

## CHAPTER 85.\*

## VEHICLES AND TRAFFIC.

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85.01 Auto registration. (1) REQUIRED; MANNER OF ENFORCEMENT. No automobile, motor truck, motor delivery wagon, bus, motor cycle or other similar motor vehicle or trailer or semitrailer used in connection therewith, shall be operated upon any highway

\*Revisor's Note: Section 110.03 (created by chapter 410, Laws 1939) transfers to the motor vehicle department the powers and duties heretofore vested in the secretary of state by chapter 85 of the statutes, those vested in the industrial commission under 85.06 and 85.07, and those of the highway commission under most of chapter 85; and 110.03 directs the revisor of statutes "to make the necessary changes in the language of the statutes so as to indicate the transfers provided in section 110.03." The revisor has made the changes which, in his opinion, are a compliance with this mandate.

unless the same shall have been registered in the office of the motor vehicle department, and the registration fee paid. Any person who shall operate an automobile or motor cycle, or any person, except as hereinafter provided, who shall operate after July 15, a motor truck, tractor truck, bus, tractor, trailer or semitrailer, unless the same shall have been registered, as hereinbefore provided, may be arrested by any sheriff, deputy sheriff, city or village marshal, constable or any other police officer, and brought before any judge of a court of record or justice of the peace. Such judge or justice shall impose the penalty provided by subsection (12), and in addition require such person to make application for registration and pay the fee therefor, and \$2 in addition thereto. Such judge or justice shall forthwith forward such application and fee to the motor vehicle department, and pay the \$2 collected in addition to the registration fee to the informant. The absence of number plates shall be prima facie evidence that the vehicle is not registered. The provisions of this subsection shall not apply to any motor vehicle while being operated by any dealer or distributor, in accordance with the provisions of section 85.02, nor to any motor vehicle while being operated by any private person within a period of 10 days from the date of purchase of such vehicle by such private person, provided that application for registration has been made, or to any vehicle displaying official permit issued by the motor vehicle department. The motor vehicle registration fee for any vehicle registered under this chapter as a bus, truck, trailer or semitrailer may be paid on a quarterly basis when the registered gross weight of such vehicle is 8,000 pounds or more, or any vehicle operated in conjunction with another such vehicle as a unit having an aggregate combined registered gross weight of 8,000 pounds or more. The quarterly registration fee for each quarter shall be one-quarter of the annual fee plus \$1. The quarters are the three-month periods commencing on July 1, October 1, January 1 and April 1; and no vehicle permit shall be issued pursuant to section 194.47 or 194.48 until such quarterly or annual registration fee shall have been paid. The quarterly permit plate so issued shall cover all licenses, fees, and tax due under chapter 194 and shall be in lieu of the license number plate issued for the quarter period for which it is issued. No such quarterly plate shall be issued except it appear by affidavit that such vehicle was not operated on the highways of this state during the previous quarter of the license year without the payment of the annual or quarterly registration fee due for such previous quarter. If such vehicle was not operated on the highways during any quarter it shall be exempt from the payment of the registration fee for such quarter in which it was not used. If such vehicle is new or has not previously been registered in this state, and the time of registration falls within any such quarter, the owner thereof may at his option pay for the remainder of the quarter during which he desires to so operate which fee shall be computed on the basis of one-twelfth of the annual fee multiplied by the number of months within the quarter which have not fully expired. The quarterly registration fees so collected shall be deposited in the state treasury. The provisions of subsection (4) (h) shall not apply to the provisions of this subsection relating to quarterly payment.

(1a) DEFINITIONS. In this section, unless the context otherwise requires, the following words and terms shall have the following meanings:

(a) "Automobile" shall mean every motor vehicle not excluded by paragraph (b) designed for the purpose of transporting not more than 7 persons including the operator.

(b) The term "automobile" does not include motor driven cycles, motor vehicles used for the purpose of transporting persons or goods for hire, and motor vehicles owned and operated exclusively in the public service by the state of Wisconsin or by any county or municipality thereof.

(c) The owner of a vehicle shall be deemed to "operate" the same if it is being driven with his consent.

(1b) MONTHLY SERIES REGISTRATION SYSTEM ESTABLISHED. (a) There is adopted and established, and the commissioner of the motor vehicle department is authorized and empowered to effectuate a system of registration of automobiles on a monthly series basis, to distribute the work of registering such vehicles as uniformly as practicable throughout the 12 months of the calendar year.

(b) Commencing July 1, 1946, automobiles required to be registered by this chapter shall be registered for a period of 12 consecutive calendar months. There are established 12 registration periods, each of which shall start on the first day of each calendar month of the year and shall end on the last day of the twelfth month from date of beginning. The period ending January 31 shall be designated the first period; that ending February 28 (29) shall be designated the second; that ending March 31 shall be designated the third; that ending April 30 shall be designated the fourth; that ending May 31 shall be designated the fifth; that ending June 30 shall be designated the sixth; that ending July 31 shall be designated the seventh; that ending August 31 shall be designated the eighth; that ending September 30 shall be designated the ninth; that ending October 31

shall be designated the tenth; that ending November 30 shall be designated the eleventh; and that ending December 31 shall be designated the twelfth.

(c) Automobiles operated for the first time upon the public highways of this state to and including the fifteenth day of any given month shall be subject to registration and payment of fee for the 12 month period commencing the first day of the month of such operation; automobiles operated for the first time upon the public highways of this state on and after the sixteenth day of any given month shall be subject to registration and payment of fee for the 12-month period commencing the first day of the next following calendar month.

(d) During the time necessary to accomplish the change-over from the present system of annual calendar year registration to the monthly series system, all automobiles subject to registration on January 1, 1946 shall be registered for one of 12 registration periods, which shall vary in length from a minimum of 6 consecutive calendar months to a maximum of 17 calendar months as hereinafter provided. In the order of the receipt of applications for registration of automobiles by the owners thereof, the commissioner shall allocate to each of said 12 registration periods such number of automobiles, not to exceed 99,999 in any one month, as will, in his judgment, as uniformly as practicable, distribute the clerical work of registering such vehicles throughout the 12-month period in which such registrations shall expire and come up for renewal. In determining the number of registrations to be allocated to any given period, he may take into consideration the volume of registrations of trucks and other vehicles not under the monthly series registration system which may conflict with the registration of automobiles in any given month, being governed by considerations of efficiency and the equalization of the monthly volume of clerical work of said department. The 12 registration periods necessary to accommodate the change-over from the one system to the other, are established as follows: Each period shall commence January 1, 1946. The first period shall expire June 30, 1946; the second, July 31, 1946; the third, August 31, 1946; the fourth, September 30, 1946; the fifth, October 31, 1946; the sixth, November 30, 1946; the seventh, December 31, 1946; the eighth, January 31, 1947; the ninth, February 28, 1947; the tenth, March 31, 1947; the eleventh, April 30, 1947; and the twelfth, May 31, 1947.

(1c) FRACTIONAL REGISTRATION PERIODS, WHEN PERMISSIBLE; REFUNDS. Automobiles not previously registered in Wisconsin and operated for the first time upon the public highways of this state after January 1, 1946 shall be registered for a full 12-month period without regard for the varying periods of registration provided for during the period of change-over to the staggered registration system, subject, however, to the following provisions:

(a) Notwithstanding any requirement to the contrary, automobiles may be initially registered for less than a 12-month period at the commissioner's option, when in his judgment such fractional registration period shall tend to fulfill the purpose of the monthly series registration system.

(b) Upon expiration of the initial fractional registration periods automobiles so registered shall thereafter be registered for full 12-month periods as provided in subsection (1b).

(c) Whenever the commissioner shall determine from an increase or a decrease in the number of registrations of any and all types of motor vehicles in any given month, that the volume of clerical work of registration of all types of motor vehicles in such month has become so disproportionate to the volume of work in the remaining registration periods as to render the system burdensome or inefficient, he is authorized and empowered to change the registration period of such number of automobiles as may be necessary to increase or reduce the volume of registrations in one or more periods, as the case may be, by advancing the renewal date, and shortening the registration period of such automobiles. Such shifting of registration periods shall be accomplished by notifying the registrants of the change and refunding to them a pro rata portion of the fee for such portion of the registration period not yet elapsed. In such instances the commissioner shall order the registrant to surrender the license plates and title certificate held by him, and shall issue new plates and title certificate designating the new registration expiration date.

(d) When an owner has been required to register his automobile for a period in excess of 12 months during the change-over to the monthly series registration system, and he shall have moved out of the state or ceased to operate an automobile after the expiration of one year, he shall, upon surrender of his license plates and upon furnishing satisfactory evidence of his removal from the state or cessation of operation, be entitled to a refund to be computed on the basis of one-twelfth of the full year registration fee prescribed for such vehicles, multiplied by the number of months not to exceed 5, which

have not expired at the time of his removal or cessation of operation. Refunds shall be made in accordance with sections 14.68 (5) and 20.051 (2).

(1d) INTERPRETATION. (a) Subsections (1a), (1b), (1c), (4), (5), (6), (8), (10) and (11) as amended or created to establish and effectuate the system of staggered registration of automobiles and the permanent retention of license plates by the owners of automobiles registered under that system, are declared to supersede all existing statutes governing registration and licensing in so far as they may conflict therewith. In so far as the existing statutes relating to registration and licensing of motor vehicles are consistent with the staggered system of registration and permanent retention of license plates, the same shall continue to be applicable to the vehicle defined as "automobiles" under section 85.01 (1a).

(b) If any of the provisions of subsections (1a), (1b), (1c), (4), (5), (6), (8), (10) and (11), relating to the establishment of a system for the staggered registration of automobiles, and providing the formula for accomplishing same shall be held invalid and unconstitutional by any court of competent jurisdiction, with the resultant effect of nullifying the system of staggered registration so provided for, the class or classes of persons and automobiles affected thereby shall become subject to the existing provisions of this chapter as if no system of staggered registration had been provided for. All provisions enumerated above are declared to be severable, so that in the event of a declaration of invalidity as to one or more of such sections which does not effectually nullify the system of staggered registration, the existing provisions of this chapter shall be applicable to the extent of such nullification.

(1e) BUSES, REGISTRATION 1944. The registration fee for busses for the one-half year period from January 1, 1944 to July 1, 1944, shall be computed pursuant to the provisions of section 85.01 (4) (h).

(2) APPLICATION. Application for such registration shall be made by the owner to the motor vehicle department in the form prescribed by it and the registration fee shall be paid to it. Blank applications shall be supplied to the several county clerks by the motor vehicle department. Such application shall give the name of the town, city or village in which the owner of the motor vehicle resides which shall be stated in each instance on the certificate of title by the motor vehicle department. In cities of the first and second classes the application shall also give the true residential or business address of the owner and no application shall be accepted by the motor vehicle department which does not give the town, city or village in which the owner resides or which gives an address of general delivery. If the motor vehicle department has doubts about the facts stated in the application it may require such further evidence of ownership as it may consider necessary.

(3) CERTIFICATE OF TITLE AND OF REGISTRATION; WHERE KEPT. The motor vehicle department shall register the vehicle described in the application, giving it a distinguishing number, and shall thereupon issue to the applicant a certificate of registration and a certificate of title, which shall contain the name, place of residence and address of the owner, the registered number assigned, and a brief description of the vehicle registered, and furnish him registration number plates. The certificate of registration issued under the provisions of this section shall, in the case of motor trucks and passenger busses, be displayed in a prominent place in the driver's compartment of such vehicle. The certificate of title shall show any mortgage, conditional sales contract or other lien on the vehicle, and shall always be in the possession of the owner. In the case of a new motor vehicle being registered for the first time, no certificate of title or registration shall be issued unless such application is signed by an enfranchised new car dealer authorized to sell such new motor vehicle.

(4) FEE. (a) *Automobiles*. There shall be paid annually to the motor vehicle department for the registration of each automobile a fee of \$16; provided that any automobile registered prior to the effective date of the recreation of this subsection (1947) for a fee less than \$16 and any automobile 5 years or more old registered prior to said time for an amount less than \$16, shall continue to be registered for such lesser fee or amount so long as it continues to be registered.

