

342.25 History: 1965 c. 485; Stats. 1965 s. 342.25; 1969 c. 500 s. 30 (3) (i).

342.255 History: 1963 c. 515 s. 1; Stats. 1963 s. 342.26; Stats. 1965 s. 342.255; 1969 c. 500 s. 30 (3) (i).

342.26 History: 1965 c. 485; Stats. 1965 s. 342.26; 1969 c. 500 s. 30 (3) (i).

342.281 History: 1965 c. 485; Stats. 1965 s. 342.281; 1969 c. 500 s. 30 (3) (i).

342.282 History: 1965 c. 485; Stats. 1965 s. 342.282; 1969 c. 500 s. 30 (3) (i).

342.283 History: 1965 c. 485; Stats. 1965 s. 342.283; 1969 c. 500 s. 30 (3) (i).

342.284 History: 1965 c. 485; Stats. 1965 s. 342.284.

342.285 History: 1965 c. 485; Stats. 1965 s. 342.285; 1969 c. 500 s. 30 (3) (i).

342.30 History: 1957 c. 260; Stats. 1957 s. 342.30; 1969 c. 500 s. 30 (3) (i).

Legislative Council Note, 1957: Subsections (1) and (2) restate present s. 85.01 (8) (b) with the following changes: (a) The requirement that the identification number be stamped upon the rear axle of a trailer or semitrailer has been deleted. This provision creates problems particularly in the case of mobile homes where it is a fairly common practice for the manufacturer or dealer to repurchase the axle and wheels if the purchaser does not wish to keep them. Moreover, the identification number stamped on the frame should be sufficient identification. (b) The reference to stamping or welding the identification number to the body, if the vehicle is a 1955 or later model, is new. Starting with the 1955 models, manufacturers discontinued the use of engine numbers and instead are using a single identification number. (c) The requirement in the present law that the stamping or welding of the new number be done under the supervision of a "sheriff, deputy sheriff or police officer" was changed to read "peace officer." (d) The requirement that the identification number be defaced from the block of an engine which has been removed or replaced was dropped. It was considered to be better policy to have the number remain on the removed engine block to identify it in case it is again inserted in a vehicle.

Subsection (3) is based upon the "any other violation" provision of s. 85.01 (8) (e). As in other places in this chapter, the maximum fine has been reduced from \$500 to \$200. [Bill 99-S]

342.31 History: 1957 c. 260; Stats. 1957 s. 342.31; 1969 c. 500 s. 30 (3) (i).

342.32 History: 1957 c. 260; Stats. 1957 s. 342.32; 1969 c. 500 s. 30 (3) (i).

342.33 History: 1957 c. 260; Stats. 1957 s. 342.33; 1969 c. 500 s. 30 (3) (i).

Legislative Council Note, 1957: This section is based upon present s. 85.04 (2) and (5). This section is broader than the present law in 2 respects: (1) The present law applies

only to sale of a vehicle "in this state to any resident thereof." The quoted phrase was dropped. Fraudulent sales should not go unpunished merely because the victim happens to be a resident of another state. (2) The provision requiring the certificate of title to be exhibited to the vendee before the sale is consummated is new. The present law fails to accomplish its purpose of preventing the defrauding of purchasers of motor vehicles previously used as taxicabs because the seller who is intent on misleading the purchaser can complete the sale before showing the purchaser the stamped certificate of title.

The present law is broader than the new provision in one respect. It imposes criminal liability upon "every officer, agent or employe of any person, firm or corporation" who violates the law. Literally interpreted, it means that every employe of a corporation is guilty if one employe of the corporation violates the law. This goes far beyond general principles of criminal liability and it is very doubtful that it serves any good purpose. [Bill 99-S]

Sale of an automobile, which the seller knows was formerly used as a taxicab, without making sure that the certificate of title is stamped, is a violation, even though the seller does not know that the certificate has not been stamped. 37 Atty. Gen. 461.

Motor vehicles leased by drive-yourself companies are not vehicles "previously licensed and used as a taxicab or for public transportation." 37 Atty. Gen. 495.

342.34 History: 1957 c. 260; Stats. 1957 s. 342.34; 1969 c. 500 s. 30 (3) (i).

CHAPTER 343.

Operators' Licenses.

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

343.01 History: 1957 c. 260, 551, 663, 684; Stats. 1957 s. 343.01; 1959 c. 49, 52, 107, 183, 660; 1961 c. 662; 1969 c. 412.

Legislative Council Note, 1957: Among the definitions in s. 340.01 which are pertinent in this chapter are "commissioner," "department," "hours of darkness," "local ordinance which is in conformity therewith," "motor vehicle," "operating privilege," "nonresident," "school bus," "traffic officer" and "vehicle."

The definition of "vehicle" in s. 340.01 differs from the definition in the present law in that streetcars and trolley busses are included. This means that operators of those vehicles will be required to have operators' licenses.

The definition of "operating privilege" in s. 340.01 is new and will result in a substantial saving in the number of words required to express concepts relating to revocation, suspension and cancelation without resulting in a change in the substance of the law.

The term "license" has been defined to include all types of licenses issued under this chapter, including instruction permits. The present law is not clear on this point.

The definition of "conviction" has been clarified. The present statutes state that conviction means a final conviction but this has

been construed to mean merely that an adjudication of guilt has been made by the court of original jurisdiction. *State v. Berres*, 270 W 103, 70 NW (2d) 197 (1955).

The definitions of "suspension," "revocation" and "canceled" contained in present s. 85.08 (1) have been dropped. The effect of suspension, revocation and cancellation of operating privileges is stated clearly in the proposed revision and there is no need for further definition of those terms. [Bill 99-S]

The determination of the "principal purpose" of a given employment in the administration of the chauffeur's licensing law involves a question of fact for the motor vehicle commissioner. 47 Atty. Gen. 3.

343.02 History: 1957 c. 260; Stats. 1957 s. 343.02.

343.05 History: 1957 c. 260, 551, 684; Stats. 1957 s. 343.05; 1965 c. 182, 301; 1967 c. 292.

Legislative Council Note, 1957: This is largely a consolidation and restatement of s. 85.08 (3) and (4) (a), (b) and (c). Paragraph (d) of s. 85.08 (4) has been omitted on the ground that it is obsolete. All states now require licensing of drivers and foreign visitors are issued international permits.

