

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 re-statement 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-

tions, ran into a stationary truck upon the highway and killed a person in charge of the truck, and who was convicted of manslaughter in the fourth degree.

A motorist whose car lights suddenly went out and who could not see or know on what part of the highway his car was or the condition of the highway would have been violating 85.06, Stats. 1945, if he had operated his car farther. *Woodcock v. Home Mut. Cas. Co.* 253 W 178, 32 NW (2d) 202.

85.06, Stats. 1945, is a safety statute, and failure to comply therewith is negligence per se. *Parr v. Douglas*, 253 W 311, 34 NW (2d) 229.

Where the lights of a truck were lighted and were in full compliance with statutory requirements, they constituted adequate warning lights to other users of the highway. *Callan v. Wick*, 269 W 68, 68 NW (2d) 438.

347.07 History: 1957 c. 260; Stats. 1957 s. 347.07.

347.08 History: 1957 c. 260; Stats. 1957 s. 347.08.

347.09 History: 1957 c. 260; Stats. 1957 s. 347.09.

The evidence supported a finding that the driver of a truck was causally negligent in failing to maintain proper lights on the truck, though operating the truck on the right side of the highway at the time of a collision with an approaching automobile. (*McGuiggan v. Hiller Brothers*, 209 W 402, applied.) *Olson v. Rink*, 259 W 599, 49 NW (2d) 923.

347.10 History: 1957 c. 260; Stats. 1957 s. 347.10.

One who drove an automobile at night, with only dim side lights thereon, on the streets of a city, too fast to enable him to stop within the distance that he could see an object ahead of the size of a person, was guilty of negligence in running into the rear end of a milk wagon. *Yahnke v. Lange*, 163 W 512, 170 NW 722.

85.06 (2) (a), Stats. 1947, does not require the headlights to be sufficient to reveal object the specified distance ahead the entire width of the highway area. *Ott v. Tschantz*, 239 W 47, 300 NW 766.

Aside from the requirement that headlights be sufficient to disclose substantial objects the specified distance to the front, due care also requires headlights which enable a motorist to see the usual highway signs prescribed by statute, located at the sides of highways. *Schulz v. Chicago, M., St. P. & P. R. Co.* 260 W 541, 51 NW (2d) 542.

347.11 History: 1957 c. 260; Stats. 1957 s. 347.11.

Legislative Council Note, 1957: This section states the headlamp specifications for power driven cycles and motor bicycles. In some respects, they are less stringent than the headlamp specifications for other motor vehicles.

Subsections (1) and (2) restate parts of s. 85.06 (21) but the illuminating power specifications have been increased from 100 to 200 feet. This is a compromise between the present Wisconsin law which requires a headlamp with illuminating power sufficient to render persons, vehicles or substantial objects 100 feet

ahead visible and the UVC which requires 100-foot visibility at speeds up to 25 miles per hour, 200-foot visibility at speeds of 25 to 35 miles per hour and 300-foot visibility at speeds of more than 35 miles per hour. Most power driven cycles and motor bicycles are capable of traveling in excess of 25 miles per hour and probably very rarely will be operated in excess of 35 miles per hour during hours of darkness. Consequently the 200-foot requirement was chosen.

Subsections (3) and (4) are not in the present law. They are based upon s. 12-224 of the UVC. They provide desirable requirements with respect to the intensity and adjustment of the headlamp on power driven cycles and motor bicycles. [Bill 99-S]

347.12 History: 1957 c. 260; Stats. 1957 s. 347.12.

Legislative Council Note, 1957: This is a re-statement of s. 85.06 (16) with the exception that the requirement of the present law to the effect that a person operating a motor vehicle upon a highway during hours of darkness must use headlamps which will reveal a person or vehicle "at least 100 feet ahead" has been changed to read "at a safe distance in advance of the vehicle." Changing atmospheric conditions make it impossible to specify an exact distance measured in terms of feet. This section deals with actual operating conditions while ss. 347.10 and 347.11 deal with performance ability of lamps measured under the ideal conditions specified in s. 347.08. Hence, it is proper to specify a certain number of feet of visibility in the preceding sections, such visibility being determined on a level highway during hours of darkness under normal atmospheric conditions.

This section corresponds to s. 12-222 of the UVC but differs from the UVC in that the Wisconsin law requires dimming of headlights when approaching within 500 feet of a preceding vehicle while the UVC specifies 200 feet. [Bill 99-S]

The rule under *Lauson v. Fond du Lac*, 141 W 57, 123 NW 629, requiring an automobile driver to be able to stop his car within the distance that he can see obstructions was incorporated into 85.13. *Turecek v. Marathon County*, 197 W 75, 221 NW 384.