(am) *Automobiles under monthly series registration*. The fees payable during the 17 months commencing January 1, 1945 and ending May 31, 1947 for the registration of automobiles as defined in section 85.01 (1a) shall be computed on the basis of one-twelfth of the full year registration fee prescribed for such vehicles in paragraph (a) multiplied by the number of months for which said automobiles shall be required to be registered. Commencing January 1, 1946 there shall be paid to the motor vehicle department for the registration of each automobile required to be registered for a 12-month period a fee equal to the annual fee prescribed for such class of vehicles in paragraph (a).

(an) *Change of automobiles.* Upon application for registration of an automobile by an owner who holds a valid registration not yet expired for another car of which he has disposed, the commissioner shall register the car which is the subject of the application for the unexpired portion of the registration period for which applicant holds a license. When in such instances the automobile which is the subject of the application for registration for remainder of unexpired period is of the same weight class as the automobile for which the license was originally issued no further fee shall be required. When such automobile is in a heavier weight class for which a greater fee is prescribed applicant shall pay a pro rata portion of the difference in fees. When such automobile is in a lighter weight class for which a lesser fee is prescribed applicant shall not be entitled to a refund of the difference.

(ao) *Fee prorated.* Upon application for registration of an automobile by an owner who holds license plates for a registration period which has expired, as permitted by section 85.01 (8) (am), the commissioner shall register said vehicle for such fraction of a 12-month period as will enable said owner to use said license plates so held by him, and he shall be required to pay a fee computed on the basis of one-twelfth of the full year registration fee prescribed for such vehicles in paragraph (a), multiplied by the number of months remaining in the registration period for which he shall be required to register.

(b) *Motor cycles.* For the registration of each motor cycle, a fee of five dollars. For the registration of each motor cycle equipped with a side car, a fee of eight dollars.

(ba) *Snowmobiles.* For the registration of each snowmobile weighing less than three thousand pounds, a fee of five dollars. If the snowmobile is converted to a motor vehicle, such vehicle shall again be registered upon payment of the registration fee provided for such vehicle with allowance of credit for the registration fee paid for snowmobile.

(bb) *"40 et 8".* For the registration of each motor vehicle operated as a "40 et 8" combination of motor vehicle and box car trailer, when used exclusively by the "40 et 8" or the American Legion, a fee of one dollar.

(c) *Trucks.* For the registration of each motor truck or motor delivery wagon having a gross weight of  $1\frac{1}{2}$  tons or less, a fee of \$10; having a gross weight of more than  $1\frac{1}{2}$  tons and less than  $2\frac{1}{4}$  tons, a fee of \$15; having a gross weight of  $2\frac{1}{4}$  tons or more and less than 3 tons, a fee of \$20; having a gross weight of 3 tons or more and less than 4 tons, a fee of \$35; having a gross weight of 4 tons or more and less than 5 tons, a fee of \$60; if the gross weight is 5 tons or more a fee of \$60, plus a fee of \$25 for each ton or fraction thereof in excess of 5 tons. The registration fee for any motor truck or any traction well-drilling rig permanently equipped with a well-drilling outfit and used exclusively for well-drilling purposes, or any trailer not used for hire and used for transporting any ditching machine which is used exclusively for farm ditching or for the loading of gravel or other road material and which has a dipper capacity of not to exceed five-eighths of a yard, shall be \$10. The gross weight in tons shall be in every case arrived at by adding together the weight in pounds of the motor truck or motor delivery wagon when equipped ready to carry a load and the maximum load carried by the vehicle in pounds, and then dividing the sum of the two by 2,000. This section, however, shall not be construed to mean that any such vehicle may be licensed to operate in violation of any other provision of this chapter.

(cm) *Farm trucks.* For the registration of farm trucks having a gross weight of 10,000 pounds or less a fee of \$5, and for the registration of farm trucks having a gross weight in excess of 10,000 pounds, one-quarter of the fee specified in paragraph (c) for a truck of the same gross weight.

(d) *Busses.* For the registration of each motor vehicle having a passenger carrying capacity of more than 7 persons used for the transportation of passengers which takes place entirely within contiguous incorporated cities or villages and in municipalities contiguous to that in which the motor carrier has its principal place of business, or entirely within one municipality or municipalities contiguous thereto, or each motor vehicle which is operated as auxiliary to or a part of a street railway system the fee specified in paragraph (c) for a motor truck of the same gross weight. The gross weight in tons of the passenger carrying motor vehicles specified in this paragraph shall be in every case determined by adding together the weight of pounds of the vehicle when equipped ready to carry passengers and the total passenger weight capacity in pounds divided by 2,000. The total passenger weight capacity in pounds shall be determined by dividing the total length of seating space therein or thereon, including the driver's seat, by 20 inches and multiplying this result by 150.

(dm) *Interurban bus.* For the registration of each motor vehicle having a passenger carrying capacity of more than seven persons used for the transportation of passengers and not used exclusively in the operations described in paragraph (d) of this subsection

three and three-quarters times the fees required to be paid under paragraph (c) of this subsection.

(dr) *Busses used in war work.* For the registration of each motor vehicle having a passenger-carrying capacity of more than 7 persons and used exclusively for the transportation of passengers as follows: (a) to or from any military or naval camp; (b) to or from any factory engaged in war work; and (c) when used jointly as a school bus as defined in section 85.08 (1) (c) and for the transportation of persons specified in (a) and (b), one fee only as specified under paragraph (c) for a motor truck of the same gross weight.

(e) *Trailers.* For the registration of each trailer or semitrailer, designed to be hauled by a motor vehicle, and having a gross weight of 1½ tons or less, if used for hire, a fee of \$3; for every trailer or semitrailer having a gross weight of more than 1½ tons, a fee one-half of the fee specified in paragraph (c) of this subsection for a motor truck of the same gross weight. The gross weight in tons of the vehicles specified in this paragraph shall be in every case arrived at by adding together the weight in pounds of the vehicle when equipped ready to carry a load and the maximum load carried by the vehicle and then dividing the sum of the two by 2,000. Any trailer or semitrailer permanently equipped with a well-drilling outfit or designed for moving pea viners and used exclusively for either of such purposes need not be registered. Provided, where 2 or more trailers or semitrailers, not used for hire, but used exclusively for transportation on or about the premises of the owner of such trailers or semitrailers, or for transportation to and from a railroad freight station, platform or car located not more than 2 miles from the premises of such owner, are hauled interchangeably by registered motor vehicles, so that not more than one of such trailers or semitrailers is operated on the streets or highways at any one time by each such registered motor vehicle, the registration fee for such trailers or semitrailers shall be as follows: A fee as hereinabove prescribed in this subsection shall be paid for one trailer or semitrailer for each registered motor vehicle used by the same owner for the purpose of hauling such trailers, such fee to be based upon the gross weight of the heaviest trailer or semitrailer so hauled by such registered motor vehicles; and a fee of \$5, regardless of gross weight, for each additional trailer or semitrailer hauled by such registered motor vehicles.

(em) *Cabin trailers.* For the registration of each cabin trailer, except such as are used by contractors and workmen engaged in any construction work upon any public property, a flat fee of five dollars, if such trailer is twenty-five feet or less in length, and ten dollars if over twenty-five feet in length. The overall length shall be measured from the rear thereof to the rear of the vehicle to which it is attached. The term "cabin trailer" shall mean any trailer or semitrailer, designed to be hauled by any motor vehicle upon a public highway and designed, equipped or used for sleeping, eating or living quarters or is intended to be so used.

(en) *Cabin trailer brakes.* All new cabin trailers manufactured or sold in this state shall be equipped with brakes approved by the motor vehicle department, designed of a capacity sufficient to bring to a stop such vehicle and cabin trailer within a distance of 50 feet when operated at a speed of 20 miles per hour. No person shall drive any cabin trailer unless the propelling vehicle may stop within the distance and manner specified herein.

(f) *Tractors.* For the registration of all tractors not otherwise expressly exempted from registration, the fees prescribed in subsection (c) for trucks of the same gross weight. This amendment (1945) shall be effective July 1, 1945. Tractors used exclusively in agricultural operations, including threshing, or used exclusively to provide power to drive other machinery, or to transport from job to job machinery driven by such tractor, or tractors used exclusively for construction operations need not be registered.

(fm) *Exemption.* Any motor vehicle, trailer or semitrailer, if operated empty, or transporting the equipment of the owner to or from a certain location over the public highways, need not be registered under this section, when such operation at the location is otherwise exempt from the provisions of this chapter, and provided such operation has been approved by the motor vehicle department and proper evidence thereof is displayed on such vehicle.

(g) *State and municipal vehicles.* Automobiles, motor trucks, motor delivery wagons, trailers or semitrailers owned and operated exclusively in the public service by the state of Wisconsin, or by any county or municipality thereof, and motor busses owned and operated by a private school or college and used exclusively for transportation of students to and from such school or college and not used for hire shall be registered by the motor vehicle department upon receipt of a properly filled out application blank accompanied by the payment of a registration fee of \$1 for each of said vehicles or trailers. The foregoing provision shall also apply to automobiles, motor trucks, motor delivery wagons,

trailers or semitrailers loaned to the state or any county or municipality thereof for the duration of the war emergency and operated exclusively by the state or such county or municipality for civilian defense purposes. The motor vehicle department shall furnish one number plate for each automobile, motor truck, motor bus, motor delivery wagon, motor cycle, trailer or semitrailer, of a special series and color, and said number plates shall be renewed each year so long as it is used exclusively in the public service or for such school or college transportation. Registration fees received under this paragraph shall be credited as from the town, village or city from which said fees are received. Automobiles owned by the state and used by conservation wardens may be registered in the same manner as privately owned automobiles.

(h) *Part year fees.* The registration fees provided in this section shall be paid in full on all automobiles, motor trucks, passenger busses, motor cycles or other similar motor vehicles or trailers or semitrailers used in connection therewith registered in Wisconsin in the previous year, excepting vehicles transferred as hereinafter provided. For new vehicles and vehicles not previously registered in this state, the fees shall be computed on the basis of one-twelfth of the full year registration fee prescribed for such vehicles, multiplied by the number of months of the current registration year which have not fully expired on the date of application. When a nonregistered vehicle which has not been previously operated upon the public highways during the current registration year by the person acquiring ownership of such vehicle shall be transferred, the registration fee to be paid by the transferee shall be computed as provided above for new vehicles; provided a satisfactory affidavit of such nonoperation is filed with the motor vehicle department. The legal date of application for registration shall in the case of a new vehicle, a vehicle not previously registered in Wisconsin or a vehicle being transferred, be the date on which such vehicle was first operated on the public highways after it was acquired by the applicant; however, if the bill of sale is dated prior to the date the vehicle was placed in operation as aforesaid the applicant must file an affidavit of nonoperation, provided the latter date is a factor in the computation of the registration fee. On any new vehicle purchased in Wisconsin by residents of other states there shall be paid fees as specified in this section providing that when the license plates are returned to the motor vehicle department within 30 days, a refund shall be made of any money collected in excess of \$2.

(ha) *Same; persons called to military duty.* The motor vehicle owned by any person who engages in active service of any of the naval or military forces of the United States shall be exempt from the registration provisions of chapter 85 for any period not less than one month of any registration year, provided the owner thereof makes written application for such exemption to the commissioner of the motor vehicle department in such form and furnishes such proof as the commissioner may require for any such vehicle which will not be operated upon the public highways of this or any other state during any registration period or part thereof. A refund shall be made of one-twelfth of the registration fee paid for such vehicle times the number of full months remaining in the registration year for which the vehicle will not be operated upon the public highways of this or any other state, provided that the applicant for such refund surrenders the certificate of registration, license plates, and files with the commissioner an affidavit in such form as the commissioner shall require. Whenever the owner of a vehicle who has been granted an active service exemption under the provisions of this paragraph desires to reregister such vehicle, the motor vehicle department will register such vehicle in the same manner as a vehicle which has not been previously registered in this state.