Subsection (1) states the general requirement that all persons must be licensed in order to operate a motor vehicle on the highways of this state. It restates the first sentence of s. 85.08 (3). The last sentence of s. 85.08 (3) is covered in s. 343.26 and s. 343.38.

Subsection (2) states the exceptions to the licensing requirement. Paragraph (a) is a clarification of s. 85.08 (4) (a). The revised provision makes clear that the vehicle must be owned by or leased to the United States government and that the operator must be in the armed forces. The present provision does not make clear whether the operator must be in the armed forces.

Paragraph (b) is a restatement of s. 85.08 (4) (b). In regard to when a farm tractor is "temporarily operated," the attorney general has ruled that a person need not have a drivers' license to operate a tractor over the highways from a garage where it has been repaired back to his farm (42 Atty. Gen. 66 (1953)) but that a person must have a license to operate a farm tractor regularly between his farm and a nearby village for the purpose of hauling produce to the village for sale (43 Atty. Gen. 248 (1954)).

Paragraph (c) is a restatement of s. 85.08 (4) (c). The provision in s. 85.05 (1) basing the nonresident's operating privilege on reciprocity has been omitted. It has never been followed in practice.

The penalty in sub. (3) is based upon s. 85.08 (35) (g) and (41). [Bill 99-S]

An out-of-state student, coming here merely for the purpose of attending school and retaining residence of his own or with his parents in a foreign state, having the definite and present intention of returning to his residence out of state, is a nonresident. 17 Atty. Gen. 230.

Operators of "power cycles" are required to have drivers' licenses. 29 Atty. Gen. 163.

Operation of a farm tractor on a highway between the garage where it has been re-

paired and the farm of the owner by one whose driver's license has been suspended is not a violation. 42 Atty. Gen. 66.

Where a farm tractor exempt from registration by reason of use in agricultural operations is nevertheless used regularly upon public highways as a road tractor, its operator must possess a motor vehicle operator's license. Such operation is not "temporary," and the exemption is inapplicable. 43 Atty. Gen. 248.

The exemption from Wisconsin drivers' license requirements conferred upon nonresidents holding licenses issued by the states of their residence does not extend to a person whose privilege to operate in Wisconsin has been revoked and who has not complied with conditions imposed by Wisconsin law for restoring such privilege. 44 Atty. Gen. 306.

See note to 343.44, citing 51 Atty. Gen. 45.

343.06 History: 1957 c. 260; Stats. 1957 s. 343.06; 1959 c. 583, 641; 1963 c. 374; 1965 c. 232; 1967 c. 26, 292; 1969 c. 276 s. 604 (2); 1969 c. 336 s. 176; 1969 c. 366 s. 117 (2) (b); 1969 c. 500 s. 30 (3) (g), (h), (i).

The driving of an automobile upon a public street by a boy 14 years of age, unaccompanied by an adult, in violation of law, will not prevent a recovery for injuries sustained by him in a collision with another automobile, where the boy was guilty of no contributory negligence and his violation of the statute had no causal agency in producing the collision. *Benesch v. Pagel*, 171 W 620, 177 NW 861.

The driver of a truck, who suffered an epileptic seizure, became unconscious, and lost control of the truck, with the result that the truck struck a workman at the side of the street, was negligent as a matter of law in driving the truck when he knew that he was subject to spells or seizures rendering him unconscious, although he did not know that he had epilepsy. In such circumstances, the epileptic seizure was not an "act of God" and the collision was not an unavoidable accident. *Eleason v. Western Cas. & Surety Co.* 254 W 134, 35 NW (2d) 301.

343.07 History: 1957 c. 260; Stats. 1957 s. 343.07; 1959 c. 34, 338, 542; 1959 c. 641 s. 34; 1961 c. 662; 1965 c. 225, 348; 1967 c. 292; 1969 c. 276, 363; 1969 c. 500 s. 30 (3) (g), (i).

Legislative Council Note, 1957: Subsection (1) is a restatement of s. 85.08 (7). Subsection (2) is a restatement of s. 85.08 (7m). "Hours of darkness" has been substituted for "nighttime" so as to conform to other provisions of the motor vehicle laws. The restrictions placed on general instruction permits have been made applicable to school instruction permits. This conforms to practice even though such restrictions were omitted from s. 85.08 (7m) (a) when revised in the 1955 session. The omission apparently was inadvertent. [Bill 99-S]

343.08 History: 1957 c. 260; Stats. 1957 s. 343.08; 1959 c. 19; 1967 c. 292; 1969 c. 500 s. 30 (3) (i).

A pretended permit by a county judge to a child under 16 years of age to operate a motor truck for delivery purposes is null and void, the act itself being illegal. 6 Atty. Gen. 627.

343.085 History: 1965 c. 232; Stats. 1965 s. 343.085; 1969 c. 469; 1969 c. 500 s. 30 (3) (h), (i).

343.09 History: 1957 c. 260; Stats. 1957 s. 343.09; 1969 c. 366; 1969 c. 500 s. 30 (3) (h), (i).

Legislative Council Note, 1957: This is a restatement of s. 85.08 (6) (j), except that the membership of the reviewing board has been increased from 3 to 5. It is a hardship on the 2 doctors on the present board to require them to serve at every meeting since they are busy practitioners and it has been their practice to serve without pay. Moreover, it would be easier to get at least 2 doctors together for a meeting if there were 4 doctors authorized to attend meetings. [Bill 99-S]

343.10 History: 1957 c. 260, 571, 684; Stats. 1957 s. 343.10; 1959 c. 203; 1961 c. 495, 643; 1963 c. 206, 373, 459; 1967 c. 292; 1969 c. 383; 1969 c. 500 s. 30 (3) (h), (i).

