto the 6-foot shoulder, violated 346.51 (1) and was thereby negligent, and liable for damages to a second car which collided with the car left standing upon the highway. Reykdal v. Miller, 216 W 561, 257 NW 604.

An operator, permitting a highway grader to stand on a roadway while changing scarifier teeth, which would require 10 to 15 minutes, when it was practical to move it off the roadway, was contributorily negligent where the grader was struck by a truck. Kassela v. Hoseth, 217 W 115, 258 NW 340.

Great diligence must be used to guard against collisions when a disabled vehicle is standing on the highway. The facts which warranted the jury in finding that the driver of a truck was negligent in failing to remove his disabled truck from the highway are stated. Knauf v. Diamond Cartage Co. 226 W 111, 275 NW 903.

The statute does not prohibit the stopping of a school bus for a short time while waiting for school children to enter the bus. Swenson v. Van Harpen, 230 W 474, 283 NW 309.

A truck driver who voluntarily leaves his truck partly on the roadway is guilty of contributory negligence as a matter of law if there is available a farm driveway where the truck can be parked off the roadway and within the limits of the highway. Liebenstein v. Eisele, 230 W 521, 284 NW 525.

The provision prohibiting stopping of a vehicle or leaving it standing on a highway unless a clear view of such vehicle may be obtained from a distance of 200 feet in each direction along such highway did not apply where the motorist stopped because of a snowdrift and because of obscured vision by reason of blowing snow, and where the only obstruction to a view of his car by other motorists was the blowing snow. 85.19 (1), in regulating parking, stopping and leaving vehicles standing on highways, was not intended to prescribe absolute requirements under any and all circumstances. When the situation on a highway is such that a motorist's vision is completely obscured, it is his duty to slow down or even stop until the cause of such obscured vision is at least in part removed. Haight v. Luedtke, 239 W 389, 1 NW (2d) 882.

Stopping on a highway, even though merely temporarily, may contravene the statute, if not within the exceptions of 85.10 (30). In applying 85.19 (1) the highway shoulders are not to be included as part of the roadway, the word "roadway" being defined by statute. Guderyon v. Wisconsin Tel. Co. 240 W 215, 2 NW (2d) 242.

A motorist who stopped his car on a roadway of a 2-lane highway near the bottom of a hill out of respect for mourners in a long funeral procession, which was proceeding up the hill, violated provisions against parking on the roadway and as to leaving an unobstructed width of not less than 15 feet on the roadway opposite for the free passage of other vehicles thereon, and his negligence was a proximate cause of a collision which occurred when a second car stopped momentarily behind his car and a third car collided with the rear of the second car. The second motorist was not negligent as a matter of law in thus stopping on the roadway for a few seconds, before his car was struck from the rear by the third car, instead of driving onto the shoulder, especially when the shoulder was steep and consisted of 4 feet of gravel and 2 feet of grass with a deep ditch alongside. Reuhl v. Uszler, 255 W 516, 39 NW (2d) 444.

See note to 347.20, citing Schwellenbach v. Wagner, 258 W 526, 46 NW (2d) 852.

85.19 (1) applies whether the stopping was voluntary or involuntary, and is in relation to the vehicle after it has come to a stop, no matter what the cause of the stopping may have been. Failure of a trial court to cite provisions of 85.19 (8) was not error, in the absence of any request and of any evidence that the car of such defendant was so disabled as to come within the exception. Puccio v. Mathewson, 260 W 258, 50 NW (2d) 390.

See note to 346.14, citing Retzlaff v. Soman Home Furnishings, 260 W 615, 51 NW (2d) 514.

Defendant motorist, who parked his car partly on a concrete roadway but as close to a ditch as possible and leaving ample room for passage of other vehicles on the concrete, may have been causally negligent in parking in the manner in which he did, but defendant's causal negligence in the one respect found was not greater than the plaintiff's causal negligence in the 2 respects (lookout and management and control) found. Hephner v. Wolf, 261 W 191, 52 NW (2d) 390.

Defendant negligently tried to pass a preceding car in a fog and struck a car approaching from the opposite direction so that the 2 cars obstructed passage from either direction; a tractor-trailer operator arrived at the scene, parked his vehicle with left wheels on the pavement and was getting out flares to warn oncoming traffic when plaintiff's car hit the rear of the trailer. Action of the tractor-trailer operator was a normal response to the situation created by the defendant and was

not extraordinarily negligent nor such intervening or superseding cause as to relieve defendant from liability with respect to the second collision. (Prior decisions analyzed.) McFee v. Harker, 261 W 213, 52 NW (2d) 381.

The operator of a truck was properly found negligent in stopping with the left rear of the truck extending over the traveled portion of the highway. Schroeder v. Kuntz, 263 W 590, 58 NW (2d) 445.

An allegation that the driver of a truck was negligent in parking "adjacent" to the corner of an intersection so as to obscure vision of drivers of vehicles involved in a collision, was subject to general demurrer as failing to show that the truck was parked in violation of the statute and as failing to state any breach of duty which the driver of the truck owed to the users of the adjacent highways. Lawrence v. E. W. Wylie Co. 267 W 239, 64 NW (2d) 820.

Where the driver of a tractor-trailer unit attempted to turn around on a highway by backing into a farm driveway, but during such turning became stalled across the highway in such a manner that it could be moved only by means of a wrecker, it was a "disabled" vehicle within the meaning of 85.19 (8), so that provisions of 85.19 (1) were inapplicable. Jennings v. Mueller Transportation Co. 268 W 622, 68 NW (2d) 565.

The evidence was insufficient to raise a jury question as to negligence of the driver of a stalled truck in leaving the truck standing on a roadway but leaving a clear and unobstructed width of more than 15 feet on the roadway for passage of traffic. Szymon v. Johnson, 269 W 153, 69 NW (2d) 232, 70 NW (2d) 2.

The evidence presented a jury question as to whether defendant violated 85.19 (1) in parking a car on a highway when it was practical to park off the roadway. Ryan v. Cameron, 270 W 325, 71 NW (2d) 408.

85.06 (18) and 85.19 (1) are safety statutes, violation of which is negligence as a matter of law. Robinson v. Briggs Transportation Co. 272 W 448, 76 NW (2d) 294.

A truck temporarily stopped on a highway because the engine would not start, but capable of being moved to a shoulder of the highway by a truck which had it in tow, was not such a "disabled" vehicle as to be excused from provisions of 85.19 (1). Robinson v. Briggs Transportation Co. 272 W 448, 76 NW (2d) 294.

Where a driver, whose automobile was stopped on a highway at night preparatory to making a sharp right turn into a farm driveway when struck by an automobile from the rear, had stopped in front of his driveway before he was blinded by headlights of an approaching vehicle, and by exercise of ordinary care could have completed the turn without stopping and before he was blinded by any headlights could be found causally negligent in stopping where he did. Vidakovic v. Campbell, 274 W 168, 79 NW (2d) 806.

The requirement of leaving 15 feet of roadway clear is a safety provision, violation of which constitutes negligence as a matter of law, and under the circumstances here discussed was causal as a matter of law. Wittig v. Kepler, 275 W 415, 82 NW (2d) 341.

Assuming plaintiff had stopped her car 175 feet from a county truck blocking a roadway, instead of being in motion, when her car was struck from the rear, it cannot be said as a matter of law that she was negligent as to position on the highway in the situation confronting her ahead, and she not being required to anticipate that a following car would come from behind at a speed too great for stopping. Schroeder v. Chapman, 4 W (2d) 285, 90 NW (2d) 579.

Construed in connection with 85.16 (12), requiring all traffic moving in both directions to stop in the case of a school bus stopping on the highway displaying its flashing red signals, the parking statute, 85.19 (1), requiring vehicles to stop off the traveled roadway, if practical, and to leave at least 15 feet of usable roadway opposite, does not apply to the driver of a school bus, but the driver of a school bus is nevertheless required to use ordinary care in determining whether he can stop with safety on the paved portion of the highway. Alden v. Matz, 8 W (2d) 485, 99 NW (2d) 757.