(hb) *Temporary permits to persons on furlough.* The motor vehicle owned or designated by any person engaged in the active military service of the United States or its allies may be operated on the highways of this state by any such person while on furlough and for a period not to exceed 30 days without complying with the registration provisions of chapter 85, provided such person makes application for a temporary permit for such operation to the commissioner of the motor vehicle department in such form and furnishes such proof as the commissioner may require. There shall be no fee charged for such permit.

(hm) *Registration of replacement vehicle.* If any vehicle is junked or permanently removed from the highways of the state by reason of fire, collision or other accident, and replaced by another vehicle, such replacement vehicle shall be registered by the motor vehicle department upon payment of only the excess registration fee, if any, of such replacement vehicle over the vehicle so removed. Such registration shall be conditioned on the filing of proof, satisfactory to the motor vehicle department, that such permanent removal occurred as herein provided. No application to register a motor vehicle previously junked shall be granted unless accompanied by a certificate over the signature of a traffic officer of the locality where the applicant resides stating that in his opinion the motor vehicle described in the application is in such mechanical condition that oper-

ation thereof on public streets and highways will not jeopardize the safety of motorists or pedestrians.

(i) *Improper use of plates.* No person shall operate or have in his possession any motor vehicle, trailer or semitrailer, with any metal number plates or plates fashioned in imitation of, or altered in any manner so as to resemble the legal license number plates issued by the motor vehicle department for such registration year. No number plates shall be used or displayed except by the person to whom issued in accordance with this section. The issuance or use of any windshield or other permit for the operation of a motor vehicle pending the receipt of registration number plates, excepting such permit as may be issued by the motor vehicle department, is hereby prohibited. Such permits shall be valid only for a period of 15 days from date of issuance. Violations of this paragraph shall be punishable by a fine of not less than \$25 nor more than \$100, or by imprisonment for not less than 30 days nor more than 6 months.

(j) *Fraudulent registration.* If any motor truck, truck tractor, tractor, delivery wagon, passenger automobile bus, or trailer or semitrailer used in connection therewith, shall be registered at a lower gross weight than that indicated thereon as required by section 85.50, or if the gross weight of the vehicle is greater than that at which such vehicle is registered, or the owner wilfully gives an erroneous address in the application, the owner thereof shall be required to register the same in conformity with the actual gross weight of the vehicle and shall pay only the additional fee required for the increased carrying capacity of the vehicle, or shall be required to supply such correct address and in addition the penalties provided in subsection (12) of this section may also be imposed. Trucks, trailers and semitrailers may be registered in excess of the maximum gross weight according to the manufacturers' rating on payment of the proper fee for such weight but such registration shall not exempt such vehicle from compliance with all weight restrictions imposed by chapter 85.

(5) *EXPIRATION OF LICENSE.* All motor vehicles, trailers and semitrailers except as hereinafter provided shall be registered annually and automobile and motor cycle registrations shall expire on December 31 of the year for which registration is made. After June 30, 1930, the annual registration of all motor trucks, busses, tractor trucks, tractors, trailers and semitrailers shall expire on the succeeding June 30. After October 31, any application for registration of an automobile or motor cycle shall be given a registration number of the succeeding year, which shall serve as a registration for the balance of the current year. After May 31, any application for registration of a motor truck, bus, tractor truck, tractor, trailer or semitrailer shall be given a registration number of the succeeding fiscal year which shall serve as a registration for the balance of the current fiscal year. Motor vehicle registrations paid on a quarterly basis shall expire on the last day of the quarter for which a permit is issued. This section shall not be applicable to expiration date of registrations under the monthly series system provided in subsection (1b).

(6) *NUMBER PLATES.* (a) *Design, issue.* The motor vehicle department shall devise, secure, issue and deliver prepaid to each owner of any motor vehicle registered in accordance with the provisions of this section except motor cycles, two official number plates, and to the owner of any trailer or semitrailer registered in accordance with the provisions of this section, one official number plate. The name: "Wisconsin" or "Wis." and the registration year for which the license is issued shall be indicated thereon and the words "America's Dairyland" shall in addition be indicated on all official number plates on automobiles.

(b) *Plates for trucks and busses, how lettered.* The set of number plates for motor trucks, motor delivery wagons, and for trailers and semitrailers, shall bear distinguishing letters indicating the gross weight as follows: One and one-half tons, or less, the letter A; for more than one and one-half tons and less than two and one-quarter tons, the letter B; two and one-quarter tons or more and less than three tons, the letter C; three tons or more and less than four tons, the letter D; four tons or more and less than five tons, the letter E; five tons or more and less than six tons, the letter F; six tons or more and less than seven tons, the letter G; seven tons or more and less than eight tons, the letter H; eight tons or more and less than nine tons, the letter J; nine tons or more and less than ten tons, the letter K; ten tons or more and less than eleven tons, the letter L; eleven tons or more and less than twelve tons, the letter M; twelve tons and over, the letter N. Number plates issued for motor busses and other passenger vehicles registered under paragraph (d) of subsection (4) of this section and for trailers and semitrailers shall bear similar distinguishing letters, and in addition insignia denoting the type of vehicle.

(c) *Plates, how affixed.* 1. One of the said number plates shall be firmly and rigidly fastened and placed horizontally in a conspicuous place on the front of each motor vehicle, and the other of such number plates shall be firmly and rigidly fastened and placed horizontally in a conspicuous place on the rear of such vehicle, and the number plate

issued for a trailer or semitrailer shall be firmly attached in a horizontal position to the rear of such vehicle. All such number plates shall be so displayed and kept reasonably clean at all times that the same can be readily and distinctly seen and read. Any peace officer may require the operator of any vehicle on which plates are not properly displayed to display such plates as required by this paragraph. Plates shall not be removed from any vehicle, until the plates for the succeeding year are attached, except as provided in subsection (6) (c) 2.

2. Plates issued to owners of automobiles registered under the monthly series system of registration provided for in subsection (1b) shall remove such plates on sale or transfer of ownership of such vehicles. Such plates shall thereafter be retained and preserved by the person to whom issued, to be fastened to such other automobile as said person shall thereafter register in his name and for which he shall pay the required fee, if any be due under subsection (4) (am). It shall be a misdemeanor, punishable under subsection (12), to fasten said plates to any vehicle not validly registered in the name of the person to whom such plates have been issued.

(d) *Numbering during emergency.* 1. For the period terminating as provided in subsection (6) (d) 3 the provisions of subsection (6) (a) and (c) shall be superseded by the provisions of subsection (6) (d) 2.

2. The motor vehicle department shall devise, secure, issue and deliver, prepaid, to each owner of any motor vehicle, trailer or semitrailer, registered in accordance with the provisions of this section, one official number plate; the name: "Wisconsin" or "Wis." and the registration year for which the license is issued shall be indicated thereon. Such number plate shall be firmly and rigidly fastened and placed horizontally in a conspicuous place on the rear of each motor vehicle, trailer or semitrailer, except that the number plate for a vehicle registered under subsection (4) (c) used exclusively to draw a trailer or semitrailer shall be so attached to the front of the vehicle. The commissioner of the motor vehicle department may, by reasonable rules and regulations, provide for the front of the vehicle a substitute for the number plate which was provided for under subsection (6) (a) before March 28, 1943. Such substitute may be of such material and design so that it can be applied to the inside of the windshield and may have thereon the registration number assigned to the vehicle. All such number plates or other means of identification shall be so displayed and kept reasonably clean at all times that the same can be readily and distinctly seen and read. Any peace officer may require the operator of any vehicle on which a plate is not properly displayed to display such plate as required by this subdivision. Any plate shall not be removed from any vehicle unless the plate for the succeeding year is immediately attached, excepting upon transfer of ownership of vehicles registered under the monthly series registration system, which shall be governed by subsection (6) (c) 2.

3. The provisions of subsection (6) (d) 2 shall terminate at the time of the beginning of the registration period (for motor vehicles, trailers or semitrailers) which occurs next after the two-year period which follows the cessation of hostilities as declared by the president or the congress of the United States, except that the commissioner of the motor vehicle department, with the approval of the governor, may fix an earlier date, which shall be published in the official state paper not less than 30 days prior to such date, for terminating the effect of subsection (6) (d) 2 if he is satisfied after investigation that suitable material is available for number plates under subsection (6) (a) and (c). Upon such termination the provisions of subsection (6) (a) and (c) shall again be in effect. Any person who shall violate the provisions of subsection (6) (d) 2 or any rules or regulations made thereunder shall be punished as provided in subsection (12).

(7) **MOTOR DRIVEN CYCLE NUMBERS.** The motor vehicle department shall issue and deliver to each owner of a motor driven cycle an official number plate of standard size and design which shall have thereon the letter "W" and the number assigned to such motor driven cycle, such letter and figures to be at least 2 inches high; said number plates shall be kept firmly and rigidly fastened on the rear of such motor driven cycle in a conspicuous place.

(8) **TRANSFER OF TITLE.** (a) *Manner, effect.* The rights conferred by the certificate of title specified in subsection (3) shall be transferable with the sale of the vehicle covered thereby, and the number plates issued for any calendar year shall be valid for use on the identical vehicle for which they were issued during said calendar year, notwithstanding the sale or sales of such vehicle. Provided, that no such transfer shall be valid nor shall the use of such plates after sale be valid unless the motor vehicle department shall have been notified in writing of such sale or transfer, such notice to be accompanied by the certificate of title properly signed by the new owner. Upon receipt of said certificate of title, accompanied by the payment of a fee of \$1, to cover the cost thereof, the motor vehicle department shall issue and mail to said new owner a new certificate of title. If

ownership of the vehicle be transferred, the owner shall assign the certificate of title in writing at the time of sale. When ownership shall pass by judicial decree or sale, or by operation of law, the new owner shall be entitled to a certificate of title upon filing appropriate evidence thereof. Within 5 days thereafter, the transferee shall present such certificate or evidence to the motor vehicle department. License plates issued for the vehicle being transferred, must remain on the same notwithstanding such transfer or transfers. This section, in so far as it requires license plates to remain on vehicles notwithstanding transfer, shall not be applicable to automobiles as that term is defined under the system of monthly series registration in subsection (1a).

(am) *Plates not transferable.* License plates issued upon the registration of automobiles as defined in subsection (1a) shall not be transferred upon sale of the vehicle for which originally issued, but shall remain with the owner to identify him as the owner of any other automobile registered by him in the future.

(b) *New identifying numbers.* If the identification number of a motor vehicle or other vehicle required to be registered has been removed, obliterated or altered, or if the original casting has been replaced and the number on the original cannot be ascertained, or if the vehicle has not been numbered by the manufacturer the application for certificate of title shall so state and the motor vehicle department shall assign a number to be stamped upon the engine if a motor vehicle, and on the frame and rear axle if a trailer or semitrailer. Such numbers shall begin with 101, run consecutively, and be followed by the letters: "WIS." Such numbers shall be stamped upon the engine or other part only under the supervision of a dealer, manufacturer or distributor registered under section 85.02, a sheriff, deputy sheriff or police officer, who shall report the same to the motor vehicle department. Upon the removal or replacement of the engine or the part thereof which bears the identification number, the number shall be defaced from the old block.

(c) *Application to dealers.* Dealers, manufacturers or distributors, registered under section 85.02, need not apply for certificates of title for vehicles in stock, or acquired for stock purposes but upon transfer of the same, shall give the transferee evidence of title, which in case the vehicle has a certificate shall be a reassignment of the same.

(d) *Autos junked or stolen.* Any person owning or possessing a motor vehicle shall notify the commissioner of motor vehicle department within ten days after the destruction or junking of the same. The certificate of title must be returned to the commissioner of motor vehicle department for cancellation along with the license plates. Each sheriff and police department in the state shall make immediate report of each motor vehicle reported stolen or recovered, and of each felony committed and detected within its jurisdiction, to the commissioner of motor vehicle department who shall keep a file and index of such reports, together with similar reports received by him from other states. The commissioner of motor vehicle department shall prepare once a month a list of such reports during the preceding month and forward a copy to each sheriff and police department in this state, to each motor vehicle organization in Wisconsin applying therefor, and to the motor vehicle registration official in each state of the United States. Reports and lists of felonies unsolved or for which no arrest has been made shall contain such and other information which may be deemed helpful in leading to the solution of such felony or to the apprehension of the offender. Before issuing a certificate of registration and title the commissioner of motor vehicle department shall check the application with his records. Records more than five years old may be destroyed.