A headlight properly equipped and adjusted, having no greater power than necessary to satisfy the statute, does not violate the prohibition against glaring headlights. *Carribeau v. Vatopek*, 204 W 139, 235 NW 445.

347.13 History: 1957 c. 260; Stats. 1957 s. 347.13; 1967 c. 292.

In an action for the death of the operator of a motor scooter, proceeding on the highway at night and struck by defendant's overtaking automobile evidence warranting the inference that reflectibility of the taillight glass on the scooter was such that defendant should have seen it, even though the lights on the scooter were inadequate, was sufficient to sustain the finding that defendant was negligent as to lookout. *Johnson v. Sipe*, 263 W 191, 56 NW (2d) 852.

Where the question was whether the preceding truck showed a taillight of the required

visibility, the absence or invisibility of which would be negligence as a matter of law, a question in the special verdict asking whether defendant was "negligent . . . with respect to transporting the load on his truck in such a manner so as to obscure the taillight," was confusing and subject to misinterpretation. *Johnston v. Eschrich*, 263 W 254, 57 NW (2d) 396.

Testimony of the driver and another occupant of a car colliding with the rear of a car parked on the shoulder of a road, that neither saw a lighted taillight on the parked car, but that neither saw such car until they had passed a facing car, and that the driver of the colliding car was blinded by the lights of the facing car and an approaching car was concerned with avoiding them, was so negative in substance and character as to be incapable of overcoming the positive testimony offered by the operator of the parked car that there was a lighted taillight on it. *Rambow v. Wilkins*, 264 W 76, 58 NW (2d) 517.

The purpose of the requirement in 347.13, Stats. 1965, that all vehicles have tail lamps is to inform a following driver of the presence of the vehicle in front, while the purpose of clearance lamps and reflectors (required under 347.16-347.19) is to mark the extreme width of the vehicle. *Vanderkarr v. Bergsma*, 43 W (2d) 556, 168 NW (2d) 880.

347.14 History: 1957 c. 260; Stats. 1957 s. 347.14; 1961 c. 662; 1967 c. 292.

347.15 History: 1957 c. 260; Stats. 1957 s. 346.35 (2), 347.15; 1961 c. 662 s. 18; Stats. 1961 s. 347.15; 1965 c. 336; 1967 c. 292.

347.16 History: 1957 c. 260; Stats. 1957 s. 347.16; 1959 c. 629; 1961 c. 662; 1969 c. 81.

Operation of a truck without a clearance light constitutes negligence as a matter of law which is ground for liability if the lack of a clearance light causes or contributes to an injury. *Burns v. Weyker*, 218 W 363, 261 NW 244.

Absence of reflectors on the rear of a truck (a matter not in dispute), contrary to the requirement of 347.16, Stats. 1965, constituted negligence as a matter of law. *Kiggins v. Mackyol*, 40 W (2d) 128, 161 NW (2d) 261.

347.17 History: 1957 c. 260; Stats. 1957 s. 347.17.

347.18 History: 1957 c. 260; Stats. 1957 s. 347.18.

347.19 History: 1957 c. 260; Stats. 1957 s. 347.19.

347.20 History: 1957 c. 260; Stats. 1957 s. 347.20.

In an action for injuries sustained by an occupant of an automobile when the driver thereof failed to turn out soon enough to avoid colliding with a log protruding from the rear of a truck loaded with logs and parked at a curve in the highway, the record sustained the jury's findings that the operator of the truck was negligent in parking at the time and place in question, and in failing to display a red flag at the end of the load of logs, at least one of which extended more than 4 feet beyond the rear of the platform of the

truck. *Schwellenbach v. Wagner*, 258 W 526, 46 NW (2d) 852.

347.21 History: 1957 c. 260; Stats. 1957 s. 347.21.

347.22 History: 1957 c. 260; Stats. 1957 s. 347.22.

Legislative Council Note, 1957: This is substantially a restatement of s. 85.06 (20). The present law is phrased broadly in terms of requiring farm tractors and implements to carry the "lighted lighting equipment required of motor vehicles." Literally interpreted, this would mean that farm tractors and self-propelled farm implements would have to be equipped with stop lamps and clearance lamps and perhaps with direction signal lamps. The new section is limited to headlamps and tail lamps, which would seem to be adequate equipment for such slow moving vehicles likely to be operated on a highway during hours of darkness only on rare occasions. The effect of this section is to take farm tractors out of the general exception contained in s. 347.02 (1) (a), insofar as headlamp and tail lamp requirements are concerned. [Bill 99-S]

347.23 History: 1957 c. 260; Stats. 1957 s. 347.23; 1959 c. 629; 1961 c. 33.

The display of warning devices, intended to show clearance, on a county maintenance vehicle does not relieve the county of giving other warning where the vehicle completely blocks a highway and there is no clearance. *Schroeder v. Chapman*, 4 W (2d) 285, 90 NW (2d) 579.