Legislative Council Note, 1957: This is a restatement of s. 85.08 (25c) (a), (am), (b), (c) and (e). Paragraph (d) of s. 85.08 (25c), relating to revocation of the occupational license, is covered in ss. 343.30 and 343.31. [Bill 99-S]

The authority given a "judge" of a court of record to order the commissioner of the motor vehicle department to issue an occupational driver's license to a person convicted of operating a motor vehicle while under the influence of intoxicating liquor, considered with the provision that in certain cases the commissioner should not issue an occupational license until the person had filed acceptable proof of his financial responsibility, conferred no judicial power on the county court, and the county judge, in entering an order directing the issuance of an occupational license, was acting solely in an administrative capacity; in so acting the judge was without power to punish the commissioner for contempt in failing to issue the license. *State v. Marcus*, 259 W 543, 49 NW (2d) 447.

Any order issued pursuant to 85.08 (25c), Stats. 1951, was solely an administrative order, and not a judicial order, even though it was issued in the name of the court, instead of in the name of the judge of such court. *State ex rel. Marcus v. County Court*, 260 W 532, 51 NW (2d) 503.

Although an operator whose license is revoked because of a conviction of operating a motor vehicle while under the influence of intoxicating liquor may seek an occupational license under 343.10, nevertheless, by the provision prohibiting the issuance of an occupational license until at least 90 days after the conviction the legislature has indicated that there should be a minimum period of 90 days of absolute revocation regardless of the degree of hardship involved for the individual, and hence the improvident issuance of an order restraining the commissioner from interfering during such period would frustrate the legislative purpose. *Carlyle v. Karns*, 9 W (2d) 394, 101 NW (2d) 92.

Functions, powers, duties, etc., of the commissioner of the motor vehicle department and of judges and magistrates, with respect

to 85.08 (25c), created by ch. 206, Laws 1941, are discussed in 30 Atty. Gen. 418.

A motor vehicle operator who refuses or neglects to qualify for a restricted (occupational) operator's license which has been ordered issued under 85.08 (25c), Stats. 1943, stands in the same position at the end of a year following revocation as an operator for whom no restricted license has been ordered, and accordingly must furnish proof of financial responsibility. 33 Atty. Gen. 42.

Conviction of a holder of a restricted (occupational) motor vehicle operator's license for violation of restrictions requires mandatory revocation of the license. A court or judge has no power to permit such person to retain such license. 34 Atty. Gen. 1.

A person who has secured a restricted driver's license pursuant to 85.08 (25c), Stats. 1947, and who thereafter regains his original unrestricted driver's license need not file proof of financial responsibility. A motor vehicle operator who is issued an occupational license for his employer's vehicles only need not file proof of financial responsibility. 37 Atty. Gen. 74.

The legislative history of chs. 38 and 634, Laws 1949, amending 85.08 (25c), clearly supports the conclusion that the petition for an occupational driver's license is to be filed in the designated courts located in the county of petitioner's residence. 39 Atty. Gen. 146.

Under 85.08 (25c), Stats. 1953, petitions for occupational drivers' licenses do not institute actions or special proceedings in the courts. No clerk fees or suit tax may properly be charged. 43 Atty. Gen. 38.

Where a holder of an occupational driver's license is convicted of operating in violation of the license restrictions, 85.08 (25c), Stats. 1955, makes revocation of his license mandatory, neither the commissioner of motor vehicle department nor the judge having any discretion in the matter, and a new license may not be issued until one year after the date of revocation. 44 Atty. Gen. 343.

343.11 History: 1957 c. 260, 684; Stats. 1957 s. 343.11; 1959 c. 542; 1969 c. 500 s. 30 (3) (i).

Legislative Council Note, 1957: This is a new provision. It would permit better driver control by assuring that at no time does a driver licensed in this state have more than one valid operator's license in his possession. Similar provisions are contained in s. 6-101 of the UVC. [Bill 99-S]

A person holding an out-of-state driver's license must surrender it to the motor vehicle department when applying for a Wisconsin license. A receipt should be issued and it will constitute a temporary license for not more than 30 days. Failure to pass the examination cancels a temporary license and the receipt should be stamped to indicate that it is not a temporary license. 47 Atty. Gen. 233.

343.12 History: 1957 c. 260; Stats. 1957 s. 343.12; 1959 c. 85, 183; 1969 c. 365; 1969 c. 500 s. 30 (3) (i).

343.125 History: 1957 c. 684; Stats. 1957 s. 343.125; 1959 c. 502, 646; 1961 c. 627; 1965 c. 309; 1967 c. 232, 292; 1969 c. 500 s. 30 (3) (i).

The owner of an automobile cannot be pros-

ecuted criminally for dereliction of the chauffeur, even though he be in the automobile at the time. 5 Atty. Gen. 209.

343.126 History: 1957 c. 684; Stats. 1957 s. 343.126; 1969 c. 383.

343.13 History: 1957 c. 260; Stats. 1957 s. 343.13; 1969 c. 500 s. 30 (3) (i).

343.14 History: 1957 c. 260; Stats. 1957 s. 343.14; 1969 c. 500 s. 30 (3) (h), (i).

Legislative Council Note, 1957: This section restates present law. Subsection (1) is based upon s. 85.08 (8) (a) and (18) (introductory phrase). "License" includes instruction permits by virtue of the definition in s. 343.01. This section pertains only to applications made to the department. In the case of an occupational license, the application is made to the court and the fee paid to the county treasurer as provided in s. 343.10.

Paragraphs (a), (b), (c) and (d) of sub. (2) are from s. 85.08 (8) (b). Paragraph (e) is from s. 85.08 (8) (c). Paragraph (f) is not clearly stated in the present law but must clearly be implied. Subsection (3) is from s. 85.08 (35) (e) and (41). [Bill 99-S]

343.15 History: 1957 c. 260; Stats. 1957 s. 343.15; 1961 c. 662; 1969 c. 500 s. 30 (3) (h), (i).

Legislative Council Note, 1957: The first sentence of sub. (1) is a restatement of s. 85.08 (8) (c). The second sentence makes the law conform to a long-standing practice on the part of the department.

Subsection (2) restates s. 85.08 (9) (c). The negligence is imputed to the sponsor even though the vehicle was operated without his consent. *Employers Mutual Fire Ins. Co. v. Haucke*, 267 W 72, 64 NW (2d) 426 (1954).

Subsection (3) is substantially a restatement of s. 85.08 (10) except that the law as to the time when the sponsor's liability is terminated has been clarified.