A driver who stops his car on the highway because of children crossing or about to cross is not negligent if a man of ordinary prudence similarly situated would reasonably conclude that the safety of the children required the stopping. Mack v. Decker, 24 W (2d) 219, 128 NW (2d) 455.

Stopping a bus without pulling off highway where it would be possible to do so can be held to be causal negligence even though it was so stopped for some time before the collision. Milwaukee & S. T. Corp. v. Royal Transit Co. 29 W (2d) 620, 139 NW (2d) 595.

346.52 History: 1957 c. 260; Stats. 1957 s. 346.52; 1959 c. 308; 1967 c. 329; 1969 c. 50.

Legislative Council Note, 1957: Subsection (1) is largely a restatement of parts of s. 85.19 (3). The exception in the introductory clause of the present section relative to stopping or standing to avoid conflict with other traffic or to comply with the directions of a traffic officer or traffic sign or signal has been made part of s. 346.50 which applies to all the sections restricting stopping or parking as therein enumerated. Specifically, paragraphs (a) to (e) of the new section are the same as paragraphs (a) to (e) of present s. 85.19 (3), except that the words "or markers or parking meters" have been added in certain cases to indicate that parking privileges may be indicated by parking meters as well as by official traffic signs. As explained in the note to s. 346.51, paragraph (f) of s. 85.19 (3) has been dropped. Paragraph (f) of this section corresponds to s. 85.19 (3) (g) of the present law. Paragraph (g) is a restatement of s. 85.19 (4) (c). Paragraph (h) corresponds to s. 85.19 (4) (g). As explained in the notes to ss. 346.53 and 349.13, a distinction has been made between parking, on the one hand, and stopping or standing, on the other. Paragraph (h) of this section therefore refers to signs prohibiting stopping or standing. Parking in violation of signs prohibiting parking is covered by s. 346.53 (6).

Subsection (2) is a revision of s. 85.19 (4) (f). The present law, by virtue of the definition of parking, prohibits any stopping adjacent to a school house during school days. This

was designed as a safety measure, because if vehicles are lined up in front of a school house even temporarily, there always is the chance that a child may dart out from between them. The absolute prohibition did not solve the problem, however, because if the statute is followed strictly it means that the school children cannot be let out of a vehicle on the side of the street adjacent to the school house and they must cross the street on foot. The revised provision is an attempt at a satisfactory compromise. It retains the absolute prohibition of the present law insofar as through highways are concerned, but on other highways it would permit stopping temporarily for the purpose of receiving or discharging passengers. [Bill 99-S]

Negligence of the driver of a car in parking within the limits of a "Y" intersection constituted a legal cause of a collision of 2 trucks which resulted after the driver of another truck acted to avoid collision and the truck following him then skidded into the path of the other. Dombrowski v. Albert F. and S. Corp. 264 W 440, 59 NW (2d) 465.

The driver of a taxicab made a stop in the lane of travel to pick up a passenger, and thereby violated the parking statute. Cushing v. Meehan, 7 W (2d) 30, 95 NW (2d) 796.

346.52 (1) (d), which in pertinent part prohibits parking a vehicle on a sidewalk or sidewalk area, is intended for the protection and convenience of users of the walk and has no application to vehicles entering a highway from an alley or nonhighway access. Blanchard v. Terpstra, 37 W (2d) 292, 155 NW (2d) 156.

346.53 History: 1957 c. 260; Stats. 1957 s. 346.53.

Legislative Council Note, 1957: This section to a large extent restates s. 85.19 (4) with part of the pre-1947 definition of "parking" written back into the law. Prior to 1947 "parking" was defined as the "stopping or standing of a vehicle, whether occupied or not, upon a highway otherwise than (a) temporarily for the purpose of and while actually engaged in loading or unloading, (b) when making necessary repairs, or (c) in obedience to traffic regulations or official traffic signs or signals." In 1947, however, the legislature amended the definition of parking so as to mean simply "the stopping or standing of a vehicle, whether occupied or not, upon a highway otherwise than in obedience to traffic regulations or official traffic signs or signals." As applied to present s. 85.19 (4), the amended definition is meaningless, for s. 85.19 (4) itself contains the exception relating to obedience to traffic regulations or official traffic signs or signals. Moreover, its application to s. 85.19 (4) becomes absurd in some respects. For example, a literal reading of the statute and definition means that stopping in a loading zone for the purpose of loading or unloading is illegal unless such stopping is in compliance with directions of a traffic officer or traffic control sign or signal. As under the pre-1947 definition of parking, the new section permits stopping for the purpose of loading or unloading with, however, the additional restriction that the vehicle must be attended by a licensed operator so that it can be promptly moved in an emergency or to avoid obstruction of traffic. Subsections (1), (2), (3), (4), (5) and (6) correspond respectively to paragraphs (a), (b), (d), (e), (j) and (g) of s. 85.19 (4). Those provisions of present s. 85.19 conferring power upon state and local authorities, either expressly or by implication, to regulate parking have been restated in s. 349.13. [Bill 99-S]

346.54 History: 1957 c. 260; Stats. 1957 s. 346.54.

Legislative Council Note, 1957: This is a restatement of s. 85.19 (2) and (4) (i), with a few minor clarifications. The requirement that a vehicle lawfully parked on the left side of a street must have its left wheels within 12 inches of the curb is new. The present law refers only to vehicles parked on the right side of the street, but it would seem that the same rule should apply to vehicles parked on the left side. The phrase "unless a different system of parallel parking is clearly indicated" in connection with the 2-foot spacing requirement has been added to take care of systems of parallel parking where vehicles are grouped by twos rather than being evenly spaced. [Bill 99-S]

Where a bus driver was traveling in the right-hand third traffic lane of a city street, which street also had an extra and available paved fourth lane at the right near a railroad spur track, and the bus was stopped for the spur track while in the third lane when struck in the rear by a following automobile the bus driver, although stopping only momentarily, could be deemed to have thereby violated 85.19 (2). Jeffers v. Peoria-Rockford Bus Co. 274 W 594, 80 NW (2d) 785.

The provision prohibiting parking on a street unless parallel to the edge of the street and with the right wheels of the vehicle within 12 inches of the curb, was applicable to temporary stopping of a bus, but such violation did not constitute negligence per se as to a passenger alighting from the bus. Reque v. Milwaukee & S. T. Corp. 7 W (2d) 111, 95 NW (2d) 752, and 7 W (2d) 114a, 97 NW (2d) 182.

346.55 History: 1957 c. 260, 674; Stats. 1957 s. 346.55.

Editor's Note: A city ordinance which prescribed restrictions on parking motor vehicles in the garage of a public building was construed and applied in Madison v. McManus, 44 W (2d) 396, 171 NW (2d) 426.

Parking a lighted truck on the left side of a highway at night to make delivery, not unreasonably interfering with others, was not negligence per se. Whether the driver was negligent in parking was a jury question. Whether the driver of an automobile striking a lighted truck parked on the left side of a highway was contributorily negligent was for the jury. Delfosse v. New Franken O. Co. 201 W 401, 230 NW 31.

One who intentionally parked her automobile on the left side of a highway, in violation of 85.19 (2) and (9), was negligent as a matter of law in that respect. Scory v. La Fave, 215 W 21, 254 NW 643.

The mere fact that the truck was parked on the left half of a roadway so as to face in the wrong direction could not of itself be con-

sidered the cause of a collision between a parked truck and a car approaching on that half of the roadway. Guderyon v. Wisconsin Tel. Co. 240 W 215, 2 NW (2d) 242.

The prohibition against parking or stopping on the left side impliedly excepts wreckers engaged in rescuing a disabled vehicle, where so stopping is the only practical way to conduct the operation, but the operator must use ordinary care to warn other traffic of the obstruction. Vandenack v. Crosby, 275 W 421, 82 NW (2d) 307.