(e) *Penalty for violating subsection (8).* Any person who shall knowingly make a false statement in any application or other document required by this subsection to be filed with the motor vehicle department, or forge any such application or other document or any certificate of title or assignment thereof, or attempt to do any of said acts, shall be guilty of a felony and shall be punished by a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both. Any person who shall operate a motor vehicle for which a certificate of title is required without such certificate having been issued or applied for, or shall sell, buy or otherwise transfer such a vehicle without assignment of the certificate of title, or shall violate any other provision of this subsection for which no penalty is herein specifically provided, shall be guilty of a misdemeanor and shall be punished by fine not exceeding five hundred dollars or imprisonment not exceeding six months or both.

(9) **RECORD.** A record of all applications and of certificates issued thereon shall be kept by the motor vehicle department and shall be open to inspection of all persons during office hours.

(10) **DUPLICATES.** (a) *Plates.* 1. Upon satisfactory proof of the loss or destruction of any number plate, except those issued as provided by section 85.02, the motor vehicle department shall issue a duplicate thereof to the owner of the registered vehicle upon the payment of a sum not exceeding \$1, provided that issuance of duplicate plates

for automobiles registered under the monthly series system of registration shall be governed by subdivision 2.

2. Upon satisfactory evidence of the loss, destruction or illegibility of any number plate issued for automobiles registered under the monthly series system provided for in subsection (1b), the motor vehicle department shall issue a duplicate thereof to the owner of the registered vehicle upon the payment of a sum not exceeding \$1 if the duplicate is issued within one year of date of issuance of the plate or plates to be replaced, and without fee if application is made after the expiration of one year. Duplicates shall be issued at any time without fee if the reason for issuance is illegibility of a plate, which illegibility shall be certified in writing by any law enforcement officer who has inspected same. Whenever a law enforcement officer shall observe a plate to be in such condition as to hinder or make difficult the identification of the same, and shall notify the motor vehicle department, the licensee may be required by order of the commissioner to surrender said plate for the issuance of a duplicate thereof without fee. If the plate for which duplicate is requested has not been destroyed, the same shall be surrendered to the motor vehicle department when application for duplicate has been made. Failure to surrender plate for which duplicate has been issued is declared to be a misdemeanor punishable under subsection (12).

(b) *Titles.* Upon satisfactory proof of the loss or destruction of a certificate of registration or certificate of ownership the motor vehicle department shall issue a duplicate thereof to the registered owner upon payment of the sum of twenty-five cents.

(11) PUBLICATION OF REGISTRY LISTS. (a) *Publication of motor vehicle registry list.* The motor vehicle department shall before April 1 of each year transmit to each county clerk, sheriff and chief of police and to every village clerk making application therefor one copy, to the state highway commission 10 copies, to the state department of taxation 5 copies, of an up-to-date numerical list, from January 1, and from time to time thereafter up to November 15, supplementary lists in book form of all registrations of motor vehicles, excepting therefrom automobiles as that term is defined in subsection (1a). Such lists shall contain the name and address of the owner of such vehicle, the name and make thereof, the weight used to determine the registration fee, and the registered number. Such officers, clerks and commissions shall keep such lists on file in their respective offices and the same shall be open to the inspection of all persons. The bureau of purchases shall sell copies of such registration lists at not exceeding \$50 for the entire annual series.

(an) *Same; publication temporarily suspended.* The motor vehicle department shall not be required to transmit annually a motor vehicle registry list as provided in section 85.01 (11) (a) to the persons and bodies designated therein during the period of national war emergency and while new motor vehicle registration numbers are not being issued annually. The motor vehicle department shall, however, continue to transmit from time to time to the persons and bodies designated in section 85.01 (11) (a), numerical registry lists of motor vehicles not registered in Wisconsin previous to the transmittal of the last annual registry list and numerical registry lists of those vehicles previously registered for which new registration numbers have been issued. This section shall no longer be in effect as to any group or groups of vehicles designated under section 85.01 (4) at any time the motor vehicle department shall issue new registration numbers for any such group or groups.

(b) *New car sales registration.* The motor vehicle department shall compile and publish daily a list by counties of new car sales registrations. If a vehicle has once been registered it shall not again be listed as a new car sale. Such lists shall contain the name and permanent address of the owner of such vehicle, the make, model, serial number, motor number and registration number thereof, together with the firm name and address of the firm selling such car and date of such sale. Such lists shall be made available to county clerks upon request. Such clerks shall keep such lists on file in their respective offices and the same shall be open to the inspection of all persons. The bureau of purchases shall sell copies of such daily new car registration lists at not exceeding \$50 per annum.

(c) *Five-year registry lists.* The motor vehicle department shall before August 1, 1946, and before August 1 of each fifth year thereafter, publish and distribute an up-to-date numerical list in book form of all registrations of automobiles as that term is defined in subsection (1a) as provided in paragraph (a). The supplementary lists provided for in paragraph (a) shall include automobile registrations which are made during the periods between the publication of the 5-year automobile registry lists. The 5-year registry list of automobiles shall be distributed as provided above without additional fee beyond that provided in paragraph (a).

(12) PENALTY. Any person convicted of violating any provision of this section for which no penalty is otherwise prescribed shall be subject to a fine of not less than five dol-

lars, nor more than one hundred dollars, or imprisonment in the county jail not to exceed ninety days, or to both such fine and imprisonment. The penalty provided by this subsection may be imposed by any judge or justice of the peace notwithstanding any statutes defining the jurisdiction of judges and justices in any county. [1931 c. 9; 1931 c. 22 s. 2; 1931 c. 422 s. 1, 2; 1933 c. 210, 364, 386, 414; 1933 c. 418 s. 2; 1933 c. 491 s. 5; 1935 c. 75, 116, 152, 189, 219, 297, 373, 536; 1937 c. 246, 287, 298, 314; 1939 c. 39, 41, 84, 115, 154, 176, 299, 375, 399, 410, 459, 464, 478, 488, 489, 499, 507; 1939 c. 517 s. 10a; 1941 c. 88, 107, 159, 276; 1943 c. 16, 22, 23, 24, 42, 58, 224, 275, 329, 352; 1945 c. 95, 442, 518, 527; 1947 c. 194, 460, 528, 605]

**Cross Reference:** See 193.01 (1), providing that trackless trolley cars shall not be deemed motor vehicles within the meaning of ch. 85 and ch. 194.

**Note:** An automobile, the registration of which had expired, was not a "lawfully registered and licensed automobile" at the time of an accident, within an accident policy; hence the insurer was not liable for the accidental death of the insured while driving such automobile, although the governor had requested an extension expiration date and although the want of registration of the automobile did not cause the accident. *Wyman v. Great Northern L. Ins. Co.*, 220 W 369, 265 NW 220.

A tribal Indian, living on the Menominee Indian reservation, owning a motor truck, and operating it only within the boundaries of the reservation, must nevertheless register his truck under this section and pay a registration fee to the state for its operation over that portion of a state highway which is within the boundaries of the reservation, and the state court has jurisdiction of the offense committed by him by his failure so to register and pay. *State v. Tucker*, 237 W 310, 296 NW 645.

State or county owned automobile operator of which is authorized to use it in his official capacity as well as in his private business and for pleasure is not exclusively operated in public service and may be registered as privately owned automobile. 19 Atty. Gen. 210.

County owned motor road grader or scraper need not be licensed. 20 Atty. Gen. 192.

Use of truck to haul milk over regular route for compensation is use for commercial purpose under (4) (c), Stats. 1931. Use of truck for commercial purpose for which license plates have not been secured is punishable under 85.91 (1a). 20 Atty. Gen. 1184.

Motor vehicle previously owned by municipality and used exclusively in public service, and registered as such, when sold may be registered in name of new owner as vehicle not previously registered in this state. 21 Atty. Gen. 891.

Person operating motor vehicle with license plates issued on license subsequently canceled is subject to arrest under this section. 22 Atty. Gen. 123.

Secretary of state may, upon proper certification by public service commission, lower registered gross weight of motor vehicles to correct errors in such registration. 23 Atty. Gen. 114. But see 22 Atty. Gen. 857 and 884.

Transferee of truck licensed as "farm truck" in accordance with (4) (c) or (cm), Stats. 1933 who is not a farmer must get new license for truck. 23 Atty. Gen. 509.

Farm tractor used occasionally to grade town highways must be licensed. 24 Atty. Gen. 248.

Holder of federal mail contract who employs his automobile solely to haul mail must secure Wisconsin license. 24 Atty. Gen. 576.

When automobile registered in this state in previous year but not used in current license year is transferred, fee to be paid by transferee shall be computed as for new vehicles. 25 Atty. Gen. 131.

Tractors used exclusively in agricultural operations are exempt from motor vehicle registration under (4) (f) but such exemption does not extend to commercial hauling. Type of trailer or vehicle hauled is immaterial. 27 Atty. Gen. 209.

Section 85.01 (4) (h), Stats. 1937, has reference solely to current license year, and

in no event should fees computed under this section exceed fee for whole year. Part year fee is computed from date of bill of sale for which license is sought. 27 Atty. Gen. 435.

Truck trailer not registered in this state during preceding licensing year is vehicle "not previously registered in this state" within meaning of (4) (h), Stats. 1937, and when license is applied for in January is eligible for registration upon payment of part year fee as provided in said section. 28 Atty. Gen. 34.

(4) (f) does not apply to truck used for hauling construction machinery from job to job and in the hauling of lumber used on the job. 28 Atty. Gen. 352.

Triangular steel frame mounted upon four dual-tired wheels, designed only for carrying a power shovel from place to place, and further designed for attachment to independent motive power, is nevertheless a trailer as defined by 85.10 (11) and subject to registration pursuant to 85.01 (4) (e). 28 Atty. Gen. 382.

Under (5) motor vehicle department may not issue registration numbers of current year on applications received after October 31, and this provision is unaffected by 85.01 (4) (h). 28 Atty. Gen. 694.

The provision in (5) that applications for motor truck registration made after May 31 shall be given registration numbers of succeeding fiscal year applies only to vehicles registered under annual registration provisions and not to those registered on quarterly basis. 29 Atty. Gen. 349.

Compliance with provisions of 85.01 (1) is prerequisite to issuance of permits under 194.04 (5) and 194.49. 29 Atty. Gen. 386.

Where trailer not required to be registered under 85.01 (4) (e) is propelled by truck, gross weight of combination for tax purposes under 194.48 and 194.49 is gross weight of propelling vehicle only. 29 Atty. Gen. 389.

Under 85.01 (1), Stats. 1941, where owner of vehicle of 8,000 pounds or more elects to pay motor vehicle registration fee on quarterly, rather than on annual basis, he may at any one time apply and pay for as many quarters less than full license year as he desires, but fee for each quarter must be one-fourth of annual fee, plus \$1. 31 Atty. Gen. 145.

When motor vehicle department receives appropriate evidence of sale of registered vehicle free of incumbrance in bankruptcy proceedings, department should issue certificate of title to purchaser under 85.01 (8) in accordance with terms of such sale. 31 Atty. Gen. 251.

Owner of trailers kept for purpose of rental to private users need not qualify such trailers under (4) (e). 32 Atty. Gen. 225.

Motor vehicles owned by the United States government and operated by auxiliary military police under command and authority of the commanding officer of Badger Ordnance Works, United States army, need not be registered under 85.01. 33 Atty. Gen. 274.

Dealer purchasing trucks from out of state for resale in the state who does not operate the trucks himself for the purposes for which they were constructed, must nevertheless register such vehicles according to gross weight scale and formula prescribed by (4) (c). 34 Atty. Gen. 153.