347.24 History: 1957 c. 260; Stats. 1957 s. 347.24.

Legislative Council Note, 1957: This is a substantial restatement of s. 85.06 (24), except that the visibility requirement for the red lamp or lantern was changed from 300 feet to 500 so as to be consistent with other similar provisions of this chapter. The requirement that the reflectors meet the mounting and visibility specifications prescribed for reflectors on other vehicles also is new.

The present law reads in terms of "vehicle or piece of equipment or machinery not otherwise referred to in this section." This was changed to refer specifically to "implement of husbandry" and "animal-drawn vehicle" so as to take those vehicles out of the exemption imposed by s. 347.02. The phrase "every other vehicle not specifically required by law to be equipped with lamps or other lighting devices" is a catch-all to make certain that all vehicles operated on the highway during hours of darkness are protected by at least one light showing to the front and a light or reflectors showing to the rear. It corresponds to the phrase "not specifically required by other sections of this chapter to be equipped with lamps or other lighting devices" which is used in present s. 85.06 (24). [Bill 99-S]

A sandthrower attached to a truck, operating only when the truck moves, is not a separate piece of equipment within the meaning of 85.06 (24), Stats. 1955. *Harvey v. Brown County*, 5 W (2d) 256, 92 NW (2d) 831.

347.245 History: 1969 c. 77; Stats. 1969 s. 347.245.

347.25 History: 1957 c. 260, 514, 674; Stats. 1957 s. 347.25; 1961 c. 662; 1963 c. 201; 1969 c. 500 s. 30 (3) (h).

Legislative Council Note, 1957: Subsection (1) is a consolidation and generalization of several scattered provisions of the present statutes. Section 85.06 (14) (a) provides that any authorized emergency vehicle may be equipped with flashing, oscillating or rotating red lights. Section 85.40 (5), however, requires a flashing red light visible for a distance of 500 feet to be in operation when the vehicle is exceeding a speed limit. Since all emergency vehicles may at times be required to exceed a speed limit, the practical effect of this provision is to require all authorized emergency vehicles to be equipped with flashing red lights. Hence, from a practical standpoint, the new section does not depart from present law. The provision requiring the flashing light to be visible for the specified distance both during normal sunlight and during hours of darkness is new but is an obviously desirable requirement. The provision specifying the occasions on which the flashing red light may be used is based upon the last sentence of s. 85.67 (2) but has been expanded to cover operators of all authorized emergency vehicles. Present s. 85.67 (2) refers only to members of fire departments when operating their privately owned authorized emergency vehicles which have been equipped with flashing red lights.

Subsection (2) is a restatement of part of s. 85.16 (12) (b). In line with the drafting policy followed throughout ch. 347, the language of the present section has been revised so as to make clear that the duty of seeing that the vehicle is properly equipped falls upon the operator. Of course, the owner also may be liable by virtue of s. 347.04. [Bill 99-S]

347.26 History: 1957 c. 260, 432; Stats. 1957 s. 347.26; 1961 c. 393; 1965 c. 223, 303, 314, 478; 1969 c. 347; 1969 c. 500 s. 30 (2) (e).

347.27 History: 1957 c. 260; Stats. 1957 s. 347.27.

Legislative Council Note, 1957: This is a consolidation and revision of present provisions relating to lighting requirements for parked vehicles. A review of present provisions referring to lighting requirements for parked vehicles will help explain the changes made by the new law.

Section 85.06 (5) requires every motor vehicle "parked upon or immediately adjacent to, a traveled portion of a highway" to display a lighted tail lamp or, if parked within the corporate limits of a municipality, to display either a lighted tail lamp or "a red reflex reflector or reflectors in accordance with subs. (26) and (27)." Section 85.06 (20) provides that a farm tractor parked upon a highway must carry the lighted lighting equipment required of other motor vehicles. Section 85.06 (24) requires all vehicles or pieces of equipment or machinery "not otherwise referred to in this section" to show a white light ahead and a red light to the rear when "occupy(ing) any highway during hours of darkness" or, in lieu of the red light, 2 red reflectors.

Since the same rules apply to farm trac-

tors as to other vehicles, there are basically 2 different requirements in the present law relating to lighting equipment for parked vehicles. Motor vehicles, including farm tractors, must display a lighted tail lamp or, if parked inside corporate limits, a reflector or reflectors. Other vehicles must display a white light showing to the front and a red light to the rear or, in lieu of the red light, 2 red reflectors. Note that a nonmotor vehicle apparently is required to display a white light on the front, whether or not parked within corporate limits. Note that it apparently is unlawful to park any vehicle on the streets of an unincorporated village unless a lighted tail lamp is showing, for it would seem that such a vehicle is parked "immediately adjacent to the traveled portion of a highway" within the meaning of s. 85.05 (5) and certainly is occupying a highway within the meaning of s. 85.06 (24). These are some of the problems which the new section attempts to solve.