346.56 History: 1957 c. 260; Stats. 1957 s. 346.56; 1967 c. 292.

346.57 History: 1957 c. 260; Stats. 1957 s. 346.57; 1959 c. 312, 593, 641; 1969 c. 500 s. 30 (2) (e).

Legislative Council Note, 1957: This is a restatement of s. 85.40 (1) (a) to (h) and (2) (a) and (b), with several changes to be noted.

The definitions in sub. (1) can best be discussed in connection with the provisions to which they pertain.

Subsection (2) is a restatement of s. 85.40 (2) (a). The reasonable and prudent limit applies under all circumstances.

Subsection (3) is a restatement of s. 85.40 (2) (b). Highway construction and maintenance workers have been added to the enumeration of persons on a roadway for whom reduced speed is required. This is primarily a matter of emphasis rather than a change in the law.

Subsection (4) (a), (b) and (c) restates present law. Subsection (4) (d) prescribing a 15 mile per hour limit in alleys is new. Alleys are not designed for through traffic or fast driving. Moreover, in residential areas it is quite common for children to play in the alleys.

Subsections (4) (e), (f) and (g) and (6) represent a substantial revision of present s. 85.40 (1) (a) and (b). In the revision, an attempt has been made to achieve a fair balance between the interest of the motorist in receiving adequate warning of speed limits and the interest of residents of urban areas in being protected from the hazards of unduly fast-moving traffic.

The law presently prescribes a 25 mile per hour limit in any business or residence district in any city, village, or unincorporated village and a 35 mile per hour limit in outlying districts in any city, village or unincorporated village. The new section retains the 25 mile per hour limit in cities and villages, except in outlying districts, but requires that notice of such limit be posted on state and county trunk highways and connecting streets before such limit is effective. The reference to business or residence district has been omitted so as to avoid any hiatus between the outlying district where the 35 mile per hour limit applies and the remainder of the city or village where the 25 mile per hour limit applies. Such a hiatus exists under present law, for it is possible that buildings are situated too far apart to constitute a business or residence district as defined in s. 85.10 and yet not far enough apart to constitute an outlying district within the meaning of s. 85.40 (1) (b). The definition of outlying district has been revised so as to correspond more closely to those areas within corporate limits which have rural characteristics. The required average distance between buildings has been reduced from 500 to 200 feet and at least 1,000 feet of highway must be considered.

The reference to "unincorporated villages" has been omitted and in lieu thereof the term "semi-urban district" is used. It is not clear what constitutes an unincorporated village within the meaning of the present speed law, though perhaps the definition is s. 62.06 (1) was intended to be incorporated. This would require an area of not more than one-half square mile with a population of 150 or more or a greater area with a population of 200 or more or an area greater than one square mile with a population density of not less than 400 per square mile. Presumably the boundaries of the area would have to be fixed by the town board pursuant to s. 60.29 (6) before the area could be considered an unincorporated village. The term "semi-urban district" which has been substituted for "unincorporated village" is defined so as to require a fairly substantial development of business, industrial or residential buildings and they must be fronting on the highway in question. The average distance between buildings in use must be not more than 200 feet, considering those on one side of the highway. Buildings on both sides also may be considered collectively. Thus, it is possible that the buildings on either side of the highway considered separately may be more than 200 feet apart on the average but that when buildings on the 2 sides are considered collectively the average distance between them is less than 200 feet. The new definition is not dependent on actual population within any specified area nor is it dependent on whether the town board has fixed any boundaries. The only duty of the town board will be to cause the erection of signs at appropriate points on town highways involved. Frontage of buildings in use for business, industrial or residential purposes is a factor of greater relevance to proper speed on a highway than is the population within a given area through which the highway runs.

Subsection (4) (h) is a consolidation and restatement of s. 85.40 (1) (g) and (h), the term "hours of darkness" having been substituted for "nighttime." The purpose in this change is to make the reduced speed limit take effect at the same time that lighted headlamps and tail lamps are required. In general, this will mean that the 55 mile per hour limit will take effect one-half hour earlier under the new section than under present law.

Subsection (5) refers to speed zones and in effect restates parts of s. 85.40 (3). The remainder of s. 85.40 (3) has been restated in s. 349.11. [Bill 99-S]

Editor's Notes: (1) Sec. 85.40, Stats. 1955, which was superseded by this section, was created by sec. 3, ch. 454, Laws 1929, and was subsequently amended by numerous statutes. Prior legislation on the subject of speed restrictions was considered and applied in the following cases (among others): Luethe v. Schmidt-Gaertner Co. 170 W 590, 176 NW 63; Mulkern v. State, 176 W 490, 187 NW 190; Maxon v. State, 177 W 379, 187 NW 753; and Pisarek v. Singer T. M. Co. 185 W 92, 200 NW 675.

(2) A municipal ordinance patterned after 346.57 (2), Stats. 1965, was involved in Whitefish Bay v. Hardtke, 40 W (2d) 150, 161 NW (2d) 259. See also Milwaukee v. Berry, 44 W (2d) 321, 171 NW (2d) 305.

1. Generally.
2. Reasonable and prudent limit; reduced speed.
3. Fixed limits.

1. Generally.

A guest in an automobile driven by the owner is guilty of negligence if he failed to remonstrate against unreasonable speed at which the automobile approached a railroad crossing where he was injured by a passing train. A passenger in an automobile is required to use the same care for his safety that a reasonably careful person exercises under the same or similar circumstances. The extent to which he may rely upon the driver for safety depends on circumstances. Howe v. Corey, 172 W 537, 179 NW 791.

Driving a motor vehicle recklessly, at an unreasonable speed, is actionable negligence where there is a causal connection between the violation of the statute and an injury to another. Driving at a rate which prevented the driver from stopping in time to avoid an accident, is actionable if the driver could reasonably have anticipated that injury might result to someone by reason of such rate of speed. Pisarek v. Singer T. M. Co. 185 W 92, 200 NW 675.

Where a mother rode as a gratuitous guest in an automobile driven by her daughter, with knowledge of the daughter's failing in turning corners at dangerous rates of speed, the mother assumed the risk of injury from that cause, and was precluded from recovering for injuries resulting from the daughter's negligence in driving a car too fast around a curve. Page v. Page, 199 W 641, 227 NW 233.

Testimony about the speed of an automobile is competent, when the witness is an experienced driver. Gerbing v. McDonald, 201 W 214, 229 NW 860. See also Feyrer v. Durbrow, 172 W 71, 178 NW 306.

That a driver was compelled to act in an emergency is no defense, where the only emergency existing resulted from the driver's failure to maintain proper lookout. Madden v. Peart, 201 W 259, 229 NW 57.

Where the jury found plaintiff negligent as to speed only, and that such speed was not an efficient cause which produced a collision with a car driven by defendant, but nevertheless apportioned 20% of the combined negligence to the plaintiff, the verdict was inconsistent and a new trial is required. Mitchell v. Williams, 258 W 351, 46 NW (2d) 325.

Negligence as to speed is generally a question for the jury, but there must be evidence that such speed has a bearing on the driver's ability to control his vehicle. Bachmann v. Bollig, 270 W 82, 70 NW (2d) 216.

In conformity with the established standards applicable to trial courts, judicial notice can be taken of the speed conversion chart as set forth in the Manual for Motorists, as well as the facts pertinent to the case under consideration. Schmiedeck v. Gerard, 42 W (2d) 135, 166 NW (2d) 136.

The requirements of 85.40 (2), Stats. 1947, apply to locations with fixed limits as well as to other locations. 37 Atty. Gen. 478.

In a prosecution under 85.40 (2), involving a collision with another vehicle, it is incumbent on the prosecutor to prove conditions and actual and potential hazards then existing and that the other vehicle was on or entering a highway in compliance with legal requirements and using due care. 45 Atty. Gen. 309.