Subsection (4) is new. There have been meritorious cases under present law where a minor whose parents are dead has been unable to obtain a license because of inability to obtain an adult sponsor. Subsection (4) would permit such persons to obtain a license without a sponsor if they are adequately covered by liability insurance. [Bill 99-S]

The provision of 85.08 (1a), Stats. 1935, amounts to a legislative declaration that when a parent consents to the use of his car by his child the parent cannot claim that the child is a bailee of the car or, in driving it, that the child is acting independently of him, but such statutory provision does not preclude recovery from a third party for injuries sustained by the child while driving the parent's car. *Scheibe v. Lincoln*, 223 W 417, 271 NW 43.

The sponsor of a temporary instruction permit issued to his son was liable for the son's wrecking of an automobile as the result of negligence in operating the same, although the son had stolen the car and wrecked it while attempting to escape capture. *Employers Mut. Fire Ins. Co. v. Haucke*, 267 W 72, 64 NW (2d) 426.

An exclusion clause in a liability policy providing that the policy does not apply to

liability assumed by the named insured under any "contract or agreement," did not operate to exclude coverage to the named insured for liability for injuries sustained in a collision caused by the negligence of the named insured's minor son while driving an automobile, since any liability of the named insured in the premises was a liability imposed by statute. *Klatt v. Zera*, 11 W (2d) 415, 105 NW (2d) 776. See also: *Mancheski v. Derwae*, 11 W (2d) 467, 105 NW (2d) 773; *Asleson v. Hardware Dealers Mut. Fire Ins. Co.* 11 W (2d) 624, 106 NW (2d) 330; and *Rosar v. General Ins. Co.* 41 W (2d) 95, 163 NW (2d) 129.

343.15 (2) was not applicable in the case of a 17-year-old operator of an automobile which struck a pedestrian in Wisconsin while such minor was there driving it under authority of a license issued to him by the state of Minnesota pursuant to an application signed by his father, residing in Minnesota. *Lies v. Tuttle*, 19 W (2d) 571, 120 NW (2d) 719.

The liability imposed by 343.15 (2) on a person who sponsors an application for a minor's driving license is a direct statutory one and not the result of contract. *Groth v. Farmers Mut. Auto. Ins. Co.* 21 W (2d) 655, 124 NW (2d) 606.

343.15 (2) does not prevent the sponsoring parent from recovering damages from his minor son. *Dombeck v. Chicago, M., St. P. & P. R. Co.* 24 W (2d) 420, 129 NW (2d) 185.

A parent who signed an application for a driver's license for a son cannot recover for injuries caused by the son's negligence, since 343.15 (2) imputes his negligence to the parent. *Gilbertson v. DeLong*, 201 F (2d) 284.

343.16 History: 1957 c. 260; Stats. 1957 s. 343.16; 1959 c. 35, 542, 641; 1959 c. 660 s. 80, 81; 1965 c. 348; 1967 c. 292; 1969 c. 251; 1969 c. 500 s. 30 (3) (h), (i).

Legislative Council Note, 1957: This is largely a consolidation and restatement of s. 85.08 (12) and (33) so as to bring together in one section all provisions pertaining to examination of applicants and licensed persons. Paragraphs (b) and (e) of s. 85.08 (12) no longer are necessary now that the state examiners have taken over all driver examining and so they have been omitted. Failure or refusal of a licensed person to submit to examination when required pursuant to this section is constituting a ground for cancelation of the license is covered in s. 343.25. The concept of "cancelation" has been substituted for the concept of "surrender" presently used in s. 85.08 (33). This will reduce to 3 the concepts referring to termination of operating privileges—namely suspension, revocation and cancelation. "Surrender" will refer to the physical act of giving up the license card when the license has been suspended, revoked or canceled.

Two minor changes have been made so as to make the law conform to practice: (1) The requirement of the present law that the department shall make provision for giving an examination in the city or village of or nearest the applicant's residence has been changed to read "at the examining station" in the city or village of or nearest the applicant's residence.

Examining stations have not been set up in every city or village in the state. (2) The \$2 limitation on the physician's examination fee in the case of an examination ordered pursuant to sub. (2) has been dropped. The fee limitation is unrealistic and is universally ignored in practice. [Bill 99-S]

343.17 History: 1957 c. 260; Stats. 1957 s. 343.17; 1969 c. 500 s. 30 (3) (i).

343.18 History: 1957 c. 260; Stats. 1957 s. 343.18; 1969 c. 255.

Legislative Council Note, 1957: This is restatement of s. 85.08 (14). "Traffic officer" has been substituted for "police officer . . . peace officer, a field deputy, officer of the department or county traffic officer." "Traffic officer" is broadly defined in s. 340.01 to include every officer authorized by law to direct or regulate traffic or to make arrests for violation of traffic regulations. [Bill 99-S]

Under 85.08 (14), 1949 Stats., the officers mentioned therein have implied authority to stop vehicles for the purpose of inspecting the operator's license of the driver. If the driver is unlicensed, the officer may arrest him on that charge, but if he claims to be licensed but does not produce the license he should be arrested for violating 85.08 (14). 38 Atty. Gen. 429.

343.19 History: 1957 c. 260; Stats. 1957 s. 343.19; 1969 c. 500 s. 30 (3) (i).

Legislative Council Note, 1957: Subsection (1) is a restatement of s. 85.08 (16). The term "license" includes instruction permits. Subsection (2) is based upon s. 85.08 (35) (g) and (41). [Bill 99-S]

343.20 History: 1957 c. 260, 594, 684; Stats. 1957 s. 343.20; 1959 c. 204; 1969 c. 500 s. 30 (3) (i).

343.21 History: 1957 c. 260, 684; Stats. 1957 s. 343.21; 1961 c. 510, 539; 1963 c. 209; 1967 c. 292; 1969 c. 500 s. 30 (3) (i).