The new section applies only if a vehicle is parked upon a roadway or the shoulder immediately adjacent thereto. This is similar to the present law stated in s. 85.06 (5) which mentions "traveled portion of a highway" or immediately adjacent thereto. The new language is based upon s. 12-214 of the UVC and is somewhat more definite than the language of s. 85.06 (5). Under the new law the same basic rule applies both to motor vehicles and other vehicles while, under present s. 85.06 (24), nonmotor vehicles apparently may not be parked on any part of a highway during hours of darkness without displaying lights, regardless of whether the vehicle is parked adjacent to the traveled portion of the highway.

The first part of sub. (1) (a) is new. If there is sufficient artificial light to render a vehicle visible from a distance of 500 feet, there should be no necessity for displaying lighted lamps. This is the criterion used in the UVC. It would supplement the latter part of sub. (1) (a) referring to vehicles parked within corporate limits and would make clear that vehicles parked on lighted streets in unincorporated villages need not display lighted lamps. The latter part of sub. (1) (a) is based upon present s. 85.06 (5). The scope of the present law has been expanded to cover all vehicles rather than only motor vehicles. The reflector requirements have been revised so as to require only one reflector, regardless of whether the vehicle is a motor vehicle or nonmotor vehicle. Vehicles customarily operated on a highway and more than 80 inches in width will be equipped with 2 reflectors in any event, but there does not seem to be any good reason for requiring 2 reflectors on a parked vehicle. It is important, however, that if only one reflector is used that it be mounted as close as practicable to the side of the vehicle nearest passing traffic, and so this requirement has been added.

Subsection (1) (b) corresponds more closely to s. 85.06 (24) than to s. 85.06 (5). The 300-foot visibility requirement for the red rear light prescribed by s. 85.06 (24) has been changed to 500 feet so as to be consistent with other similar provisions in ch. 347. The new provision provides for maximum safety while at the same time providing a great deal

of flexibility to meet the needs of different situations. An ordinary automobile will, of course, comply simply by having its tail lamps and parking lamps lighted. The vehicle or piece of equipment or machinery not ordinarily equipped with lights can comply simply by having a lamp placed on its side nearest passing traffic. One lamp or lantern will suffice if it shows the required white light to the front and the required red light to the rear.

Subsection (2) is new but states an obviously desirable safety rule. It is based upon s. 12-214 (c) of the UVC.

Subsection (3) is necessary because of s. 347.02 which excludes the enumerated vehicles from the scope of ch. 347 unless they are expressly included within the particular section in question.

A vehicle parked in the middle of the roadway is not parked in violation of this section if it is displaying the required lights. It should be remembered, however, that there are other sections prohibiting such parking. See ss. 346.50 to 346.56. Moreover, certain vehicles must display flares or fusees when parked on the roadway. See s. 347.29. [Bill 99-S]

If a car has the light required by 85.06 (5), Stats. 1949, no additional warning need be given even though it is disabled on the highway. *Swanson v. Maryland Cas. Co.* 266 W 357, 63 NW (2d) 743.

85.06 (5) did not apply where an automobile was parked partly on the gravel shoulder but 8 feet from the concrete or traveled portion of the highway when struck from the rear by another automobile. *Superior S.P. Corp. v. Zbytoniewski*, 270 W 245, 70 NW (2d) 671.

An instruction that a driver changing a tire on a car parked partly on the highway must give warning to drivers approaching from the rear, but not informing the jury that the only warning required is adequate taillights, was prejudicial error. *Andraski v. Gormley*, 3 W (2d) 149, 87 NW (2d) 818.

The statutory duty under 347.27 to have lights of a vehicle, parked on the highway, visible from a distance of 500 feet is satisfied when parking lights (and taillights) alone are illuminated and, pursuant to 347.08 (1), such distance is to be measured under normal atmospheric conditions. *Bentzler v. Braun*, 34 W (2d) 362, 149 NW (2d) 626.