Proof of a violation of 346.57 (2) and (3) does not require showing a collision with an object, person, vehicle or other conveyance on or entering the highway. 52 Atty. Gen. 30.

See note to 346.62, citing 57 Atty. Gen. 142.

2. Reasonable and Prudent Limit; Reduced Speed.

A finding that plaintiff was guilty of negligence was sustained by evidence showing that he drove his automobile across a street intersection at a speed of 20 miles an hour and speeded up in order to cross in front of the defendant's car which had the right of way. If the collision would not have occurred but for the excessive speed of the plaintiff's car, his negligence was the proximate cause of the collision. Haswell v. Reuter, 171 W 228, 177 NW 4.

The driver of an automobile, who approached in the nighttime a private crossing over a sidewalk leading to his garage, at a speed of 6 or 7 miles an hour, enabling him to stop almost instantly in case of necessity, when he could reasonably assume that his headlights would give sufficient warning to pedestrians on the sidewalk, was not negligent. Henderson v. O'Leary, 177 W 130, 187 NW 994.

A plaintiff who drove his automobile at 20 miles per hour in the nighttime along a familiar highway and approaching a railroad crossing, the existence and location of which was known to him, was negligent as a matter of law in driving through a cloud of smoke which obscured his vision of the highway. Fannin v. Minneapolis, St. P. & S. M. R. Co. 185 W 30, 200 NW 651.

Defendant having admitted negligence as to speed and his failure to control his car, such negligence under the facts in the case was the proximate cause of a collision at a street intersection. Schneider v. Steindler, 188 W 129, 205 NW 797.

Uncontradicted physical results of a collision at an intersection where the car in which plaintiff was riding had the right of way were so convincing that they were deemed to control the case, and to disclose that defendants were guilty of an excessive rate of speed. Rubach v. Prahl, 190 W 421, 209 NW 670.

Where the driver of an automobile was driving at night at such a speed and under such circumstances that he was unable to see a large truck standing on the highway within such a distance as to permit him to stop before a collision occurred, he has so violated the law regulating his own use of the highway that if such violation is a proximate cause of the injury he received there can be no recovery. Kleist v. Cohodas, 195 W 637, 219 NW 366; Knapp v. Somerville, 196 W 54, 219 NW 369.

A motorist driving on a viaduct at a speed

in excess of that permissible was negligent as a matter of law. Kitter v. Lenard, 235 W 411, 291 NW 814.

A motorist, who could see an obscuring cloud of smoke blowing across the roadway when she was still at least 100 feet away, but who approached at 25 to 30 miles per hour and, without any material change in the course or speed of her car, entered and passed through the smoke and 8 or 10 feet beyond to where the car crashed into a truck parked on the roadway, was causally negligent in respect to speed, and in respect to management and control of her car, as a matter of law. Guderyon v. Wisconsin Tel. Co. 240 W 215, 2 NW (2d) 242.

The evidence required the conclusion that the driver of an automobile stopping his car within 11 feet from the point where he applied his brakes, was not traveling at an excessive rate of speed just prior to colliding with a motorcycle within a street intersection. Kloss v. American Indemnity Co. 253 W 476, 34 NW (2d) 816.

A motorist, who came over a hill crest when a car was stopped on the roadway some distance down the hill, and who failed to stop his car in time to avoid colliding with the rear of such stopped car, the driver of which had had no difficulty in stopping behind another stopped car although his car was traveling at the hill crest at a similar claimed speed, failed to comply with the requirements of 85.40 (2) (b), Stats. 1947. Reuhl v. Uszler, 255 W 516, 39 NW (2d) 444.

Evidence that defendant motorist was familiar with a highway and curve, that she speeded up car as it rounded the curve and proceeded upgrade, that she had sufficient vision ahead on rounding the curve, and that she swung to her right instead of going straight ahead, together with other evidence, supported the jury's findings that she was causally negligent as to speed, lookout, and management and control. Schoenberg v. Berger, 257 W 100, 42 NW (2d) 466.

The evidence would not sustain the jury's finding that westbound motorist was causally negligent as to speed on the theory that such motorist, although driving at a prudent and reasonable rate of speed until eastbound car invaded his lane of travel, was negligent thereafter in failing to reduce his speed sooner than he did, where he was found not negligent as to lookout or as to management, and control. Mezera v. Pahmeier, 258 W 229, 45 NW (2d) 620.

Evidence that a motorist, when still 100 feet from a street intersection, observed a truck slowly entering it from the right after having stopped for a stop sign, but that the motorist did not turn his car in an effort to avoid a collision, and was unable to stop in time although applying the brakes, supported the jury's findings that he was causally negligent as to management and control and as to speed. Peterson v. General Cas. Co. 259 W 370, 48 NW (2d) 459.

If a motorist's vision is completely obscured, it is his duty to slow down or even stop until the cause of such obscured vision is at least in part removed. Where a motorist first became blinded by the bright headlights of an approaching truck when he was about 4 blocks away from a stalled vehicle partly on the roadway, and he nevertheless continued to proceed without reducing his speed of 50 miles per hour or taking any other steps for his own safety until after he had passed out of the blind area and first observed the stalled vehicle only 50 feet ahead of him, when it was too late for him to avert disaster, his causal negligence was at least as great, as a matter of law, as the causal negligence of the driver whose truck headlights had blinded him. Quady v. Sickl, 260 W 348, 51 NW (2d) 3, 52 NW (2d) 134.

The driver of a truck, who materially reduced his speed on entering an area covered by smoke which came from burning leaves and was so dense that his vision was completely obscured thereby, but who continued to drive with his vision thus obscured and turned into an alley where the truck struck a city employe engaged in stirring burning leaves at the curb, was causally negligent as to speed and as to management and control as a matter of law. (Guderyon v. Wisconsin Tel. Co. 240 W 215, applied.) Cook v. Wisconsin Tel. Co. 263 W 56, 56 NW (2d) 494.

Evidence that defendant continued on without reducing his speed of 40 to 45 miles per hour when he was blinded by lights of an approaching car was sufficient to sustain findings that the defendant was negligent as to speed. Johnson v. Sipe, 263 W 191, 56 NW (2d) 852.

Plaintiff was negligent as a matter of law in failing to reduce her speed of 40 to 45 miles per hour, except by releasing the accelerator to some extent, as she approached the point of collision partially blinded by bright lights of approaching car. Schroeder v. Kuntz, 263 W 590, 58 NW (2d) 445.

Whether speed of 35 to 40 miles per hour on approaching a straight, level, dry, nonarterial intersection was a reasonable and prudent speed and an appropriate reduced speed under the conditions then existing, and considering the hazard presented by a cornfield located at the southwest corner of the intersection, was a question for the jury under the circumstances presented in evidence. In order to take the question from the jury and hold that a person was negligent as a matter of law, the evidence must be such that no other conclusion can be drawn. Lake to Lake Dairy Co-op. v. Andrews, 264 W 170, 58 NW (2d) 685.

The requirement of 85.40 (2) (b), Stats. 1949, that the driver of a vehicle shall operate at an "appropriate reduced speed" when approaching an intersection, and when special hazard exists with regard to other traffic or by reasons of weather or highway conditions, does not require that the speed of a vehicle must be reduced when approaching an intersection no matter at what speed (under the maximum limit) the vehicle is being operated. Lake to Lake Dairy Co-op. v. Andrews, 264 W 170, 58 NW (2d) 685.

Defendant came up within 150 feet of plaintiff's slowly moving, preceding car at a speed of 35 to 40 miles per hour on a slippery road and moved slightly to the left, intending to pass, when plaintiff began to turn left at a private driveway without signal of intention to do so; defendant then swung back into the right lane, put on the brakes and struck plain-

tiff's car, which was back in the right lane. Defendant was negligent as a matter of law in driving at a speed which made it impossible for him to slow or stop his car under the conditions then existing and avoid collision, as against contentions that defendant was a "passing" motorist as to whom duties of a "following" motorist did not apply, and that defendant was confronted with an emergency. Zenner v. Fischer, 264 W 393, 59 NW (2d) 435.