Motor vehicles must be registered in the name of the lawful owner. Where a corporation does business under a combined corporate name, the one corporation owning and operating the second corporation, the vehicles of the corporation under whose

names business is transacted must be registered in the latter's name. On the other hand, if owned by the successor corporation, the vehicles may be registered in the combined name. Disclosure of true identity of successor corporation when combined name is used does not violate 343.722. 34 Atty. Gen. 370.

Where an automobile is owned by joint tenants and is registered in their names as joint tenants and subsequently the registra-

tion certificate and license plates are revoked because one joint tenant is convicted of driving while under the influence of intoxicating liquor, no refund can be made to the other joint tenant of an amount representing one-half of unused portion of plates or any other amount and no credit in said amount or in any amount can be allowed such joint tenant in event he hereafter individually makes application for registration of said automobile. 85 Atty. Gen. 124.

**85.015 Licenses for power driven cycles and motor bicycles.** (1) There shall be paid annually to the motor vehicle department for the registration of each power driven cycle and motor bicycle as defined in section 85.10 (4) (a) and (b) operated upon a public highway of this state a fee of \$3.

(3) Local municipalities may by ordinance regulate the number of persons that may ride on any such power driven cycle or motor bicycle at any one time, and the time of day at which, and the highways upon which, any such power driven cycle or motor bicycle may be operated. [1939 c. 203, 410; 1947 c. 605]

**Note:** Operators of "power cycles" are required to have drivers' licenses as provided in 85.08. 29 Atty. Gen. 163.

**85.02 Registration by manufacturers and dealers.** (1) **CERTIFICATE.** (a) Every dealer, distributor and manufacturer of motor vehicles as defined in chapter 218.01 shall file a duly acknowledged application for registration with the motor vehicle department, which shall contain the name under which such dealer, distributor or manufacturer is transacting business within this state, the names and addresses of the several persons constituting the firm or partnership and if a corporation the corporate name under which it is authorized to transact business, the names and addresses of its principal officers, resident general agent and attorney in fact and the established place or places of business of such dealer, distributor or manufacturer, and whether engaged in wholesale or retail selling of automobiles or both, and whenever a new place of business is opened such place of business shall promptly be reported to the motor vehicle department. On receipt of such statement and \$25 to cover the cost of registration and the first set of dealer plates, the motor vehicle department shall issue a certificate of registration to such dealer, distributor or manufacturer which shall be assigned a number.

(ab) The fees required by (1) (a) and (6) as amended by chapter 78, laws of 1945, do not affect any registration year prior to 1946.

(b) Any licensed manufacturer, distributor, or dealer of motor vehicles, shall, before changing the location of his place of business, or before opening any additional places of business within the same municipality in which he is licensed, apply to the motor vehicle department and obtain a supplemental certificate of registration for which no fee shall be charged. When a manufacturer, distributor or dealer has an established place of business in more than one Wisconsin municipality, different registration numbers must be assigned to such manufacturer, distributor, or dealer for each municipality.

(c) The motor vehicle department shall issue a certificate of registration to an applicant for the sale of motor vehicles at retail only if he owns or leases a permanent building wherein there are facilities to display and repair functional and nonfunctional parts of automobiles and where replacement parts, repair tools and equipment to service automobiles are kept, and at which place of business shall be kept and maintained the books, records and files necessary to conduct the business, and such place shall not mean residence, tents or temporary stands. An approved service contract with an established repair shop having the above repair facilities and the requirement for replacement parts, repair tools and equipment to service automobiles shall serve in lieu of an applicant's repair facilities and the requirement for replacement parts, repair tools and equipment to service automobiles, provided that such service connection is within reasonable distance from the applicant's place of business, and provided further that such service connection guarantees in writing the making of the repairs or replacements ordered by the dealer.

(2) **FORM, APPLICATION, APPOINTMENTS.** The motor vehicle department shall cause to be printed and distributed suitable forms for application for registration under this section, and also a form of motor vehicle dealers' and manufacturers' certificates of appointment, and every dealer and distributor of motor vehicles shall file his appointment with the motor vehicle department at the time application is made for registration under this section. Distributors' appointments shall be certified by the manufacturer of motor vehicles whom they represent. Appointments of dealers in motor vehicles shall be certified by the authorized distributor through whom such vehicles are received for the purpose of sale.

(3) **SERVICE VEHICLES TO BE REGISTERED.** Beginning July 1, 1931, as to motor trucks, tractor trucks, trailers and semitrailers, and on January 1, 1932, as to other vehicles,

every tow truck, service truck or pickup truck owned by any dealer, distributor or manufacturer of vehicles required to be registered by this chapter shall be registered in the same manner as other similar vehicles, except service or pickup trucks actually for sale and incidentally used for business purposes.

(6) PLATES. Number plates shall be furnished by the motor vehicle department at \$25 for the first set of 2 plates and \$1 for each additional set to manufacturers, distributors and dealers whose vehicles are registered in accordance with the provisions of this section. Such plates shall have upon them the registration number assigned to the registered manufacturer, distributor or dealer but with a different symbol upon each set of number plates as a special distinguishing mark and such plates shall be used in lieu of regular plates for private or business purposes only on those vehicles actually offered for sale by dealers, distributors or manufacturers or on vehicles while in transit from the factory to a dealer or distributor or while being used for trial tests by manufacturers.

(7) LOANING PLATES. No person, other than a bona fide manufacturer, distributor or dealer, shall obtain or use a registration certificate or the number plates issued to a manufacturer, distributor or dealer except for the purpose mentioned, and no person shall loan such registration certificate or number plates or allow it or them to be used for any other purpose.

(8) USE OF PLATES. No manufacturer, distributor or dealer or his employe shall cause or permit the display or other use of any number plate or certificate of registration which may have been furnished him except upon motor vehicles owned by the manufacturer, distributor or dealer, and no other person shall have in his possession any such number plates or certification of registration.

(9) DEALERS' DISCONTINUANCES. Whenever a dealer or distributor, or manufacturer discontinues or disposes of his business, he shall notify the motor vehicle department and return the plates.

(10) YEARLY RENEWAL. Certificates and number plates issued under this section shall be valid only during the calendar year for which issued.

(10a) POWER CYCLES EXCEPTED. Power cycles as defined in section 85.015 shall not be included within the term "motor vehicles" as used in this section.

(11) PENALTIES. Any person violating any provision of this section, shall, upon conviction be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars, or imprisonment not to exceed ninety days, or both, and the motor vehicle department shall cancel the registration, and the number plates issued to the aforesaid dealer shall be surrendered to any police officer upon direction of the motor vehicle department without refund of the fees paid. Any registration so canceled shall not be renewed during the current year. [1931 c. 22 s. 1, 3; 1931 c. 422 s. 1, 2; 1933 c. 418 s. 1, 2; 1937 c. 301; 1939 c. 208, 409, 410; 1945 c. 78, 505; 1947 c. 534]

**Note:** Motor finance company in selling repossessed cars on which it has lent money is not dealer in motor vehicles so as to register for auto license as dealer. 19 Atty. Gen. 52.

Dealer in used and new cars who does not have appointment from manufacturer or distributor is nevertheless entitled to registration as dealer. 21 Atty. Gen. 367.

Garage may permit prospective purchaser of new car to drive same upon highway without official garage representative present. 22 Atty. Gen. 752.

Cancellation under (11) of license issued to partnership or corporation on conviction of its agent, employe or member, applies to partnership or corporation and not to person convicted only. 24 Atty. Gen. 706.

Under (6), Stats. 1937, auto dealers' license plates may be used in lieu of regular plates only on vehicles offered for sale by dealers, distributors or manufacturers, or on vehicles in transit from factory to dealer or distributor, or when being used for trial tests by manufacturers; otherwise there is no restriction as to the use or as to driver of vehicles equipped with dealers' license plates. 27 Atty. Gen. 333.

Manufacturer may not operate motor vehicles upon highways to transport materials, etc., to and from its plants under manufacturer's license plates under (6), even though experimental vehicles and some testing thereof are involved. 35 Atty. Gen. 272.

85.025 Licenses for motor vehicles in transit. (1) Any person, firm or corporation engaged in this state in the business of transporting and delivering motor vehicles in tow on their own wheels or under their own power from the manufacturer to the distributor, dealer or branch of the manufacturer, or from the distributor or dealer to another distributor or dealer, the manufacturer or branch of the manufacturer, or from the branch of the manufacturer to the distributor, dealer or manufacturer, may file a duly acknowledged application for registration with the motor vehicle department which shall contain the name of said person, firm or corporation, the names and addresses of the several persons constituting the firm, and if a corporation the names and addresses of the principal officers, resident general agent and attorney in fact, and the place or places of business of such person, firm or corporation; and whenever a new place of business is opened in this state, such place of business shall promptly be reported to the motor vehicle department. On receipt of such application, the motor vehicle department shall issue a certificate of registration to such person, firm or corporation making the application.

(2) The motor vehicle department shall cause to be printed and distributed suitable forms for applications for registration under this section and also a form for certificate of registration and each such certificate of registration issued under this section shall be filed in the office of the motor vehicle department by the person, firm or corporation to whom issued. Each such certificate of registration shall bear a number distinguishing it from every other certificate of registration issued.

(3) Number plates shall be furnished by the motor vehicle department at twenty-five dollars for the first set of two plates and three dollars for each additional set of two plates to persons, firms or corporations engaged in this state in the business of transporting and delivering motor vehicles in tow on their own wheels or under their own power from the manufacturer to the distributor, dealer or branch of the manufacturer, or from the distributor or dealer to another distributor or dealer, the manufacturer or branch of the manufacturer or from the branch of the manufacturer to the distributor, dealer or manufacturer, provided such person, firm or corporation so engaged in business in this state shall have been duly issued a certificate of registration under this section, and provided further that said certificate of registration shall have been filed in the office of the motor vehicle department. Such plates shall have upon them the words "IN TRANSIT" and shall show the registration number assigned to such person, firm or corporation registered under this section but with a different symbol upon each set of number plates as a special distinguishing mark to distinguish one set thereof from another.

(4) No person, firm or corporation other than one actually engaged in the business of transporting and delivering motor vehicles in tow on their own wheels or under their own power shall obtain or use said number plates, and said number plates shall be used by said person, firm or corporation only on motor vehicles being transported in tow on their own wheels or under their own power from the manufacturer to the distributor, dealer or branch of the manufacturer, or from the distributor, or dealer to another distributor or dealer, the manufacturer or branch of the manufacturer or from the branch of the manufacturer to the distributor, dealer or manufacturer.

(5) Certificates of registration and number plates issued under this section shall be valid only during the calendar year for which issued and said number plates shall be transferable from one motor vehicle to another.

(6) Any person violating any provision of this section shall upon conviction be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment not to exceed ninety days, or both, and the motor vehicle department shall cancel the registration, and the number plates issued shall be surrendered to any police officer upon direction of the motor vehicle department without refund of the fees paid. Any registration so canceled shall not be renewed during the current year. [1937 c. 135; 1939 c. 410]

85.03 [Repealed by 1939 c. 489]

85.04 **Used motor vehicles, title history; penalty.** (1) Any person, firm or corporation who applies for a Wisconsin license for any used motor vehicle which was previously licensed and used in another state or country, shall furnish the motor vehicle department an affidavit pertaining to the title history of such motor vehicle as shall be required by such motor vehicle department, which shall be sworn to before a notary public or any person authorized to administer oaths. Such application shall contain a certification by a sheriff, deputy sheriff, police officer or other law enforcement officer, stating that the physical description of said motor vehicle has been checked and conforms to the description given in said application.

(2) No person, firm or corporation shall knowingly offer for sale or exchange in this state to any resident thereof any motor vehicle which was previously licensed and used as a taxicab or for public transportation until the certificate of title for such motor vehicle shall have been surrendered to the motor vehicle department and until the motor vehicle department has stamped in a conspicuous place on such certificate of title the words "This motor vehicle has previously been used as a taxicab or for public transportation."