347.28 History: 1957 c. 260; Stats. 1957 s. 347.28; 1965 c. 402.

Legislative Council Note, 1957: Subsection (1) (a) is a revision of part of s. 85.06 (18) which provides that "every truck, tractor or bus operated upon a highway outside of the corporate limits of any incorporated city or village" shall carry 3 fusees, pot torches or red lanterns. The new provision specifies "motor truck or motor bus more than 80 inches wide or a truck tractor or road tractor" in lieu of the rather vague reference to truck, tractor or bus. There is no more reason for requiring a small pickup truck to carry flares or fusees than for requiring an automobile to do so. Hence, the limitation to motor trucks or motor busses more than 80 inches wide. Truck tractors and road tractors customarily haul huge trailers or semitrailers, so they should

always be equipped with lanterns, pot torches or fusees. The new section specifies the distance from which the lighting devices must be capable of being seen and specifies that fusees must be carried if pot torches are used in lieu of electric lanterns. The fusee is a quick-lighting device which will burn for a relatively short time and serves the purpose of providing a warning until the pot torches can be lighted. In general, the new section is consistent with s. 12-214 of the UVC and with interstate commerce commission regulations, except that the UVC and ICC permit use of portable red emergency reflectors while the Wisconsin law does not.

Subsection (1) (b) is new. The flags of course are for daytime use.

Subsection (2) is new. It is quite obvious that the vehicles enumerated in sub. (2) should not carry fusees or pot torches, and it seems desirable to expressly prohibit them from doing so. [Bill 99-S]

347.29 History: 1957 c. 260; Stats. 1957 s. 347.29; 1965 c. 402, 478.

Legislative Council Note, 1957: Disabled vehicles left standing on the roadway without adequate warning to approaching traffic have, in the past, been one of the major causes of serious traffic accidents. This is particularly true of the large tractor-trailer units. Consequently, a system of placing warning devices to guard against this danger has been developed. The present law is deficient in its lack of detailed instructions, and the new section attempts to remedy that defect.

The new section conforms to the ICC regulations and to the UVC, except that it does not provide for use of portable red emergency reflectors. The motor vehicle laws committee is of the opinion that the present policy against use of such reflectors should be continued, since the adequacy of the warning given by such reflectors is too dependent on the angle of placement and the headlights of approaching traffic. The Wisconsin law also specifies that warning devices are to be placed 125 feet from the vehicle while the UVC and ICC specifies 100 feet.

The new section goes into much greater detail relative to the placement of warning devices than does present s. 85.06 (18) which merely states that one fusee, pot torch or lantern "shall be placed 10 feet to the left rear side of the vehicle, one placed approximately 125 feet to the front and one placed approximately 125 feet to the rear of the vehicle." The new section contains special restrictions on warning devices carried by vehicles transporting explosives and special provisions relative to the placing of warning devices on divided highways. These latter situations obviously present special problems and need to be treated in a special manner. The new section also requires the placing of warning flags during the daytime. [Bill 99-S]

Editor's Note: Amendment 1-A to Bill 99-S, by the same author, changed distance requirements and carried a note as follows: "Distance at which flares or lanterns are to be placed is changed to conform to ICC specifications."

The operator of a standing vehicle must be

allowed sufficient time to enable him to place the prescribed warning signals. The operators of a tractor and attached trailer, who were not injured or incapacitated in any manner, were negligent as a matter of law in leaving the trailer standing on the traveled portion of a highway at night without placing a light to the rear thereof, where 5 or 6 minutes elapsed between the time of stopping the tractor and the time when the motorist collided with the trailer. *Bornemann v. Lusha*, 221 W 359, 266 NW 789.

The driver of a disabled truck and trailer, stopped on a highway, was not causally negligent in placing a flare slightly off the concrete and 100 feet to the rear of the trailer instead of the required 125 feet where the road was straight and level and the driver of another truck, colliding with the stalled trailer, did not see the flare and hence would not have seen it had it been placed 25 feet farther back. *Scheffler v. Bartzen*, 223 W 341, 269 NW 537.

The owner-operator of a truck, left standing on the concrete portion of a highway at night without lights or flares as required by statute, was liable for damages resulting from a collision between 2 automobiles approaching from opposite directions when one turned to the left to avoid the truck, since, if the motorist was negligent, his negligence was a concurring rather than an intervening or superseding cause in the circumstances. *Butts v. Ward*, 227 W 387, 279 NW 6.

The requirement that 3 lighted flares or red lanterns be placed on the highway as soon as possible when a disabled truck is left standing on the roadway or shoulder is intended not only to protect the disabled truck but also to make drivers aware of the entire situation and of the dangers incident to it, including operations undertaken to remove the disabled truck from the highway. The requirement is intended to apply to a vehicle which has come to rest, and not to a vehicle which, in the course of moving the obstacle from the highway, stops a moment to attach a chain to a disabled truck. In an action for the death of a traffic officer who was struck by a westbound automobile after it had struck the right front corner of a wrecker standing on the north side of the highway facing east with its headlights on and in the process of removing a disabled truck standing behind it, whether the failure of the operator of the disabled truck to set out flares, as required, was a cause of the accident and death was a question for the jury to determine. *Miles v. General Cas. Co.* 254 W 278, 36 NW (2d) 66.