The requirement of 85.40 (2) (b), Stats. 1951, that a driver shall operate "consistent with the requirements of par. (a)" does not mean that he must reduce speed only when the driver on the intersecting road complies with requirements; it only means that the 2 paragraphs should be construed to make them compatible. Roeske v. Schmitt, 266 W 557, 64 NW (2d) 394.

Under evidence that a truck driver, approaching an intersection on an arterial highway and colliding with an automobile approaching on intersecting nonarterial highway, had reduced speed to no more than 35 miles per hour by the time he came to front of another truck parked adjacent to the highway, that he made an observation and saw the automobile approaching and that there was nothing about its speed or otherwise to give him reason to believe it was not going to stop, the question of his negligence was for the jury. Lawrence v. E. W. Wylie Co. 267 W 239, 64 NW (2d) 820.

Each approaching driver, familiar with the limited roadway, limited visibility on a curve, and slippery conditions, was required to operate his vehicle, under the circumstances known to him, with proper regard for the hazards then existing, so that his speed would be sufficiently controlled to avoid a collision. Thelen v. Machotka, 268 W 1, 66 NW (2d) 684.

In an action for the death of a truck driver who was struck by a following automobile while he was attempting to push his truck stalled on a highway, it was for jury to decide whether speed of the following driver at 50 was negligent in face of whatever reduction in visibility might have been caused by lights of oncoming cars, there being no evidence that he was blinded by their lights, and speed being held negligent as a matter of law only where the driver's vision has been blinded, dazzled, obscured, or obstructed. Szymon v. Johnson, 269 W 153, 69 NW (2d) 232, 70 NW (2d) 2.

Even though a motorist is not exceeding a posted limit his speed may be excessive where he is passing a truck parked on the shoulder of a highway across from a public garage, since he might have expected some one to walk across the highway at that point. Metz v. Rath, 275 W 12, 81 NW (2d) 34.

It cannot be held as a matter of law that the defendant's speed of 40 to 45 miles per hour going up a hill on a state trunk highway, with unobstructed vision of 300 to 370 yards, violated the requirement that the operator of a motor vehicle shall operate the same at appropriate reduced speed when approaching a hill crest. Sawdey v. Schwenk, 2 W (2d) 532, 87 NW (2d) 500.

It is a jury question whether a truck driver was negligent as to speed in approaching an intersection at 28 or 30 miles per hour on a wet highway, knowing that an approaching driver is contemplating a left turn in front of him. Korpela v. Redlin, 3 W (2d) 591, 89 NW (2d) 305.

The evidence supported a finding that a driver was negligent as to management and control, in that he had about 7 seconds in which to act before a collision occurred, and that if he had greatly reduced his speed or stopped, as he could have done, he would have enlarged the time and distance in which the driver of the car skidding over center line might have regained control; he was not entitled to the benefit of the emergency doctrine. Zimmer v. Zimmer, 6 W (2d) 427, 95 NW (2d) 438.

Where the driver of an automobile, colliding at night with an automobile approaching from the opposite direction on the wrong side of the road, could see the oncoming car lights but, because of a heavy fog, could not see such lights well enough to determine their distance or location on the road, and he did not appropriately reduce his speed but continued on, he was negligent as a matter of law as to speed. Ruid v. Davis, 8 W (2d) 288, 99 NW (2d) 129.

Where plaintiff was injured while crossing a highway at a place other than a crosswalk, the court properly refused to include the second sentence of 346.57 (2) in its instruction on defendant's speed. Field v. Vinograd, 10 W (2d) 500, 103 NW (2d) 500.

A car operator is not necessarily negligent in proceeding ahead over pavement which he has observed by preview is clear of obstructions, even though thereafter blinded by approaching lights of an oncoming car. Cary v. Klabunde, 12 W (2d) 267, 107 NW (2d) 142.

A crossover between the roadways of a divided highway does not constitute an "intersection" and hence a driver on the highway need not reduce his speed. Mayville v. Hart, 14 W (2d) 292, 110 NW (2d) 923.

The contention that a truck driver's speed was excessive because not an "appropriate reduced speed" under the circumstances, was without merit, absent any evidence to support the fact of driving at an excessive rate of speed or to permit the inference that he was driving at an excessive rate of speed. Krause v. Milwaukee Mut. Ins. Co. 44 W (2d) 590, 172 NW (2d) 181.

3. Fixed Limits.

It will not be held as a matter of law that the driver of a taxicab was not guilty of negligence that proximately caused injury, who was exceeding the lawful speed limit when, due to crystallization, some part of the car might give way and cause a loss of control by the driver, particularly in a city. Murray v. Yellow Cab Co. 180 W 314, 192 NW 1021.

Evidence of defendant driving at a rate of more than 65 miles per hour as he approached an intersection supported a finding that he was causally negligent as to speed. Kanzenbach v. S. C. Johnson & Son, Inc. 273 W 621, 79 NW (2d) 249.

Under 346.57 (5), Stats. 1965, which forbids the operation of a motor vehicle in excess of any speed limit established pursuant to law by state or local authorities and indicated by official signs, the state may charge a defendant with speeding and also state the excess

rate of speed, and such charge may be sustained by proof of any speed in excess of the maximum permissible speed. State v. Zick, 44 W (2d) 546, 171 NW (2d) 430.

Sufficiency of the evidence to support the jury finding of defendant's 90-miles-per-hour speed was not impaired by inaccuracy of the speedometer on the officer's squad car, where test of the instrument (made prior to or after the arrest) revealed that the speedometer before correction ran 5 miles slow at 90 miles per hour, so that the inaccuracy, if it existed when defendant was clocked, was in his favor. State v. Zick, 44 W (2d) 546, 171 NW (2d) 430.

346.58 History: 1957 c. 260; Stats. 1957 s. 346.58; 1963 c. 209.

346.59 History: 1957 c. 260; Stats. 1957 s. 346.59.

Legislative Council Note, 1957: This is a restatement of s. 85.40 (6) with certain clarifications. The present law states that no person shall drive a vehicle so slow "as to impede or block the reasonable and lawful movement of traffic." Technically, this could mean that a heavy truck traveling 45 miles per hour is in violation where the normal flow of traffic is 65 miles per hour, yet such truck would be violating the 45 mile per hour limit if operated any faster. Subsection (1) therefore makes an exception where reduced speed is necessary for safe operation or to comply with law.

In regard to the requirement that a vehicle impeding the flow of traffic must yield the roadway upon audible warning by the driver of an overtaking vehicle, the present law uses the term "slow-moving vehicle" which is defined in s. 85.10 (10) as a vehicle being operated upon a highway at a speed less than the maximum speed then and there permissible. This definition has been eliminated and instead sub. (2) uses the phrase "vehicle moving at a speed so slow as to impede the normal and reasonable movement of traffic." If the normal and reasonable movement of traffic at a particular place at a given time is 60 miles per hour, there is no reason why all other vehicles should be required to yield the roadway to 1 or 2 vehicles which may insist on driving 65 miles per hour, yet the present law would seem to require this. [Bill 99-S]

Defendant's futile attempt to start a car by placing it in low gear on a downgrade was negligence to a high degree and the jury's apportionment of 50% of total causal negligence to plaintiff, who was negligent as to speed as matter of law when her car struck defendant's car from behind, was sufficient basis for a new trial ordered by the trial court in the interest of justice. Petlock v. Kickhafer, 7 W (2d) 102, 96 NW (2d) 83.

A contention that, despite the fact that there was no fixed minimum speed at the place in question, the overtaken driver's slow speed of 15—18 miles per hour was causal negligence under 346.59 (1), Stats. 1963 (by reason of impeding the normal and reasonable movement of traffic), had no merit, it being undisputed that the overtaken driver was entering an area where reduced speed was required and that the left or passing lane was free of oncoming traffic. Slattery v. Lofy, 45 W (2d) 155, 172 NW (2d) 341.