(3) Any person who shall sell a motor vehicle contrary to the provisions of this section and every officer, agent or employe of any person, firm or corporation and every person who shall sell or who shall authorize, direct, aid in or consent to the sale of a motor vehicle contrary to the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment.

(6) If any part of this section or of sections 85.02 or 85.025 shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of these sections. [1935 c. 537; 1939 c. 410, 479; 1945 c. 78, 518]

**85.045 Automobile property tax certified; registration fees tabulated by municipalities.** (1) The department of taxation shall compute and not later than November 15, 1931, certify to the highway commission the approximate amount which was collected in each town, village, and city from the property tax on motor vehicles levied in the year 1930. Such amount shall be arrived at by assuming that the tax collected on motor vehicles bears the same ratio to the total personal property tax collected up to the time when the delinquent tax roll is delivered to the county treasurer as the assessed value of motor vehicles bears to the assessed value of all personal property.

(2) Not later than December fifteenth of each year, beginning with the year 1932, the motor vehicle department shall compute the amount of the net registration fees derived from motor vehicles customarily kept in each town, village, and city in the state for the fiscal year ending the previous June thirtieth and certify such amounts for each town, village, and city to the highway commission. [1931 c. 22 s. 3; 1939 c. 410; 1943 c. 20]

**Note:** See note to 194.04, citing 35 Atty. Gen. 308.

**85.05 Autos, foreign licensed.** (1) Any motor vehicle, trailer or semitrailer registered in any state of the United States, the District of Columbia, or any foreign state or province which carries the number plates indicating such registration, may be operated over the highways of Wisconsin without registration in this state, during the year of such registration if such state, district or province allows motor vehicles, trailers or semitrailers registered in this state to be operated tax free upon its streets and highways under conditions substantially as favorable to residents of Wisconsin as granted herein to non-residents, unless the owner of the motor vehicle has moved to Wisconsin, or the vehicle is purchased by a Wisconsin resident, in which case the vehicle must be registered in accordance with section 85.01.

(2) (a) No motor vehicle, trailer or semitrailer engaged in commercial transportation over regular routes or between fixed termini, or making more than one trip into Wisconsin during any year, whether for direct or indirect hire, and no motor vehicle, trailer or semitrailer used regularly for the delivery or distribution of merchandise within this state or for interstate hauling, shall be operated on the public highways of Wisconsin, unless said motor vehicle shall have paid the full registration fee provided in section 85.01 of the statutes, and shall display Wisconsin number plates. The penalty applying to violations of section 85.01 shall apply to this subsection.

(b) Provided, that notwithstanding the provisions of paragraph (a) of this subsection the motor vehicle department shall have authority to enter into reciprocal agreements with the responsible officers of other states as to licenses, permit fees, mileage and flat taxes, under which motor vehicles, trailers or semitrailers owned by citizens of such states and engaged in commercial transportation or while engaged in the exclusive transportation of unmanufactured agricultural products may be operated in this state without a Wisconsin registration, provided like privileges are accorded to vehicles owned by Wisconsin citizens in such other states, but the motor vehicle department shall have no authority to enter into such reciprocal agreements covering motor vehicles, trailers or semitrailers engaged in commercial transportation over regular routes or between fixed termini, or those operating for direct or indirect hire except while engaged exclusively in the transportation of unmanufactured agricultural products.

(c) If any of the exemptions provided for in paragraph (b) of this subsection shall be held invalid and unconstitutional by any court of competent jurisdiction, the class or classes held to be invalidly exempted shall forthwith become subject to the provisions of paragraph (a) as if no exemption had been provided for. Such declaration of invalidity as to any of the foregoing exempted classes shall not affect the validity of any other provision of this subsection, and all such provisions are hereby declared to be severable.

(d) Notwithstanding any contrary provision of this section, the commissioner of the motor vehicle department, with the approval of the governor, shall have authority to enter into reciprocal agreements with the responsible officers of other states as to licenses, permit fees, mileage and flat taxes under which motor vehicles, trailers or semitrailers properly licensed or registered in other states may be operated in interstate commerce in this state without a Wisconsin registration or the payment of permit fees or mileage or flat taxes, provided like privileges are accorded to vehicles owned by Wisconsin citizens when operated in such other states.

(3) The use and operation by a nonresident of a motor vehicle over the highways of Wisconsin shall be deemed an irrevocable appointment binding upon his executor, administrator or personal representative by such nonresident of the commissioner of the motor vehicle department to be his true and lawful attorney upon whom may be served all legal processes in any action or proceeding against him, or his executor, administrator or personal representative, growing out of such use or operation resulting in damage or loss to person or property, and said use or operation shall be a signification of his agree-

ment that any such process against him, or his executor, administrator or personal representative, which is so served shall be of the same legal force and validity as if served on him personally, or his executor, administrator or personal representative. Service of such process shall be made by serving a copy upon the commissioner of the motor vehicle department or by filing such copy in his office, together with a fee of \$2, and such service shall be sufficient service upon the said nonresident, or his executor, administrator or personal representative; provided, that notice of such service and a copy of the process are within 10 days thereafter sent by mail by the plaintiff to the defendant, or his executor, administrator or personal representative, at his last known address, and that the plaintiff's affidavit of compliance herewith is appended to the summons. The fee of \$2 paid by the plaintiff to the commissioner of the motor vehicle department at the time of the service shall be taxed in his costs if he prevails in the suit. The commissioner of the motor vehicle department shall keep a record of all such processes which shall show the day and hour of service.

(4) The provisions of subsection (3) shall apply to a nonresident defendant who was a resident of the state at the time of the accident or occurrence which gave rise to the cause of action sued on. [1931 c. 146, 156, 444; 1939 c. 410; 1941 c. 268; 1943 c. 39, 395; 1945 c. 336; 1947 c. 267, 483, 528]

**Note:** Subsection (2) does not violate constitutional guaranties of equal protection of laws. Paragraph (b) authorizing the secretary of state to enter into reciprocal agreements with sister states, is not invalid as an unconstitutional delegation of legislative power. The fees collected under said statute, being virtually all allocated to highway purposes, are validly exacted of foreign-owned vehicles, even though engaged exclusively in interstate commerce, and even though such fees are not allocated to highways used by such vehicles. *Interstate T. Co. v. Dammann*, 208 W 116, 241 NW 625.

Subsection (3) is applicable to an action by a nonresident plaintiff residing in the state of the nonresident defendant, and does not because thereof deny due process of law. *State ex rel. Rush v. Circuit Court*, 209 W 246, 244 NW 766.

Subsection (3), Stats. 1933, did not authorize service of process upon the executor or personal representative of a deceased nonresident motorist, or upon a foreign insurance association, in which the deceased had carried automobile liability insurance, where such association was not licensed and never had done business within the state, and had never appointed any one upon whom service of process might be made. *State ex rel. Ledin v. Davison*, 216 W 216, 256 NW 718.

Salesman for foreign corporation over whom employer exercised no control respecting routing or mode of travel, and whose contract controlled only prices of merchandise and terms fixed by employer, held not agent of corporation so as to authorize substituted service on salesman as agent for corporation, in action for injuries resulting from operation of automobile. *State ex rel. J. A. Sexauer Mfg. Co. v. Grimm*, 217 W 422, 259 NW 262.

Service of summons and complaint on nonresident defendant in automobile collision case by filing copies thereof with secretary of state and sending copies by registered mail to alleged address of such defendant, where receipt was signed by person purport-

ing to act as agent for defendant and copies of summons and complaint were apparently delivered to defendant by or through person receipting therefor, and defendant did not deny receiving letters sent by plaintiff to him at such address, constituted sufficient compliance with (3). *State ex rel. Nelson v. Grimm*, 219 W 630, 263 NW 533.

Neither a golf professional, employed by an Illinois golf club, nor his assistant was an agent of the club in respect to the operation of the assistant's automobile on a trip into Wisconsin (made on a day when neither was required to be at the club) for the purpose of purchasing merchandise for a shop which the professional operated at the club as his own independent business, and hence, in an action for injuries resulting from such operation of the car, substituted service on the club by service on the secretary of state as provided for in the case of nonresident motorists by 85.05 (3), supportable only on the theory that such agency relation existed, was void. *State ex rel. Oak Park Country Club v. Goodland*, 242 W 320, 7 NW (2d) 828.

School teacher employed from October to June in Wisconsin is required to register his automobile. 20 Atty. Gen. 899.

Under (2) (d) the commissioner of the motor vehicle department may not validly enter into agreement with other states to exempt nonresident operators from payment of motor fuel tax in Wisconsin. 33 Atty. Gen. 247.

85.05 (3) does not authorize service of justice court summons in county other than that in which it is issued. 35 Atty. Gen. 408.

At the time of an automobile accident the statutes provided for service of summons upon a nonresident by service on the secretary of state but before the action was commenced the statute was amended so as to provide for service of summons on a nonresident by service on the commissioner of motor vehicles. That change in procedure did not affect a substantive right of the nonresident defendant. *Zavis v. Warren*, 35 F Supp. 689.

#### 85.06 Lighting equipment on vehicles. (1) ADEQUATE LIGHTING EQUIPMENT REQUIRED.

No motor vehicle shall be operated upon or occupy any public highway unless such vehicle is provided with sufficient lights, as required by this section, provided, however, that the motor vehicle department, after a public hearing thereon duly noticed by publication at least once in the official state paper, is authorized to fix reasonable and uniform standards for lighting equipment for tractors, motor trucks, road graders and other road machinery and equipment used for and engaged in maintaining public highways, and lights in accordance with such standards may be used on such vehicles, road machinery and equipment in lieu of the lights otherwise required by this section. All headlights, tail lights, clearance lights and lights on road machinery required by this section shall be kept lighted from one-half hour after sunset until one-half hour before sunrise.

(2) LIGHTS REQUIRED. (a) *Headlights.* Every motor vehicle in use on the public highways except motor driven cycles shall be equipped with at least 2 headlights in good working order. Such headlights shall display a white light of sufficient illuminating

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power under normal atmospheric conditions to reveal any persons, vehicles, or substantial objects 200 feet ahead of the headlights. Motor driven cycles and motor bicycles shall be equipped with at least one such head light. Power driven cycles shall be equipped with an electric headlight, tail light and current source. The headlight shall illuminate an object 50 feet ahead of the vehicle; the lens shall be of the diffusing type; the bulb or bulbs shall be of the prefocused type, or permit ready focusing; the headlight shall be so designed and attached to the machine that the height of the beam from the road may be readily adjusted; there shall be either 2 bulbs or a bifocal bulb. The tail light, when illuminated, must be visible on a dark, clear night for a minimum of 500 feet from the rear or either side; there shall be either 2 bulbs or a bifocal bulb. The current source shall be one of 3 types: By means of a wet battery and current generating source; or by means of a generator connected to motor direct, or by gears, chain or belt; or, by means of a light coil incorporated into the magneto.

(b) *Tail lights.* Every motor vehicle, including a motor driven cycle, when in use or parked upon, or immediately adjacent to, the traveled portion of the highway, shall display on the rear at least one lamp so constructed and placed as to show a red light from the rear plainly visible under normal atmospheric conditions from a distance of 500 feet to the rear of such vehicle. Reflective signals approved by the motor vehicle department may be used in lieu of tail lights on trucks, trailers, and semitrailers non-electrically equipped, or power driven cycles, and on parked vehicles, except as provided in paragraph (d).

(c) *Clearance lights.* Every motor vehicle having a width at any part in excess of eighty inches shall carry two clearance signal lights on the left side of such vehicle, one located at the front and the other located at the rear of the vehicle. Such lights shall show a green, blue or amber light to the front and a red light to the rear. Reflective signals approved by the motor vehicle department may be used in lieu of rear clearance signal lights but the center of such signals shall not be more than forty-eight inches above the roadway. The foregoing requirements for clearance lights shall not be applicable to tractors, motor trucks, road machinery and equipment engaged in and used for maintaining public highways where such vehicles or equipment is lighted in accordance with the applicable standards promulgated by the motor vehicle department.