The operator of a wrecker, engaged in assisting a stalled motorist, had no statutory duty to set out fusees, flares or other lights at 4 o'clock in the afternoon on March 8th, since the statutory requirement covers only as to periods of time from one-half hour after sunset to one-half hour before sunrise. *Daanen v. MacDonald*, 254 W 440, 37 NW (2d) 39.

In an action for injuries sustained when plaintiff's northbound automobile ran into the rear of a northbound truck standing on a roadway in the dark, the evidence warranted a finding that the operator of the standing truck, who was conversing in another car, was causally negligent in stopping on the highway in

the place he did without placing fusees or flares, in failing to have rear clearance lights lit on the truck, and in failing to have a usable, lighted taillight. *Foemmel v. Mueller*, 255 W 277, 38 NW (2d) 510.

In an action for injuries sustained by the driver of a truck proceeding on a main highway from the north, and colliding with a tractor-trailer which had turned west into a side road to turn around but became stalled so that it extended back into the main highway, the evidence sustained the jury's finding that the driver of the tractor-trailer was causally negligent as to placing and maintaining proper flares, fusees, or other warning devices. *Yanisch v. American F. & C. Co.* 257 W 462, 44 NW (2d) 267.

The fact that a wrecker was engaged in an emergency rescue operation and would be stopped only about 4 minutes does not excuse it from putting out warning devices. The presence of various lights on a wrecker and even of a third person waving a flashlight does not excuse the operator from putting out warning signals, but does go to the question of whether his negligence was causal, and presents a jury issue. *Vandenack v. Crosby*, 275 W 421, 82 NW (2d) 307.

Since a truck driver who stopped to help a stalled driver should have realized that he would be maneuvering on and off the pavement for about 10 minutes, the jury could find that he was negligent in failing to set out warning devices. *Christenson v. Klitzke*, 2 W (2d) 540, 87 NW (2d) 516.

See note to 59.24, citing *Kagel v. Brugger*, 19 W (2d) 1, 119 NW (2d) 394.

347.30 History: 1957 c. 260; Stats. 1957 s. 347.30; 1959 c. 542; 1961 c. 414.

347.35 History: 1957 c. 260; Stats. 1957 s. 347.35; 1965 c. 347; 1967 c. 292; 1969 c. 500 s. 30 (3) (h).

A truck operator was negligent as a matter of law in failing to come to a stop at a stop sign because of an insufficient emergency brake which he knew would not stop the truck and which he did not attempt to apply. *Prunty v. Vandenburg*, 257 W 469, 44 NW (2d) 246.

The sudden, unforeseen failure of the brakes on the automobile of the defendant was not an inexcusable violation of the statute as a matter of law so as to result in civil liability therefrom without any showing that he was negligent. *Pollack v. Olson*, 20 W (2d) 394, 122 NW (2d) 426.

347.36 History: 1957 c. 260; Stats. 1957 s. 347.36.

347.37 History: 1959 c. 58; 1959 c. 660 s. 82; Stats. 1959 s. 347.37.

347.38 History: 1957 c. 260; Stats. 1957 s. 347.38.

Legislative Council Note, 1957: Subsections (1) and (2) restate s. 85.67 (2) with the exception that the prohibition against use of "compression spark plug whistle" has been changed to "compression or exhaust whistle." The latter phrase is more inclusive. It seems obvious that use of all whistles of this type

should be prohibited except as expressly authorized.

Subsection (3) is new. The attorney general has expressly ruled that use of a siren in an automotive protection device is illegal under law. 38 Atty. Gen. 419 (1949). There may be considerable merit in the use of special protective devices on certain types of vehicles and there would not seem to be any harm in the device as long as it is arranged so that it cannot be used by the driver as an ordinary siren. Subsection (3) is based upon s. 12-401 (c) of the UVC.

Subsection (4) is based upon present s. 85.67 (2) and (3). The restrictions on use of sirens which presently apply only to members of fire departments who have equipped their private motor vehicles with sirens have been expanded so as to apply to all emergency vehicles. [Bill 99-S]

The horn required to be a part of the outfit of every motor vehicle must be sounded whenever the occasion makes that a reasonable warning, notwithstanding a failure of the statutes to designate or specify such occasions. *Cunnien v. Superior I. W. Co.* 175 W 172, 184 NW 767.

It is not negligence on the part of an automobile driver to fail to sound his horn when the glare of his headlights afford ample warning to pedestrians that he is about to use a private crossing over the sidewalk to reach his garage. *Henderson v. O'Leary*, 177 W 130, 187 NW 994.

It is error to instruct that there is no law requiring a driver of an automobile to sound his horn as he approaches a pedestrian or an intersection and that failure so to do cannot be regarded as negligence. Whether the horn should have been sounded was for the jury to say. *Vanden Heuvel v. Schultz*, 182 W 612, 197 NW 186.