Legislative Council Note, 1957: This is a restatement of s. 85.08 (18), (26) (am) and (29) (am), with certain additions so as to make the law conform to practice. There will also be one change in practice as a result of this section. Subsection (1) (e) will require a person who is 18 years of age or over when applying for reinstatement to pay the \$10 fee even though he was under 18 when his license was revoked. The present law has been interpreted to mean that such a person pays only the \$2 fee. [Bill 99-S]

343.22 History: 1957 c. 260; Stats. 1957 s. 343.22; 1969 c. 500 s. 30 (3) (i).

343.23 History: 1957 c. 260; Stats. 1957 s. 343.23; 1969 c. 500 s. 30 (3) (h), (i).

Legislative Council Note, 1957: This is primarily a restatement of s. 85.08 (20) and that part of s. 85.08 (13) requiring the department to keep proper records of all licenses issued. Two minor changes have been made so as to make the law conform to practice. The requirement that the file contain a copy of the license issued has been omitted. The license

is a photostatic copy of part of the application. Hence, the copy of the application serves as a copy of the license. The provision to the effect that the commissioner *shall* consider only those records covering the preceding 4 years in determining whether to suspend a license has been changed to *may* consider so as to make clear that he need not go back 4 years. The present practice is to consider the operating record for only the 3 preceding years in determining whether to suspend. "Suspend" has been changed to "revoke" in accordance with the change in terminology in subsequent sections of this chapter. [Bill 99-S]

343.25 History: 1957 c. 260; Stats. 1957 s. 343.25; 1959 c. 19; 1969 c. 500 s. 30 (3) (h).

Legislative Council Note, 1957: This section lists all the circumstances under which a license may be canceled. Section 343.26 states the prerequisites to reinstatement of a license after cancelation.

Subsection (1) is based upon s. 85.08 (21) which provides that a license issued upon an application which is untrue in any manner is void from the date of issuance. Under sub. (1) such license would be void only after cancelation. The primary reason for this change is to clarify the law by reducing the number of concepts which are used in reference to termination of operating rights. Moreover, there does not seem to be any good reason for stating that the license is void from the date of issuance and would operate unfairly from the licensee's standpoint in case he had made an honest error in his application. If he knowingly makes a false statement in the application or otherwise commits a fraud in the application he can be prosecuted under s. 343.14 (3).

Subsection (2) is a restatement of part of s. 85.08 (10).

Subsection (3) is a restatement of part of s. 85.08 (11).

Subsection (4) is based upon s. 85.08 (6m) which provides that a person shall surrender his license to the department upon demand whenever he falls into one of the classes to whom the law prohibits issuance of a license. Again, in order to keep the concepts straight, the new provision will require an order of cancelation. The duty to surrender the license card then becomes automatic by virtue of s. 343.35. [Bill 99-S]

343.26 History: 1957 c. 260; Stats. 1957 s. 343.26; 1969 c. 500 s. 30 (3) (h), (i).

Legislative Council Note, 1957: The present law does not state very clearly what are the rights of a person whose license has been canceled insofar as again obtaining a license is concerned, though s. 85.08 (11) indicates that in at least one instance of cancelation the person whose license was canceled proceeds as upon an original application. This section makes that fact clear, but provides that the department need not require an examination of the applicant as would be required in case the application were an original one. The important thing to note is that there is no waiting period or requirement that proof of financial responsibility be filed, such as is the case after revocation. [Bill 99-S]

343.27 History: 1957 c. 260, 674; Stats. 1957 s. 343.27.

Legislative Council Note, 1957: Subsection (1) and the first 2 sentences of sub. (2) restate s. 85.08 (24b). The last 2 sentences of sub. (2) are new. They provide for reopening of certain judgments of conviction and for opportunity to defend on the merits in cases where a person whose license was revoked because of the conviction was not informed as required by this section. The present law is silent as to the effect of a failure to inform the accused of the license revocation provisions.

Subsection (3) is new. It places the same duty upon persons receiving stipulations of guilt as subs. (1) and (2) place upon enforcement officers, district attorneys and judges.

Subsection (4) is new and is designed to clarify the law. A person may have his license revoked (called suspension under present law) for a very minor offense if he has previously accumulated points against his license. Subsection (4) makes clear that the officials upon which this section imposes a duty are not required to concern themselves with such minor offenses insofar as their duty to inform the accused is concerned. It is only when the offense, taken by itself, is cause for mandatory revocation that the officials have a duty to inform the accused that conviction will result in revocation of his operating privilege. [Bill 99-S]

Legislative Council Note, 1957: Sections 22 and 23 [of Bill 643-S] incorporate into the vehicle code the provisions of ch. 238, laws of 1957, and make the following additional corrections: (a) The reference to "nolo contendere" has been added, since a person charged with a criminal offense may decide to plead nolo contendere rather than guilty; (b) the reference to "stipulation" in subs. (1) and (2) has been changed to "statement" so as to avoid confusion with the stipulation of guilt under sub. (3); (c) the provision relating to the statement that a person must sign, to show that he has been informed that points will be charged against him in case of a stipulation of guilt, has been made more flexible by providing that it may be either attached to or a part of the stipulation of guilt. [Bill 643-S]

343.28 History: 1957 c. 260, 684; Stats. 1957 s. 343.28; 1969 c. 500 s. 30 (3) (h), (i).

The trial court correctly ruled that the evidence was insufficient to support findings of guilty in a trial charging the clerk of a traffic court with violations of 343.28, Stats. 1965. *State v. Fleming*, 38 W (2d) 365, 156 NW (2d) 485.

Neither 360.26 and 360.27 nor 26 Atty. Gen. 600 construing said sections relieves justices of the peace from the duty to comply with 85.08 (24), Stats. 1945. Compliance is mandatory, punishable as a misdemeanor for violation and enforceable by mandamus proceedings. 35 Atty. Gen. 180.

The fact that 85.08 (24), Stats. 1949, requires a justice of the peace to require physical surrender of an operator's license, registration, etc., does not oust him of jurisdiction to try persons on the charge of operating a motor

vehicle while under the influence of intoxicating liquor. 39 Atty. Gen. 120.

A nonresident convicted of an offense for which revocation of his driving privileges is mandatory should be required to surrender his foreign driver's license in the same manner that a resident is required to surrender his Wisconsin driver's license. 46 Atty. Gen. 141.

343.29 History: 1957 c. 260, 684; Stats. 1957 s. 343.29; 1969 c. 500 s. 30 (3) (h), (i).

343.30 History: 1957 c. 260, 674; Stats. 1957 s. 343.30; 1963 c. 143, 144, 374, 429, 554; 1965 c. 185, 187, 232, 499; 1969 c. 366 s. 117 (2) (b); 1969 c. 383, 469; 1969 c. 500 s. 30 (3) (g), (h), (i).