(d) *Lights to protect against stationary vehicles.* No person shall, during any period of time from one-half hour after sunset to one-half hour before sunrise, permit a motor truck, truck tractor, trailer or semitrailer to stand upon any traveled portion of a highway outside of the corporate limits of any incorporated city or village, unless such vehicle is protected by a burning fusee or flare placed on the extreme left side of the vehicle and by lights placed approximately one hundred twenty-five feet to the front and rear of the vehicle, to clearly indicate the presence of such vehicle. Such flares or lights shall be kept burning the entire time such vehicle is left standing. Every such vehicle operated on the highways shall be provided at all times with the flares or other lights required to comply with this subsection.

(e) *Auxiliary lights.* If any vehicle is equipped with any auxiliary lights in addition to headlights, except a tail light, such lights shall be subject to all the restrictions governing the use of lights and, except in the case of emergency vehicles or road machinery, shall not show a red light to the front of the vehicle.

(f) *Spot lights.* No spot light shall be used as an auxiliary driving light on any motor vehicle operated on the highways of this state except when such spot light is set or adjusted so that the rays of light shall be projected directly on the road surface at a distance not exceeding one hundred feet directly in front of the motor vehicle using such spot light and to the right of the center of the traveled way.

(g) *Road machinery; lights required.* No tractor, motor truck, road grader, road drag or other piece of road machinery used in road construction or maintenance shall be used upon any public highway in this state which is open to traffic by the public unless such machinery shall carry at least two red danger signals in the daytime and at least two red signal lanterns or lights in the nighttime. Such signals and lights shall be so displayed as to give adequate warning of the presence of such machinery and to show safe clearances for passing vehicles. In lieu of such signals, lanterns or lights, such vehicles, machinery and equipment may be marked, designated and lighted in accordance with the standard method of marking and lighting such vehicles as promulgated by the motor vehicle department.

(h) *Depressing headlights to avoid blinding drivers.* Every person operating or driving a motor vehicle on the public highways shall, when approaching, and about to pass, any other person operating or driving a motor vehicle and traveling in the opposite direction, dim, depress or tilt the front headlights on his motor vehicle so that the rays projected therefrom will not blind the person whom such driver is approaching and about

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to pass. Sufficient light to see objects for seventy-five feet ahead of the vehicle shall be maintained. This paragraph does not apply to vehicles equipped with acetylene or similar gas lights.

(i) *Lights on nonmotor vehicles.* From thirty minutes after sunset until thirty minutes before sunrise, no vehicle, other than a motor vehicle, shall be driven upon or occupy any public highway unless a light, or in lieu thereof a reflective signal approved by the motor vehicle department, is displayed on or from such vehicle so that it may be readily and distinctly seen from behind such vehicle.

(j) *Lights on bicycles.* Every bicycle, operated upon a public highway during any of the time between one-half hour after sunset until one-half hour before sunrise, shall be equipped with a lamp on the front exhibiting a white light visible from a distance of at least five hundred feet to the front and with a lamp on the rear exhibiting a red light visible from a distance of five hundred feet to the rear, except that a red reflector approved by the motor vehicle department may be used in lieu of a rear light.

(3) **CABIN TRAILER LIGHTS.** Cabin trailers shall be equipped with a combination tail light and stop light, controlled and operated from the driver's seat of the propelling vehicle.

(4) **STANDARD LIGHTING EQUIPMENT FIXED, ENFORCED.** The motor vehicle department shall investigate, ascertain, determine and fix such reasonable standards of lighting equipment and reflective signals for motor vehicles, trailers and semitrailers, and for the adjustment and use of such equipment, not inconsistent with this section, as to make the use of the highways by such vehicles safe for all the public. The said department may issue general or special orders prohibiting the use of any highway by any motor vehicle not conforming to such standards. Such investigations, standards and orders shall be made as provided in sections 101.01 to 101.28. Every order of the department shall have the same force and effect as orders issued pursuant to sections 101.01 to 101.28 and any judicial review thereof shall be instituted as provided in chapter 227.

(4a) **CABIN TRAILER HITCHES.** The motor vehicle department shall ascertain, determine and fix reasonable standards of cabin trailer hitches and may issue general or special orders prohibiting the use of any highway by any cabin trailer not conforming to such standards.

(5) **ENFORCEMENT.** It shall be the duty of sheriffs, deputy sheriffs, traffic officers, policemen, constables and marshals to enforce the provisions of this section.

(6) **EVIDENCE.** Failure to comply with the standards fixed by the motor vehicle department and with such orders as it may issue for the adjustment and use of lighting equipment or signal lights on motor vehicles, trailers and semitrailers, shall be prima facie evidence of unsafe practice in the use of the public highway by such vehicles.

(7) **EXISTING ORDERS SAVED.** Existing orders of the motor vehicle department shall remain in effect until amended or repealed by the department. [1933 c. 181; 1935 c. 141; 1939 c. 296, 298, 410, 507; 1943 c. 375 s. 18; 1945 c. 511; 1947 c. 605]

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

County, which was required to maintain state highway, was not liable for injuries sustained when automobile collided at night with rear of grader which without red signal lanterns or lights was being used to clear snow from highway, since county is not liable for negligence of its agents while engaged in governmental function. *Crowley v. Clark County*, 219 W 76, 261 NW 221.

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

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 in compliance with (2) (d), where five or six 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 the disabled truck and trailer, stopped on the highway, was not causally negligent in placing a flare slightly off the concrete and one hundred feet to the

rear of the trailer instead of approximately one hundred twenty-five feet as prescribed by (2) (d), 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 twenty-five feet farther back. *Scheffler v. Bartzten*, 223 W 341, 269 NW 537.

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

The statute is complied with if the vehicle is protected either by a fusee alone or by lights placed as prescribed. *Klitzka v. Wheeler Transp. Co.*, 223 W 28, 279 NW 611.

Subsection (2) does not prohibit rear spotlights. *Beck v. Fond du Lac Highway Committee*, 231 W 593, 286 NW 64.

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

Farm wagon is not a farm implement within meaning of the proviso in (2) (b). 19 Atty. Gen. 145.

**85.063 Safety glass on vehicles; penalty.** (1) It shall be unlawful for any person to operate on any public highway or street in this state any motor vehicle which is registered in this state and which is manufactured or assembled after January 1, 1936, unless such motor vehicle is equipped with safety glass wherever glass is used thereon in partitions, doors, windows or windshields. This provision shall apply only to motor vehicles that are manufactured after January 1, 1936.

(2) The term "safety glass," as used in this section, shall be construed as meaning glass so treated or combined with other materials as to reduce, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from external sources or by such glass when the same is struck, cracked or broken.

(3) The motor vehicle department shall approve and maintain a list of the approved types of glass, conforming to recognized specifications, tests and requirements for safety glass as defined in this section, and shall not issue a license for or relicense any motor vehicle unless such motor vehicle is equipped with safety glass as herein provided.

(4) Every vendor of a motor vehicle shall certify in a bill of sale or the certificate of title to any motor vehicle sold the type of glass used in partitions, doors, windows and windshields of such motor vehicle, and whether it was manufactured or assembled after the effective date of this section. Every owner of a motor vehicle purchasing a motor vehicle after the effective date of this section shall exhibit such certificate to the motor vehicle division when applying for registration of such motor vehicle.

(5) The operator or owner of any motor vehicle which is operated in violation of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than twenty-five dollars or ten days in the county jail or by both such fine and imprisonment. In case of violation of the provisions of this section by any common carrier or person operating under a permit or certificate issued by the public service commission, in addition to such penalty, such permit or certificate may be revoked, or, in the discretion of the commission, suspended until the provisions of this section are complied with. [1935 c. 134; 1939 c. 410]

**Note:** Glass replacement company does request of owner, ordinary glass and not not violate this section by replacing, at safety glass. 26 Atty. Gen. 137.

*85.06 (note) chapt 643(31)  
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**85.07 Adjusting stations for vehicle lights.** (1) **ESTABLISHMENT.** Stations for the purpose of testing the lighting equipment or for the adjustment or repair thereof on motor vehicles, may be established and operated by any city, village or county or by any person, firm or corporation upon application to and approval by the motor vehicle department. When approved, such stations shall be designated as "Certified Light Adjusting Stations."

(2) **EQUIPMENT.** Such certified light adjusting stations shall be equipped and conducted in accordance with the standards, rules and orders ascertained, determined and fixed by the motor vehicle department. The provisions of sections 101.01 to 101.28 shall apply with like effect to the adoption, and the force and effect of standards, rules and orders issued under this subsection. Review thereof may be had as provided in chapter 227.

(3) **CERTIFICATION.** A light adjusting station, when approved by the motor vehicle department, shall be provided with a certificate issued to the person in control of such station, such certificate to indicate the number of such station, together with the name of the person in control and said certificate shall be posted in a conspicuous place in such station. Whenever such station or the person in charge thereof shall fail to comply with any of the provisions of this section or the standards and orders prescribed by the motor vehicle department, the said department may revoke such certificate and take such station from the posted list maintained by the department. No person shall advertise or hold out to the public or to any person that his station is such certified light adjusting station unless such station has been approved by the motor vehicle department and the certificate therefor has not been revoked.

(4) **STATION OPERATOR.** The testing or adjustment or repair of motor vehicle lighting equipment shall be performed by a person who has demonstrated to the department his ability to properly adjust and repair lighting equipment and who shall be designated as station operator.

(5) **NOTICE FOR TESTING; HOW GIVEN.** Whenever any sheriff, deputy sheriff or county traffic officer of any county in which a certified light adjusting station is maintained, has reasonable ground to believe that the lighting equipment or the adjustment or use thereof on any motor vehicle upon any public highway in such county within a radius of twenty-five miles of any such station, does not conform to the requirements of section 85.06 and to the standards and orders adopted pursuant to said section, or whenever any policeman, constable, marshal or traffic officer of any city or village in which such station is maintained, has reasonable ground to believe that the lighting equipment or the adjusting or use thereof on any motor vehicle upon any public highway in such city or village does not

conform to such requirements, standards and orders, he shall direct the owner of such motor vehicle by written notice to have the same brought to a certified light adjusting station to have such lighting equipment and adjustment or use thereof tested. Such notice given to the operator or attached to such vehicle shall be deemed a direction to the owner thereof. Such sheriff, deputy sheriff, traffic officer, policeman, constable or marshal shall report the name of such owner to whom such directions have been given, together with the license number of his vehicle, to the department to which such officer is attached. Within three days, or within such time as may be specified by the officer, after such directions have been given, the owner of such vehicle shall cause the same to be brought to any certified light adjusting station to be tested. This subsection, however, shall not deny the owner of such vehicle the right to equip and adjust the lighting equipment of such motor vehicle prior to having same tested.

(6) NOTIFICATION AFTER TESTING. Upon being tested, if the lighting equipment or the adjustment or use thereof, does not conform to the requirements of section 85.06 and to the standards and orders adopted under the provisions of said section, the station operator shall notify the owner of such motor vehicle of the manner in which the equipment or adjustment or use thereof does not conform to such requirements, standards or orders. The owner of such vehicle shall forthwith make or cause the necessary changes to be made in such lighting equipment.

(7) EVIDENCE OF COMPLIANCE. Whenever the lighting equipment or adjustment or use thereof on any motor vehicle is found to conform to the requirements of section 85.06 and the standards and orders adopted under said section, the station operator shall apply a windshield sticker indicating that the lighting equipment of such motor vehicle complied with the law at the time of testing. The motor vehicle department shall determine the form, size and legend of said windshield sticker.

(8) RETURN OF WRITTEN NOTICE. The owner or operator of each motor vehicle brought to a certified light adjusting station pursuant to the notice provided for in subsection (5), shall deliver said notice to the station operator who shall promptly return said notice to the enforcement department named thereon with his indorsement stating the results of the test and the action taken to remedy any defects.