346.595 History: 1967 c. 292; Stats. 1967 s. 346.595.

346.60 History: 1957 c. 260; Stats. 1957 s. 346.60; 1967 c. 292.

346.61 History: 1957 c. 260; Stats. 1957 s. 346.61.

Legislative Council Note, 1957: Most provisions of this chapter are applicable only upon highways. This section gives the sections relating to reckless and drunken driving somewhat broader applicability. They will apply in such areas as parking lots, filling stations and loading platforms. This is a change in the law, for the attorney general has ruled that the present law relating to drunken driving applies only to driving on highways. 38 Atty. Gen. 184 (1949). Broader applicability, however, is in the interest of public safety and also is consistent with s. 11-101 of the UVC. [Bill 99-S]

346.62 History: 1957 c. 260, 674; Stats. 1957 s. 346.62.

Legislative Council Note, 1957: Subsection (1) is a restatement of s. 85.395.

Subsection (2) is a revision of part of s. 85.81 (3). The present section penalizes the injuring of another by the operation of a vehicle in a "reckless, wilful or wanton disregard of the rights or safety of others." This would seem to require proof of what usually is termed "gross negligence" by Wisconsin courts. This is a higher degree of culpability than "high degree of negligence." The high degree of negligence standard has been substituted so as to make the section on injury by reckless driving consistent with the sections on reckless driving and homicide by reckless driving.

Subsection (3) defines high degree of negligence in the same manner as the criminal code. It is considered to be a clarification rather than a change in the law. [Bill 99-S]

Legislative Council Note, 1957: The definition of high degree of negligence, without the above amendments, is identical to the definition of high degree of negligence used in the criminal code. The above amendments are necessary to provide a workable definition for use in the reckless driving section which states that "it is unlawful for any person to endanger the safety of his own person or property or the safety of another's person or property by a high degree of negligence in the operation of a vehicle." The criminal code, insofar as the high degree of negligence concept is used, is concerned only with endangering another's person, not with endangering one's own person or with endangering property. [Bill 643-S]

On a preliminary examination of a motorist whose car struck and killed a young girl, who was either walking along the edge of the concrete highway with a young companion or was starting across the road, the evidence, in view of the commonly known traits of children of such age as to heedlessness when playing together or engaged in conversation, justified a finding of reasonable probability of the defendant's guilt of unlawful operation of a vehicle on the highway, in violation of 85.40 (1), Stats. 1941. State ex rel. Shields v. Portman, 242 W 5, 6 NW (2d) 713.

One who persists in driving a motor vehicle when he should know he is likely to fall asleep may be guilty of a high degree of negligence within the meaning of 346.62, 940.08 and 941.01. 46 Atty. Gen. 110.

346.57 and 346.62, Stats. 1967, relating to speeding and reckless driving of motor vehicles, are not applicable on the frozen surfaces of lakes. 57 Atty. Gen. 142.

Reckless driving—prosecution and defense. O'Connell, 1958 WLR 210.

346.63 History: 1957 c. 260; Stats. 1957 s. 346.63; 1959 c. 641; 1967 c. 292; 1969 c. 336 s. 176.

Legislative Council Note, 1957: Subsection (1) is a restatement of s. 85.13 (1).

The first sentence of sub. (2) is a restatement of part of s. 85.81 (3). The second sentence is new and is consistent with the requirement of s. 940.09 relating to homicide by the operation of a vehicle while under the influence of an intoxicant. It probably represents a change in the law in view of the pre-1956 cases holding that it is not necessary to prove a causal connection between the intoxication and the death when a person is killed as a result of being struck by a vehicle operated by a person who is under the influence of intoxicating liquor. See State v. Resler, 262 W 285, 55 NW (2d) 35 (1952); State v. Peckham, 263 W 239, 56 NW (2d) 835 (1953). However, this law has been changed by the new criminal code.

The definition of "dangerous drug" in sub. (3) is from s. 85.13 (2).

Chemical tests for intoxication and the admissibility of the results of such tests as proof of intoxication are covered in s. 325.235. [Bill 99-S]

Editor's Note: Municipal ordinances making it unlawful for a person to operate a motor vehicle on a highway while under the influence of intoxicating liquor were construed and applied in Milwaukee v. Richards, 269 W 570, 69 NW (2d) 445; Shawano County v. Wendt, 20 W (2d) 29, 121 NW (2d) 300; Milwaukee v. Johnston, 21 W (2d) 411, 124 NW (2d) 690; Milwaukee v. Kelly, 40 W (2d) 136, 161 NW (2d) 271; Waukesha v. Godfrey, 41 W (2d) 401, 164 NW (2d) 314; Fond du Lac v. Hernandez, 42 W (2d) 473, 167 NW (2d) 408; and Kenosha v. Dennis, 42 W (2d) 694, 168 NW (2d) 216.

On chemical tests for intoxication see notes to 885.235.

See note to 895.045, (general), citing Tomasik v. Lanferman, 206 W 94, 238 NW 857.

The statutory rule against driving an automobile while under the influence of intoxicating liquor is absolute, and where there is the necessary causal relation between a person's injury and his violation of the statute, such violation constitutes negligence on his part. Devine v. Bischel, 215 W 331, 254 NW 521.

Evidence that defendant was found in an intoxicated condition, slumped in the seat on the passenger side of his automobile parked in the middle of a street with the headlights on, the motor running, and the right-hand door partially open, was insufficient to sustain a finding that defendant was "operating" a motor vehicle while under the influence of intoxicating liquor. State v. Hall, 271 W 450, 73 NW (2d) 585.

Beer is "intoxicating liquor" within the meaning of 85.13, Stats. 1941, notwithstanding its exclusion from the definition of that term as used in ch. 176. 31 Atty. Gen. 199.

Driving under the influence of intoxicating liquor. Sullivan, 1958 WLR 195.

346.64 History: 1957 c. 260; Stats. 1957 s. 346.64.

346.65 History: 1957 c. 260; Stats. 1957 s. 346.65; 1969 c. 383.

346.66 History: 1957 c. 260; Stats. 1957 s. 346.66.

Legislative Council Note, 1957: This section is new but is considered to be a clarification of the law rather than a change in the law. The attorney general has ruled that the present accident reporting provisions are applicable upon all premises open to the public, whether or not publicly owned. 35 Atty. Gen. 377 (1946). The attorney general also has ruled that the rider of a bicycle is not the "driver of a vehicle" within the meaning of the accident reporting sections. 25 Atty. Gen. 500 (1936). Section 85.08 (25) (d) requiring the revocation of the operator's license of any person failing to stop and render aid after an accident also would seem to indicate that the section pertaining to accidents was intended to include only those accidents involving one or more motor vehicles. [Bill 99-S]

346.67 History: 1957 c. 260; Stats. 1957 s. 346.67.

The evidence was sufficient to support a finding of guilt under 346.67, Stats. 1965. State v. Eberhardt, 40 W (2d) 175, 161 NW (2d) 287.

346.68 History: 1957 c. 260; Stats. 1957 s. 346.68.

346.69 History: 1957 c. 260; Stats. 1957 s. 346.69.

Legislative Council Note, 1957: This is a restatement of s. 85.141 (5) with one change. The phrase "or other property" has been added after "fixtures" so as to broaden the scope of the section. There may be property other than fixtures legally upon or adjacent to a highway. Under the revised section, for example, the driver of a vehicle striking and damaging road machinery standing on the highway would have to report such fact to the owner or person in charge while under the present law he would not. The revised section is consistent with s. 10-106 of the UVC. [Bill 99-S]

346.70 History: 1957 c. 260 ss. 1, 23; 1957 c. 545; Stats. 1957 ss. 110.04, 346.70; 1959 c. 542; 1961 c. 201; 1965 c. 370; 1969 c. 439; 1969 c. 500 ss. 16, 30 (3) (d), (g), (h), (i).