Legislative Council Note, 1957: This section consolidates the various provisions of the present law relating to suspension and revocation by the courts. Prior to 1955, the procedure was for the courts to order the commissioner to suspend or revoke and the commissioner then would suspend or revoke as ordered by the court. This is the logical procedure, since the department issued the license in the first place. In the 1955 revision of the children's code this was changed in the case of suspension of licenses of persons under 18 years of age by providing that the court would suspend the license and then forward the license to the department together with the report of the violation rather than ordering the commissioner to suspend and relying upon the department to pick up the license. If this procedure is desirable in case of courts handling juvenile offenders, it would seem to be desirable in case of adult offenders also. Consequently, the same procedure has been made applicable to other cases of revocation or suspension by the courts.

This section and several of the following sections also reflect a change in terminology. The present law uses both the term "revocation" and the term "suspension" but the only distinction between the 2 terms is that revocation is for one year while suspension may be for any term not exceeding one year. In the new section, the term "revocation" has been used in all cases where the person whose operating privilege has been terminated must pay the reinstatement fee, make a special application for reinstatement and file proof of financial responsibility. The term "suspension" is used only in those cases where the operating privilege is automatically reinstated upon termination of the period of suspension. The substance of the present law remains unchanged, however, for a distinction has been made between those cases where revocation must be for a period of one year (called revocation under the present law) and those cases where revocation may be for any period not exceeding one year (called suspension under the present law).

One other change in terminology will be apparent throughout the sections relating to suspension and revocation. The term "operating privilege" has been substituted for "license." "Operating privilege" is defined in s. 340.01 to include the privilege to secure a license and the operating privilege conferred upon a nonresident as well as the operating privilege conferred by a license. In effect,

therefore, the term "operating privilege" replaces s. 85.08 (22) (a) and (26m) of the present law.

Subsections (1), (2) and (3) of the new section are based respectively upon subs. (27) (a), (24c) and (25c) (d) of s. 85.08. There is no change in the law except for the change in procedure and change in terminology mentioned above.

Subsection (4) is largely new law but is a necessary provision if the actual suspension or revocation is to be done by the courts rather than by the commissioner. It restates present law insofar as suspension of licenses of juveniles is concerned.

Subsection (5) is a clarification and restatement of s. 85.08 (42). [Bill 99-S]

See note to 48.12, citing 46 Atty. Gen. 204 and 46 Atty. Gen. 306.

343.30 (1), Stats. 1959, grants discretionary power to courts to revoke operating privileges, which includes every license such as an operator's license and a chauffeur's license granted to a person or the right to obtain such licenses, upon a person's conviction of violating any traffic law. 49 Atty. Gen. 147.

343.305 History: 1969 c. 383; Stats. 1969 s. 343.305.

On self-incrimination see notes to sec. 8, art. I; and on searches and seizures see notes to sec. 11, art. I.

343.31 History: 1957 c. 260, 684; Stats. 1957 s. 343.31; 1959 c. 582; 1963 c. 374; 1967 c. 284; 1969 c. 366 s. 117 (2) (b); 1969 c. 383; 1969 c. 500 s. 30 (3) (h), (i).

Legislative Council Note, 1957: This section consolidates and restates the provisions of the present law relating to revocation of licenses by the commissioner. Paragraphs (a) through (g) restate paragraphs (a) through (f) of s. 85.08 (25). Paragraph (h) restates part of s. 85.08 (25c) (d). Subsection (2) restates s. 85.08 (23) (a). Subsection (3) restates present law as reflected in s. 85.08 (30).

Subsection (2) restates s. 85.08 (23) (a). Subsection (3) restates present law as reflected in s. 85.08 (30).

Section 85.08 (25) (g) has been dropped. This provision was designed to lure convicted persons to file proof of financial responsibility by a temporary suspension under the financial responsibility law pending processing of the accident case. The provision has not worked in practice. [Bill 99-S]

See note to 288.10, citing *Oshkosh v. Lloyd*, 255 W 601, 39 NW (2d) 772.

Where a driver convicted of ordinance violation under 85.08 (25) appeals to circuit court, and neither the state, the motor vehicle department nor the commissioner is a party, service on the department of an order to show cause why the driver's license should not be returned pending the appeal did not give the circuit court jurisdiction over either the state or the commissioner in the absence of a general appearance, so that a subsequent order requiring the department to reissue such license was a nullity. *Madison v. Pierce*, 266 W 303, 62 NW (2d) 910.

The term "operating privilege" as used in 343.31, Stats. 1967, which makes mandatory

the revocation, by the administrator of the division of motor vehicles, of a person's operating privilege upon receiving a record of the latter's conviction of any offense therein listed (including operating a motor vehicle while "operating privileges" are suspended or revoked), encompasses every operator's license granted under ch. 343. *Jicha v. Karns*, 39 W (2d) 676, 159 NW (2d) 691.

The provisions of 85.08 (10), Stats. 1935, apply even though the court has not ordered revocation. 24 Atty. Gen. 706.

The motor vehicle operator's license of a person convicted of operating a road grader under the influence of intoxicating liquor in violation of a city ordinance enacted in conformity to state statute is subject to mandatory revocation. 35 Atty. Gen. 173.

"Felony in the commission of which a motor vehicle is used" includes statutory rape committed in an automobile while parked away from the highway. 39 Atty. Gen. 456.

The commissioner must revoke an operator's license upon receipt of the record of conviction of operating a vehicle while intoxicated, in violation of a city ordinance conforming to the state statute, notwithstanding the person convicted claims that the evidence was insufficient to support such conviction. 40 Atty. Gen. 7.

343.32 History: 1957 c. 260, 295, 684; Stats. 1957 s. 343.32; 1959 c. 272, 600; 1961 c. 662; 1965 c. 232; 1967 c. 292; 1969 c. 383, 469; 1969 c. 500 s. 30 (3) (h), (i).

Legislative Council Note, 1957: This section consolidates and restates the provisions of the present law relating to suspension of licenses by the commissioner. As explained in the note to s. 343.30, this "suspension" is termed "revocation" in the new sections because it has the same effect as revocation insofar as reinstatement of operating privileges is concerned. Revocation under this section, however, differs from revocation under s. 343.31 in that the revocation may be for any period not to exceed one year while revocation under s. 343.31 is for one year.