347.39 History: 1957 c. 260; Stats. 1957 s. 347.39.

347.40 History: 1957 c. 260; Stats. 1957 s. 347.40.

347.41 History: 1957 c. 260; Stats. 1957 s. 347.41; 1959 c. 184.

347.42 History: 1957 c. 260; Stats. 1957 s. 347.42.

347.43 History: 1957 c. 260; Stats. 1957 s. 347.43.

Legislative Council Note, 1957: This is a revision of s. 85.063. Subsection (1) and (4) are restatements respectively of subs. (1) and (3) and the last sentence of sub. (5) of present s. 85.063. The only new part of the section is sub. (2). It is in lieu of s. 85.063 (3) and (4) which require the department to approve and maintain lists of approved types of safety glass, require the department to refuse registration of vehicles not equipped with safety glass and require vendors of motor vehicles to certify the type of glass used in such vehicle. Rigid supervision of safety glass requirements by the motor vehicle department may have been necessary at one time but today there are hardly any vehicles which are not equipped with the approved type of safety glass. More-

over, the motor vehicle dealer is in a better position to know the type of glass with which the new vehicles which he sells are equipped. The burden, therefore, has been shifted from the department to the dealer to see that vehicles sold in this state are equipped with the required type of glass. [Bill 99-S]

Editor's Note: In connection with 347.43 (1) see *Werlein v. Milwaukee E. R. & T. Co.* 267 W 392, 66 NW (2d) 185.

A glass replacement company does not violate this section by replacing, at the request of the owner, ordinary glass and not safety glass. 26 Atty. Gen. 137.

347.44 History: 1939 c. 287; Stats. 1939 s. 40.347; 1949 c. 47; 1953 c. 90 s. 111; Stats. 1953 s. 40.59; 1957 c. 514, 674; Stats. 1957 s. 347.44; 1959 c. 558; 1969 c. 500 s. 30 (3) (h).

347.45 History: 1957 c. 260; Stats. 1957 s. 347.45; 1963 c. 24, 378; 1965 c. 315; 1967 c. 221; 1969 c. 500 s. 30 (3) (i).

Legislative Council Note, 1957: This is a substantial revision of the present law relating to tire equipment. The motor vehicle laws committee is of the opinion that large parts of the present law, contained in ss. 85.57, 85.58, 85.59 and 85.60, are obsolete. For example, all of the exceptions contained in pars. (a) through (g) of s. 85.57 either are obsolete or are covered elsewhere. Sections 85.58 to 85.60 contain specifications for and restrictions on (a) solid rubber tires, (b) metal flanges, cleats and lugs, and (c) metal tires respectively. Such tires are very rare today and would be very harmful to most highways. To the extent that vehicles with such tires still exist and to the extent that there still are highways on which they can be used without harmful effect, their use is adequately provided for in subs. (2) and (3) of the new section.

The new section incorporates certain features of the present law but is based largely upon s. 12-408 of the UVC. The first sentence of sub. (1) is a restatement of the introductory paragraph of present s. 85.57. It requires all vehicles commonly operated upon a highway to be equipped with pneumatic tires. The second sentence of sub. (1) is new and prohibits absolutely the use of metal tires on motor vehicles, mobile homes, trailers and semitrailers. Note, however, that because of the provisions of s. 347.02 (1), this restriction does not apply to farm tractors, implements of husbandry, animal-drawn vehicles and road machinery. Subsection (2) does apply to such vehicles, but that subsection does not prohibit use of metal tires as long as they do not contain any protuberances of any material other than rubber. Even if they do contain such protuberances, operation is permitted if it can be done without injury to the highway, and tire chains of reasonable proportions may be used in any event if their use is necessary because of slippery conditions.

Subsection (3) authorizes issuance of permits for the operation of vehicles which might otherwise be prohibited from operating. Because of the flexibility of this section, the issuance of such permits seldom should be necessary. [Bill 99-S]

347.46 History: 1957 c. 260; Stats. 1957 s. 347.46.

Legislative Council Note, 1957: Subsection (1) restates s. 85.61. While the present law does not expressly so state, it has been held to apply only when a vehicle of the tractor type is operated on a highway. *Connell v. Luck*, 264 W 282, 58 NW (2d) 633 (1953).

Subsection (2) restates and consolidates s. 85.45 (6) and Rule MVD 7.01 which has been adopted by the department to implement s. 85.45 (6). [Bill 99-S]

85.61, Stats. 1947, construed in the light of its purpose as a highway safety measure, and in the light of the applicable definition of "vehicle" in 85.10 (1) as being every device in, on, or by reason of which any person or property may be transported or drawn "upon a public highway" is broad enough to cover a farm tractor, as defined in 85.10 (8), while being driven or operated on a public highway, but does not apply to a farm tractor while being operated in a field on the owner's farm by a farm hand who was injured during such operation as the alleged result of the absence of fenders on the driving wheels of the tractor. *Connell v. Luck*, 264 W 282, 58 NW (2d) 633.