Where the written accident report of a police officer, who heard a collision and came to the scene and conversed with the people involved, was offered in evidence by counsel for defendant on cross-examination without stating any limitations on the offer, and it was received without objection, the report was evidence of the facts therein stated and was not

limited to the function of impeachment. Cushing v. Meehan, 7 W (2d) 30, 95 NW (2d) 796.

The operator of a bicycle does not come within 85.141 (6) (a), Stats. 1935. 25 Atty. Gen. 500.

Reports made by a police officer are not confidential unless he makes a report to the motor vehicle department in the name of a participant in an accident as his agent. 29 Atty. Gen. 347.

Reports are required in cases of accidents on premises open to the public whether privately or publicly owned. 35 Atty. Gen. 377.

As used in 85.141 (6) (a), Stats. 1953, the word "immediately" means within a reasonable time under all of the facts and circumstances of the case. Whether or not a person under duty to report did so "immediately" is a question of fact and not a question of law. The failure to report "immediately" to local enforcement officers and failure to report "within 10 days" in writing to the motor vehicle department are 2 separate offenses. Prosecution will lie in appropriate cases for failure to comply with either of the 2 requirements. 43 Atty. Gen. 90.

The operator of a motor vehicle involved in an accident with more than $100 damage to own vehicle only must give notice and make report. Assessment of demerit points depends on interpretation of administrative rules. 52 Atty. Gen. 279.

346.71 History: 1957 c. 260; Stats. 1957 s. 346.71; 1967 c. 292; 1969 c. 500 s. 30 (3) (g).

The state health officer may make available to the department of transportation reports of tests for blood alcohol content on persons who have died as a result of automobile accidents, for that bureau's use for statistical purposes. 57 Atty. Gen. 187.

346.72 History: 1957 c. 260; Stats. 1957 s. 346.72.

Legislative Council Note, 1957: This section is new. There have been instances where vehicles have struck and caused extensive damage to fixtures, the operator of the vehicle then getting his vehicle repaired in a local shop and driving on without notifying the owner of the fixture or property damaged. Unless the repair shop keeps records, there is no ready clue to the identity of the vehicle causing the damage. Most repair shops keep adequate shop records and this section would not place any additional burden on them except to make such records open to inspection by enforcement officers. The section is analogous to s. 10-116 of the UVC which requires owners of garages and repair shops to report to the department all vehicles brought in which show evidence of having been involved in an accident or struck by a bullet. [Bill 99-S]

346.73 History: 1957 c. 260; Stats. 1957 s. 346.73; 1969 c. 500 s. 30 (2) (e), (3) (g), (i).

Legislative Council Note, 1957: This is a restatement of s. 85.141 (10) with one change. Accident reports filed with the motor vehicle department will be available to the state highway commission for its confidential use for highway engineering purposes. One of the primary purposes of accident reports is to enable hazardous spots on highways to be pinpointed and corrected. The attorney general has ruled, however, that the highway commission is not authorized under present law to use the accident reports for any purpose. 38 Atty. Gen. 138 (1949).

Section 85.141 (12) relating to the authority of counties, towns, cities and villages to require accident reports to be filed with specified local officials has been restated in s. 349.19. Section 85.141 (6) (b), (8) (a) and (11) relating to certain powers and duties of the motor vehicle department with respect to requiring supplemental accident reports, tabulating accident reports and preparing and distributing report forms has been restated in s. 110.04. [Bill 99-S]

On the confidentiality of various types of reports and records filed in public offices see 52 Atty. Gen. 242.

346.74 History: 1957 c. 260; Stats. 1957 s. 346.74; 1967 c. 292.

346.77 History: 1957 c. 260; Stats. 1957 s. 346.77.

346.78 History: 1957 c. 260; Stats. 1957 s. 346.78.

346.79 History: 1957 c. 260; Stats. 1957 s. 346.79.

A bicyclist, in carrying a passenger on a bicycle designed for only one person, violated the statute and was negligent per se, but it was for the jury to say whether such negligence was the proximate cause of the collision, if the question thereon had been requested and submitted to the jury. Where no such question was requested or submitted, a finding by the jury thereon was waived under 270.28 and it is deemed that the trial court, by ordering judgment on the verdict, found in favor of the bicyclist thereon. Miller v. Keller, 263 W 509, 57 NW (2d) 711.

346.80 History: 1957 c. 260; Stats. 1957 s. 346.80.

It cannot be said, as a matter of law, that a person was negligent in riding his bicycle on a path 11 feet from the right-hand curb, if the other parts of the street afforded ample space for all other vehicles to pass without colliding, although a city ordinance required that he "keep to the right and as near the right curb as possible." Friedrich v. Boulton, 164 W 526, 159 NW 803.

346.81 History: 1957 c. 260; Stats. 1957 s. 346.81; 1959 c. 19.

Legislative Council Note, 1957: Subsection (1) is based upon s. 85.06 (22), but the present section can be complied with either by using a rear reflector or a tail lamp while sub. (1) would require a reflector under all circumstances and would permit the tail lamp to be used as optional equipment. An adequate reflector usually is a more reliable piece of lighting equipment on a bicycle than is a tail lamp. Subsection (1) is consistent with s. 11-1207 (a) of the UVC except that the UVC would require the optional tail lamp to be visible from a distance of 500 feet. There does not seem to be any point in fixing a greater visibility requirement for an optional tail lamp than for a required reflector.

Subsection (2) is new. It is based upon s. 11-1207 (b) and (c) of the UVC. [Bill 99-S]

Revisor's Note, 1959: All other provisions of the vehicle code where the night hours are a factor use the term "hours of darkness." "Hours of darkness" is defined in 340.01; "nighttime" is not. [Bill 50-S]

346.82 History: 1957 c. 260; Stats. 1957 s. 346.82.

346.87 History: 1957 c. 260; Stats. 1957 s. 346.87.

346.88 History: 1957 c. 260; Stats. 1957 s. 346.88; 1959 c. 206; 1961 c. 662.

A fourth occupant of a 3-passenger automobile was not guilty of negligence as a matter of law because he sat on a cushion on the lap of another passenger in rather close proximity to the windshield and was injured in a collision. Mitchell v. Raymond, 181 W 591, 195 NW 855.

Under allegations that plaintiff was driving defendant's automobile with defendant sitting beside him, that plaintiff although making "some protest," made an observation into the back seat and allowed defendant to assume steering responsibility of the car at the insistence of defendant, and that during such time defendant also looked into the back seat and thereby lost control of the car so that it left the highway and turned over; the plaintiff assumed the risk and hence stated no cause of action against defendant for injuries sustained. Groshek v. Groshek, 263 W 515, 57 NW (2d) 704.

346.89 History: 1957 c. 260; Stats. 1957 s. 346.89.

Failure to observe the rule as to the duty of an automobile driver when approaching a crossing of a railroad constitutes more than a slight want of ordinary care, unless there was a substantial excuse for such failure. Bahlert v. Minneapolis & St. P. R. Co. 175 W 481, 185 NW 515.

The unexcused failure of the plaintiff to look for defendant's car, which he did not observe until the collision, which could have been avoided if plaintiff had looked, was a proximate cause of the collision as a matter of law. Peterson v. Simms, 189 W 517, 208 NW 264.

Plaintiff, driving an automobile on a city street at about 15 miles per hour, ran over a dog, and looking around saw defendant approaching from the rear, at a distance of approximately 40 feet. Defendant saw the incident, slowed down and, although he had room to turn out, did not do so but ran into plaintiff when he stopped without giving any signal of his intention. The collision resulted from the inattention of the defendant, and plaintiff's conduct was not a proximate cause thereof. Marhofke v. Brucken, 191 W 442, 211 NW 303.