Subsection (1) lists the circumstances under which revocation is mandatory. Subsection (1) (a) restates s. 85.08 (27) (c). Subsection (1) (b) restates s. 85.08 (27) (d). Subsection (1) (c) is based upon s. 85.08 (23) (a). Subsection (1) (d) restates s. 85.08 (27) (e).

Subsection (2) lists the circumstances under which revocation is discretionary. In actual practice, revocation under sub. (2) also is mandatory when certain conditions exist. This is by virtue of the rules which have been adopted in regard to the point system for weighing the seriousness of traffic violations. Subsection (2) restates s. 85.08 (27) (b).

Subsection (3) is based upon s. 85.08 (30) but also makes reference to the fact that different periods of revocation may be prescribed by other laws, such as the safety or financial responsibility laws. [Bill 99-S]

Although enacted later, the second sentence of 343.32 (2) must be construed as modifying and restricting the authority granted in the first sentence. *Burris v. Karns*, 14 W (2d) 431, 111 NW (2d) 509.

Where a man was convicted of driving without a license (a 4-point violation) the commissioner cannot administratively find that he was actually guilty of driving after revocation of a license and assess him with 12 points and thereupon revoke his driving privileges for one year. *Goodman v. Karns*, 29 W (2d) 140, 138 NW (2d) 276.

343.325 History: 1957 c. 571; Stats. 1957 s. 343.325; 1969 c. 500 s. 30 (3) (h), (i).

Motor Vehicle Laws Committee Note, 1957: The purpose of this bill is to provide for stay of revocation of a person's operating privilege when such person takes an appeal from the conviction which would be cause for revocation. If such person subsequently drops or loses his appeal, his operating privilege will be revoked and the period of revocation will run from the date of such revocation. In other words, he cannot shorten the period of revocation by appealing. On the other hand, if the conviction is reversed on appeal, he will have been spared the inconvenience of having his operating privilege revoked pending the decision on appeal. [Bill 287-S]

Where revocation of an operator's license has been stayed by order of a circuit court pending appeal to the supreme court from a judgment of conviction for operating a motor vehicle while under the influence of intoxicating liquor upon a trial de novo in circuit court (following appeal from an inferior court pursuant to justice court practice) and such circuit court judgment is affirmed by the supreme court, it is mandatory for the motor vehicle department to revoke such operator's unrestricted license for one year following receipt of notification of affirmance of the judgment by the supreme court. Assuming the operator's ability to satisfy requirements, he may petition the judge of the circuit court who convicted him for an order directing issuance of an occupational license. 34 Atty. Gen. 377.

343.33 History: 1957 c. 260; Stats. 1957 s. 343.33; 1969 c. 500 s. 30 (3) (h), (i).

The right to a hearing before the motor vehicle department under 85.08 (28) may be denied where the department is satisfied from records and information that no hearing is warranted. 32 Atty. Gen. 2.

343.34 History: 1957 c. 260; Stats. 1957 s. 343.34; 1969 c. 469; 1969 c. 500 s. 30 (3) (h).

Legislative Council Note, 1957: This section lists or refers to the circumstances under which an operating privilege may be suspended. As explained in the note to s. 343.30, suspension under the new sections is a concept quite distinct from revocation because of the provision for automatic reinstatement of suspended operating privileges.

Subsection (1) of this section is based upon s. 85.08 (15) (b) which provides that the commissioner shall suspend or revoke the license upon receiving satisfactory evidence of a violation of a restriction on a license. Under present law, therefore, the person whose license is thus revoked or suspended is required to make application for a new license, pay the reinstatement fee and file proof of financial

responsibility before his license can be reinstated. Under the new law, the license will be automatically reinstated at the end of the period of suspension.

Subsection (2) is based upon the last sentence of s. 85.08 (33) stating that refusal to submit to an examination is grounds for requiring surrender of the license. In the new section "suspend" has been substituted for "surrender." The term "surrender" has been reserved for the process of actually giving up the license card as required by s. 343.35 upon cancellation, revocation or suspension of an operating privilege. [Bill 99-S]

343.345 History: 1969 c. 469; Stats. 1969 s. 343.345.

343.35 History: 1957 c. 260; Stats. 1957 s. 343.35; 1969 c. 500 s. 30 (3) (h), (i).

Upon being notified by the commissioner of the motor vehicle department that the driving privilege of an inmate has been revoked, canceled or suspended, the superintendent of a mental institution must deliver to the commissioner the driver's license of such inmate if it comes into his possession. 46 Atty. Gen. 303. Compare 37 Atty. Gen. 467.

343.36 History: 1957 c. 260; Stats. 1957 s. 343.36; 1969 c. 500 s. 30 (3) (i).

343.37 History: 1957 c. 260; Stats. 1957 s. 343.37.

Legislative Council Note, 1957: This is a restatement and clarification of s. 85.08 (34). The present provision seems to require a new license in this state before any person whose license has been suspended or revoked is permitted to again operate a vehicle in this state. This is not the practice in the case of non-residents. They are permitted to drive in this state after the period of suspension or revocation has expired and upon obtaining a license in their own state and filing proof of financial responsibility in the manner required of residents of this state. The reinstatement of a nonresident's operating privilege is covered in s. 343.38 and s. 343.39. This section makes clear that purported operating authority from another state is of no effect in this state until the person's operating privilege has been reinstated pursuant to the laws of this state. [Bill 99-S]

343.38 History: 1957 c. 260, 684; Stats. 1957 s. 343.38; 1967 c. 92 s. 22; 1967 c. 284; 1969 c. 500 s. 30 (3) (h), (i).

Legislative Council Note, 1957: Subsection (1) is a consolidation and restatement of s. 85.08 (26), (29) and (31). "Revocation" under the new law covers also the situations denominated "suspension" under present law but which involve the same requirements for reinstatement of license as revocation.

Subsection (2) is not clearly stated in the present law but represents departmental policy and interpretations with respect to reinstatement of nonresidents' operating privileges after revocation.