347.47 History: 1957 c. 260, 282; Stats. 1957 s. 347.47; 1967 c. 292; 1969 c. 500 s. 30 (3) (h).

347.48 History: 1961 c. 521; Stats. 1961 s. 347.48; 1963 c. 448; 1969 c. 500 s. 30 (3) (g), (i).

347.48 does not require that the seat belt be used, but failure to use it may be found to be negligence contributing to the injuries if proper evidence of cause and effect is introduced. *Bentzler v. Braun*, 34 W (2d) 362, 149 NW (2d) 626.

In a diversity action for personal injuries the federal court must look initially to the substantive law of the forum state (Wisconsin) to determine whether a passenger, suing for personal injuries arising out of an automobile accident in another state (Oklahoma), was contributorily negligent in not using a seat belt. *Turner v. Pfluger*, 407 F (2d) 648.

347.48 may be violated even though no proof of operating on the highway is offered. 53 Atty. Gen. 132.

Failure to use seat belts as contributory negligence. *Rick*, 50 MLR 662.

Seat-belt negligence in automobile accidents. *Roethe*, 1967 WLR 288.

347.485 History: 1967 c. 292; Stats. 1967 s. 347.485; 1969 c. 500 s. 30 (3) (h).

347.486 History: 1967 c. 292; Stats. 1967 s. 347.486.

347.487 History: 1967 c. 292; Stats. 1967 s. 347.487.

347.49 History: 1957 c. 260; Stats. 1957 s. 347.49.

347.50 History: 1957 c. 260; Stats. 1957 s. 347.50.

347.75 History: 1965 c. 237; Stats. 1965 s. 347.75.

347.76 History: 1965 c. 237; Stats. 1965 s. 347.76; 1969 c. 500 s. 30 (3) (f), (g), (h).

CHAPTER 348.

Size, Weight and Load.

On exercises of police power see notes to sec. 1, art. I; on cruel punishments see notes to sec. 6, art. I; and on legislative power generally and delegation of power see notes to sec. 1, art. IV.

348.01 History: 1957 c. 260; Stats. 1957 s. 348.01.

348.02 History: 1957 c. 260, 615; Stats. 1957 s. 348.02; 1959 c. 497; 1961 c. 205.

348.05 History: 1957 c. 250, 260, 471, 672, 674; Stats. 1957 s. 348.05; 1959 c. 430, 542, 630; 1961 c. 108; 1963 c. 449, 548; 1965 c. 233; 1969 c. 480.

Legislative Council Note, 1957: Subsection (2) (h) is from s. 85.445. The last part of sub. (2) (g) is from s. 193.01 (1). The remainder of the section is from s. 85.45 (2) (a). The only change in the law results from the omission of the provision in present s. 85.45 (2) (a) authorizing motors trucks operated prior to July 1, 1929, on solid rubber tires and currently equipped with dual pneumatic tires to operate without permit even though being 8 feet 6 inches in width. This provision was dropped as being obsolete. [Bill 99-S]

Legislative Council Note, 1957: This incorporates into the vehicle code the substance of ch. 250, laws of 1957. The federal law setting up the national system of interstate and defense highways provides for withholding of federal-aid funds for such highways if a state permits such highways to be used by vehicles exceeding 96 inches in width or the corresponding legal width limitation in effect in the state on July 1, 1956, whichever is greater. Hence, the limitation of par. (j) above to vehicles operated on highways other than the national system of interstate and defense highways. 23 USCA S. 158 (j). [Bill 643-S]

Violating the statute prohibiting a trailer exceeding 8 feet in width on a highway without a permit does not abrogate the defense of contributory negligence. *Hillside G. & T. Co. v. Pflittner*, 200 W 26, 227 NW 282.

An exception contained in 85.45 (2), Stats. 1937, exempts a farmer from 8-foot load width restrictions in hauling loose hay or straw or the like in ordinary farming operations where temporary use is made of a highway. 28 Atty. Gen. 311.

A wagon or trailer temporarily propelled by a farm tractor and engaged exclusively in transporting agricultural commodities over highways is not necessarily an "implement of husbandry" unless its operation is incidental to and part of farming operations. 30 Atty. Gen. 312.

A motor truck or trailer, used by a dealer to transport new farm machinery from his place of business to a farm for delivery to a purchaser, does not thereby become an "implement of husbandry." 44 Atty. Gen. 103.

On the applicability of 348.05 (2) and (3) to "implements of husbandry" being operated temporarily on highways or transported thereon for repairs see 47 Atty. Gen. 112.