While negligence may not exist because of excessive speed, yet, where there was evidence that defendant's car, for a number of blocks prior to an accident, maintained a distance of 25 to 35 feet in the rear of plaintiff's car at a speed of 15 miles per hour, it was for the jury to determine whether the defendant maintained a proper lookout. Salo v. Dorau, 191 W 618, 211 NW 762.

Where the defendant, aware that a car was following him somewhere in the rear, followed a car ahead at a safe distance, slowed down when the car ahead slowed down, and, not passing because he believed a car was approaching from the opposite direction, brought his car to stop a distance of 15 to 20 feet to the rear of the car ahead when that car was practically stopped, and the driver of the car behind, which had defective brakes, noticed for some distance that the defendant's car was slowing down, and the car behind was 50 or 60 feet to the rear when the defendant's brake lights went on, the evidence did not sustain the jury's finding to the effect that the defendant brought his car to a sudden and unexpected stop and was causally negligent in so doing. Cole v. Phephles, 241 W 155, 5 NW (2d) 755.

346.90 History: 1957 c. 260; Stats. 1957 s. 346.90.

346.91 History: 1957 c. 260; Stats. 1957 s. 346.91.

346.92 History: 1957 c. 260; Stats. 1957 s. 346.92.

Where a passenger riding on a running board of a taxicab while too intoxicated to protect himself in that position, and whose condition was not apparent to the driver of the taxicab at the time he permitted the passenger to ride on the running board, fell off and was run over by another automobile, the passenger was guilty of contributory negligence as a matter of law. Bergsrud v. Maryland Cas. Co. 201 W 141, 229 NW 655.

346.93 History: 1957 c. 674; Stats. 1957 s. 346.93.

346.94 History: 1957 c. 260, 451, 514, 674; Stats. 1957 s. 346.94; 1959 c. 205; 1961 c. 86, 384, 621.

Editor's Note: A municipal ordinance patterned after 346.94 (2), Stats. 1963, was involved in Madison v. Geier, 27 W (2d) 687, 135 NW (2d) 761.

Under the applicable definitions the place where the defendant broke a glass bottle on the entrance to an alley—all of the entrance to the alley from the paved roadway of the street, on which the alley opened, to a point beyond the place where the bottle was broken, lying within the exterior limits of the street as laid out and dedicated on the plat, and being paved and available for vehicular travel —constituted a "highway," making it an offense to place on a "highway" any foreign substance injurious or damaging to vehicles. Poyer v. State, 240 W 337, 3 NW (2d) 369.

346.94 (5) does not protect persons from physical injury; it was designed to protect vehicles. 346.94 (7) is not a safety statute; it was designed as an anti-littering statute. Kalkopf v. Donald Sales & Mfg. Co. 33 W (2d) 247, 147 NW (2d) 277.

346.94 (5), Stats. 1965, which provides that no person shall place or cause to be placed upon a highway any foreign substance which is or may be injurious to any vehicle or part thereof, is construed as being limited to foreign matter causing direct injury to vehicles, such as glass, nails, large stones, and similar

substances. Schicker v. Leick, 40 W (2d) 295, 162 NW (2d) 66.

346.95 History: 1957 c. 260, 451, 674; Stats. 1957 s. 346.95; 1959 c. 542; 1961 c. 86, 384; 1961 c. 621 s. 28; 1961 c. 662; 1963 c. 6; 1967 c. 224, 292.

CHAPTER 347.

Equipment of Vehicles.

On exercises of police power see notes to sec. 1, art. I.

347.01 History: 1957 c. 260; Stats. 1957 s. 347.01.

347.02 History: 1957 c. 260, 615; Stats. 1957 s. 347.02; 1959 c. 542.

Legislative Council Note, 1957: This section provides important rules of construction which must be taken into account when reading any of the subsequent sections of ch. 347. These rules are not stated in the present law but it seems that they would have to be read into most provisions of the present law relating to equipment in order to arrive at a reasonable and sensible construction of those provisions.

Subsection (1) exempts certain vehicles from the equipment requirements of this chapter unless specifically included in a particular section. Technically, farm tractors, self-propelled farm implements, implements of husbandry, vehicles drawn by animals, road construction or maintenance machinery and bicycles come within the general definition of "vehicle." In the absence of an exemption such as that provided by this section, a literal construction of the statutes therefore would require that all such vehicles, whenever operated on a highway, be equipped with stop lamps, brakes (including 2 independent means of applying them), horns, mirrors and speedometers. Such vehicles are expressly required to be equipped with certain lighting equipment when operated upon a highway during hours of darkness though not all of them are subject to all the lighting requirements applicable to vehicles generally. These vehicles also are expressly made subject to certain other provisions such as the section restricting tire equipment. Equipment requirements for bicycles are covered in ch. 346 in connection with the other rules pertaining to operation of bicycles on highways. Note that the exemption in sub. (1) applies only to provisions requiring vehicles to be equipped in a particular manner. There is no exemption from provisions such as those requiring dimming of headlamps or prohibiting use of more than 4 headlamps or driving lamps at the same time.

Subsection (2) limits the applicability of ch. 347 to vehicles on highways. Many of the individual sections of the present law and of new ch. 347 are expressly so limited and the supreme court on at least one occasion held that a section requiring certain equipment on a vehicle did not apply when such vehicle was not operated on a highway even though the language of the section in question was not so limited. See Connell v. Luck, 264 W 282, 58 NW (2d) 633 (1953).

Subsection (3) makes clear that ch. 347 does not prohibit the use of optional accessories or equipment so long as such accessories or equipment are not inconsistent with the requirements of ch. 347. The subsection is based upon s. 12-101 (c) of the UVC, but is not considered to be a change in the present Wisconsin law. [Bill 99-S]

347.03 History: 1957 c. 260; Stats. 1957 s. 347.03.

Legislative Council Note, 1957: This is a restatement of s. 85.37 which was created by ch. 538, Laws 1955, in connection with revision of the muffler equipment provisions. The requirement that the sale of the device, appliance, accessory or replacement part be for "highway use" has been added. For a conviction under this section, therefore, it is necessary to prove that the device or appliance was intended for installation on a vehicle operated on a highway. This is considered to be a clarification rather than a change in the law. [Bill 99-S]

347.04 History: 1957 c. 260; Stats. 1957 s. 347.04; 1961 c. 176.

Legislative Council Note, 1957: This section is based upon present s. 85.45 (1). It means that the owner of a vehicle can be prosecuted for a violation of this chapter if he causes or knowingly permits an improperly equipped vehicle to be operated even though he is not the actual operator. The operator, of course, also is liable. Note that the scope of this section does not encompass offenses such as failure to dim headlights when meeting or overtaking a vehicle. It refers only to the equipment requirements. Note also that the owner is responsible only if he knowingly causes or permits the vehicle to be operated. The present law does not require this element of knowledge, but it seems only fair to do so in view of the fact that an owner's actual control over a vehicle often is tenuous and sometimes practically nonexistent. [Bill 99-S]

347.05 History: 1957 c. 260, 518; Stats. 1957 s. 347.05; 1969 c. 500 s. 30 (3) (f).

Legislative Council Note, 1957: This is a revision of s. 85.05 (4). The present provision grants almost unrestricted authority to the motor vehicle commissioner with respect to reciprocity agreements relating to equipment. The revised section authorizes reciprocity agreements only as to the "details" of vehicle equipment and only if such agreements will not substantially impair the safety standards of this state. For example, the commissioner would not be authorized to grant an outright exemption with respect to equipment such as mudguards for trucks but he could enter into a reciprocal agreement with another state to the effect that the mudguards required by such other state will be accepted in Wisconsin even though they do not meet the exact specifications of Wisconsin law, provided mudguards required on Wisconsin trucks are accepted in such other state. [Bill 99-S]

347.06 History: 1957 c. 260; Stats. 1957 s. 347.06; 1959 c. 19; 1961 c. 414.

Editor's Note: In Clemons v. State, 176 W 289, 185 NW 209, the supreme court sustained a conviction of a driver of an automobile without lights who, while violating speed limita-