Subsection (3) provides for automatic reinstatement of operating privileges in those cases where operating privileges have been

"suspended" within the meaning of the new sections. [Bill 99-S]

A person convicted for driving while intoxicated should have his driver's license restored when pardoned, upon application, without furnishing proof of financial responsibility. 27 Atty. Gen. 331. See also 27 Atty. Gen. 623.

A revocation of driver's license while a driver was under requirement to maintain proof of financial responsibility does not prevent the commissioner from requiring surrender of plates if proof of financial responsibility is not maintained. 48 Atty. Gen. 219.

343.39 History: 1957 c. 260; Stats. 1957 s. 343.39; 1969 c. 500 s. 30 (3) (i).

Legislative Council Note, 1957: This section lists the situations in which reinstatement of an operating privilege is "automatic" and describes the effect of an automatic reinstatement. The point of primary importance is that all suspensions will involve automatic reinstatement. In order to preserve the substance of the present law, all terminations of operating privileges which call for automatic reinstatement under the present law will be denominated "suspension" in the new law. Those requiring proof of financial responsibility and special application for reinstatement and payment of a reinstatement fee will be denominated "revocation." Thus, an important clarification in terminology and concepts will be achieved without any basic change in the substance of the law.

Subsection (1) (a) covers the automatic reinstatement of suspended operating privileges. Subsection (1) (b) deals with a special situation calling for automatic reinstatement under the present law (s. 85.08 (23) (b) and (25a)). It makes one change in the law. Present sub. (23) (b) requires reinstatement of a license suspended or revoked in this state as a result of a conviction in another state whenever the license is reinstated in the other state while that provision has been omitted from the new section. Insofar as such reinstatement in the other state is due to the fact that the laws of that state are more liberal with respect to reinstatement of operating privileges, it has the effect of weakening the laws of this state. It also means that residents of this state are given unequal treatment under substantially identical circumstances. The present law is retained and clarified insofar as reinstatement on the basis of reversal or vacation of conviction in the other state is concerned.

Subsection (2) states the effect of an automatic reinstatement. It is new in the statutes but is basically a statement of present departmental policy on automatic reinstatements. [Bill 99-S]

343.40 History: 1957 c. 260; Stats. 1957 s. 343.40.

A mandatory revocation of a license under 343.31 is not subject to review under ch. 227, since 343.40 authorizes such review only if the revocation is not mandatory. 268.025 (2) applies to orders restraining the enforcement of a statutory order of an administrative officer. *Carlyle v. Karns*, 9 W (2d) 394, 101 NW (2d) 92.

343.43 History: 1957 c. 260, 674; Stats. 1957 s. 343.43; 1959 c. 542.

Legislative Council Note, 1957: This section lists and prohibits a number of miscellaneous abuses to which licenses are subject. The section restates s. 85.08 (35) with some modifications.

Subsection (1) (a) is a modification of s. 85.08 (35) (a). The present provision seems too broad because it makes criminal merely having a revoked, suspended or canceled license in one's possession or the displaying of such a license. The provision in s. 343.35 making it a crime to fail to surrender a revoked, suspended or canceled license upon demand plus the provisions of sub. (1) (a) of this section are sufficient.

Paragraphs (b) and (c) of sub. (1) restate s. 85.08 (35) (b) and (c) respectively.

Subsection (1) (d) is based upon the "any other violation" provision in s. 85.08 (35). It is somewhat broader than the present law in that there seems to be nothing in the present law making it a crime to violate a restriction imposed on a license by the department as distinguished from a restriction imposed by law.

Paragraphs (e) and (f) of sub. (1) restate s. 85.08 (35) (f) and (h) respectively.

The penalty in sub. (2) is from s. 85.08 (41). [Bill 99-S]

343.44 History: 1957 c. 260, 292, 684; Stats. 1957 s. 343.44; 1963 c. 373; 1967 c. 292.

A driver whose regular operator's license has been revoked cannot claim that he is validly driving under his chauffeur's license when en route home after having spent 5 hours at a tavern drinking and visiting friends. *Bayside v. Berthiaume*, 29 W (2d) 102, 138 NW (2d) 232.

Those who drive on the public highway after the driving privileges have been revoked and never properly reinstated are subject to the penalty prescribed by 343.44 (2). 51 Atty. Gen. 45.

343.45 History: 1957 c. 260; Stats. 1957 s. 343.45; 1965 c. 75.

An owner's act of loaning his automobile to a 15-year-old boy who was not eligible to drive would not render the owner responsible for the boy's negligent operation of the automobile or affect the owner's right of recovery for injuries to his automobile unless the owner's own negligence in permitting the statutory violation operated in some way as a proximate cause of the injuries, as it would if the boy was an incompetent driver and the owner knew or ought to have known such fact. *Canzoneri v. Heckert*, 223 W 25, 269 NW 716.

An employer who orders his employe, a boy under 16 years, to drive an automobile in violation of sec. 1636-49, Stats. 1921, may be prosecuted as a principal in the crime. 11 Atty. Gen. 615.

343.46 History: 1957 c. 260; Stats. 1957 s. 343.46; 1969 c. 500 s. 30 (3) (i).

343.60 History: 1957 c. 674; Stats. 1957 s. 343.60; 1969 c. 276 ss. 589 (1) (a), 604 (1); 1969 c. 500 s. 30 (3) (h), (i).

343.61 History: 1957 c. 674; Stats. 1957 s. 343.61; 1969 c. 500 s. 30 (3) (h), (i).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 344.

Financial Responsibility.

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

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

The definitions in sub. (2) are substantially as in the present law. The definition of "vehicle" is from s. 85.10 and is incorporated by reference in present s. 85.09 (1). The definitions of "motor vehicle," "judgment," "operator," "proof of financial responsibility" and "state" are from s. 85.09 (1). The definition

of "registration" in present s. 85.09 (1) has been modified so as to refer to the actual registration of a vehicle rather than the evidence of registration and so as to include the privilege to register a vehicle and the reciprocal privilege granted to nonresidents. This is the concept involved when "registration" is revoked or suspended. The actual evidence of registration in this state (registration plates and certificate of registration) must be surrendered upon revocation of a person's "registration." This revision of the definition of registration is a clarification of rather than a change in the law as presently administered.

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

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

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

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

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

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

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