(9) TESTING BEFORE DELIVERY. No person, firm or corporation engaged in selling motor vehicles at retail, shall sell or deliver any motor vehicle in any county in which a certified light adjusting station is maintained unless the lighting equipment and adjustment or use thereof has been first tested at a certified adjusting station and a windshield sticker issued as provided in subsection (7) of this section. Such test shall be made within thirty days prior to delivery of such motor vehicle to the purchaser.

(10) STATEMENT IN LICENSE APPLICATION. After January 1, 1930, each application for registration shall state whether or not the lighting equipment has been tested and adjusted in accordance with the provisions of this section.

(11) TESTING FEES. All fees charged by certified light adjusting stations shall be reasonable and just.

(12) PENALTY. Any person violating any of the provisions of sections 85.06 or 85.07 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed \$25 for the first offense and for the second or each subsequent conviction within one year thereafter, by a fine not to exceed \$100 or by imprisonment in the county or municipal jail for not more than 30 days, or by both such fine and imprisonment. [1939 c. 410; 1941 c. 206; 1943 c. 375 s. 19]

**85.08 Motor vehicle operator's license.** (1) DEFINITIONS. (a) Words and phrases not specifically defined in the section shall have the meaning ascribed to them in section 85.10, except in those instances where the contents clearly indicate a different meaning.

(c) "School bus" is any motor vehicle which is owned or operated by a public or governmental agency, or privately owned and operated for compensation, which such vehicle is used to transport children to or from school or to transport school groups engaged in extra curricular activities to or from a school or district.

(d) "Nonresident" is every person who is not a resident of this state.

(e) "License" is an operator's or a chauffeur's license except in those cases where the contents clearly indicate a different type of license.

(f) "Suspension" means that the licensee's privileges to operate a vehicle are temporarily withdrawn.

(g) "Revocation" means that the licensee's privilege to operate a vehicle is terminated for a definite period.

(h) "Canceled" means that a license which was issued through error or fraud or that the release from liability under subsection (10) is declared void and terminated.

(i) "Conviction" means a final conviction; a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

(2) ADMINISTRATION. (a) The department shall administer and enforce the provisions of this section.

(b) The commissioner is authorized to adopt and enforce such rules and regulations as may be necessary for the administration of this section.

(c) Notwithstanding any other provision of this section, when so ordered by the court wherein the conviction occurred or wherein a judgment for damages was had or pursuant to petition of the registrant to the court when there is no conviction or judgment, the commissioner shall not revoke or suspend registration or require the surrender or direct any person to take possession of, the registration plates, registration certificates, registration plate inserts or windshield regulation stickers of the registrant involved. Upon receiving information, other than of a conviction or judgment for damages in a court of this state, that would be cause for suspension or revocation of registration, the commissioner shall notify the registrant of his intention to suspend or revoke such registration. The registrant may thereupon petition any court of record in his county for an order enjoining the commissioner's contemplated action, whereupon the judge of such court shall grant an order restraining the commissioner in the matter until the petition is finally determined by the court. If such petition and order are served upon the commissioner within 10 days after the date of such commissioner's notice, or before the commissioner has taken any action, the commissioner shall await the final determination of the court. The commissioner shall be given notice of the hearing. Upon a showing that it would result in undue hardship upon the petitioner to have any such registration revoked or suspended the court shall issue an order restraining the commissioner from revoking or suspending the registration.

(3) OPERATORS MUST BE LICENSED. No person, except those hereinafter expressly exempted, shall operate any motor vehicle upon a highway in this state unless such person has a valid license issued under the provisions of this section. After revocation or cancellation a new license can be obtained only as permitted in this section after the period of revocation has terminated.

(3a) SCHOOL BUS OPERATOR'S LICENSE. No person shall operate a school bus without having first applied for and received a school bus operator's license. The department shall not issue a school bus operator's license to any person who is less than 21 years of age or who does not hold a valid operator's license issued under the provisions of this section.

(4) PERSONS EXEMPT FROM LICENSE. The following persons are exempt from licenses hereunder:

(a) Any person while operating a motor vehicle in the service of the army, navy or marine corps of the United States;

(b) Any person while operating any farm tractor or implement of husbandry temporarily operated or moved on a highway;

(c) A nonresident who is at least 16 years of age and who has in his immediate possession a valid license issued to him in his home state or country may operate a motor vehicle in this state;

(d) Any nonresident who is at least 16 years of age whose home state or country does not require the licensing of operators may operate a motor vehicle for a period of not more than 90 days in any calendar year, if the motor vehicle so operated is duly registered in the home state or country of such nonresident. However, such nonresident shall have an official certificate showing the lawful registration of such motor vehicle and may be required at any time or place by any person empowered to enforce the provisions of chapter 85 to establish his identity and prove lawful possession or right to operate such motor vehicle.

(5) LICENSES PREVIOUSLY CANCELED, SUSPENDED OR REVOKED. Any person whose operator's license or motor vehicle license has been withheld, suspended, revoked or canceled by this state or any other state, province or country previous to September 1, 1941, shall be eligible to apply for a reinstated Wisconsin operator's license in the same manner as a person whose operator's license or motor vehicle license is withheld, suspended, revoked or canceled under this section.

(6) PERSONS NOT TO BE LICENSED. The department shall not issue any license hereunder:

(a) To any person whose license was withheld, suspended, revoked or canceled under the provisions of the law that was in effect before September 1, 1941, unless such person shall comply with the requirements of this section.

(b) To any person as an operator who is under the age of 16 years, except that the department may issue a restricted license as hereinafter provided to any person who is at least 14 years of age;

(c) To any person whose license has been suspended, during such suspension, nor to any person whose license has been revoked, until the expiration of one year after such license was revoked;

(d) To any person as an operator who is an habitual drunkard or who is addicted to the use of narcotic drugs, unless at the time of the application he has been legally declared to have recovered, or, in case he has been institutionalized, unless he exhibits the certificate of the superintendent that he has recovered or has been absolutely or conditionally released from the institution and, in his opinion, is competent to drive a motor vehicle, and then only in the discretion of the commissioner;

(e) To any person who has been adjudged mentally ill or mentally deficient, unless at the time of the application he has been judicially declared restored to competency, or exhibits the certificate of the superintendent that he has recovered or has been released from a hospital for the mentally ill or mentally deficient, absolutely or conditionally or on temporary discharge, and that, in his opinion, he is competent to drive a motor vehicle and then only in the discretion of the commissioner;

(f) To any person who is afflicted with or suffering from any mental or physical disability or disease such as to prevent him or her from exercising reasonable control over a motor vehicle;

(g) To any person who is required by this section to take an examination, unless such person shall have successfully passed such examination; deaf persons otherwise qualified to receive a license hereunder shall be issued such license at the discretion of the commissioner;

(h) To any person who is required under the provisions of the motor vehicle financial responsibility laws of this state to furnish proof of financial responsibility, and who has not furnished such proof in the manner prescribed by law and in accordance with the rulings of the department;

(i) To any person when the commissioner has good cause to believe that the operation of a motor vehicle on the highways by such person to be inimical to the public safety or welfare;

(j) To any person subject to epileptic seizures.

(7) INSTRUCTION PERMITS. Any person, who, except for his lack of instruction in operating a motor vehicle would otherwise be qualified to obtain a license under this section, may apply for an instruction permit, and the department may issue such permit, entitling the applicant, while having such permit in his immediate possession, to operate a motor vehicle upon the highways for a period not to exceed 60 days, but, except when operating a motor driven cycle, such person must be accompanied by a licensed operator who is actually occupying a seat beside the operator and there shall be no other occupant in the vehicle. Any instruction permit shall be valid only to the party to whom issued for use during daylight hours.

(8) APPLICATION FOR LICENSE OR INSTRUCTION PERMIT. (a) Every application for a license or for an instruction permit shall be made upon a form furnished by the department.

(b) The form of such application shall be determined by the commissioner and shall include the full name, address, date of birth, color of eyes, color of hair, sex, height and weight, race, residence and business address and occupation of applicant, and shall state whether the applicant has heretofore been licensed as an operator or chauffeur, and if so, when and by what state or country, and whether any previous license has ever been suspended or revoked or whether application has ever been refused, and if so, the date and place of such suspension, revocation or refusal.

(c) The application of any person under the age of 18 years for an instruction permit or license shall be signed and verified before a person duly authorized to administer oaths, by the father of the applicant if he has the custody of such person; or if the father has not such custody then the mother, if she has the custody; or in the event that neither parent has the custody, then by the person or guardian having such custody or by the employer.

(9) APPLICATION OF PERSON UNDER THE AGE OF 16 YEARS AND LIABILITY OF SPONSORS.

(a) The department may issue a license to any person otherwise qualified, who is less than 16 years and more than 14 years of age, if satisfied that it is necessary for such person to operate his parent's or guardian's motor vehicle licensed as an automobile or a farm truck. Such license shall be of such form or color so that it may be readily distinguishable from licenses issued to persons who are 16 years of age or over, and shall restrict the holder thereof to the operation of a motor vehicle licensed as an automobile

or farm truck belonging to his parent or guardian during the daylight hours only and shall not authorize such licensee to operate a motor cycle, motor bicycle, commercial motor truck, motor bus or taxicab. A license shall not be issued to a person who is less than 16 years of age until such person accompanied by his parent or guardian appears in person before an examining officer, as provided in this section, with a certificate of birth to show that such person is at least 14 years of age; nor until such person shall have passed an oral examination and a test of his ability to safely operate a motor vehicle as provided herein and the examining officer shall attest the signatures of the applicant and the parent or guardian as required on the application for licenses issued to persons under the age of 16 years. Nothing in this section shall be construed to permit any person who is less than 16 years of age to operate any type of motor vehicle in any county of this state having a population of 500,000 or more.

(b) The department may issue a permit to any person otherwise qualified, who is less than 16 years and more than 14 years of age, if satisfied that it is necessary for such person to operate a power driven cycle as defined in section 85.10 (4) (a), provided the applicant establishes his age and passes an operator's test as specified in paragraph (a). The driving test shall be taken on a power driven cycle and the permit issued shall be so marked as to show that it entitles the holder to operate a power driven cycle only. The permit shall be readily distinguishable from a license for operating motor vehicles and shall restrict the holder thereof to the operation of a power driven cycle belonging to his parent or guardian and during daylight hours only. The applicant shall submit on a form furnished by the department a certificate attested to by the dealer from whom the vehicle was originally purchased or by the manufacturer of the vehicle declaring that the vehicle meets all the specifications set forth in the definition of a power driven cycle as stated in section 85.10.

(c) Any negligence or wilful misconduct of a person under the age of 18 years when operating a motor vehicle upon the highways shall be imputed to the person who signed the application of such person for a permit or license, which person shall be jointly and severally liable for such operator for any damages caused by such negligent or wilful misconduct.

(10) RELEASE FROM LIABILITY. Any person who signed the application of a person under the age of 18 years for a license may thereafter file with the commissioner a verified written request that the license of such person so granted be canceled. Thereupon the commissioner shall within 10 days after the receipt of such notice, cancel the license of such person and the person who signed the application of such person shall be relieved from the liability imposed under this section by reason of having signed such application on account of any subsequent negligent or wilful misconduct of such person while operating a motor vehicle.

(11) REVOCATION OF LICENSE UPON DEATH OF SPONSORS. The commissioner upon receipt of satisfactory evidence of the death of the persons who signed the application of a person under the age of 18 years for a license shall cancel such license and shall not issue a new license until such time as a new application, duly signed and verified, is made as required by this section.

(12) EXAMINATIONS. The department shall examine every applicant for an operator's license except:

(a) That it shall be the policy of the department to issue an operator's license without examination to a person previously licensed in this state.

(b) To facilitate such examinations and tests the department may authorize any state traffic officer, deputy, chief of police, sheriff or county traffic officer to conduct the same in accordance with such rules and regulations as the department may prescribe. The person conducting such examination shall upon completion thereof forward to the department a report of same on a form furnished by the department, with a definite recommendation as to whether a license or instruction permit should be issued, denied or taken up as the case may be. If the person examined is not at the time the holder of a valid license, the examiner's report must be accompanied by a duly executed application and the proper fee.

(c) Such examination shall include a test of the applicant's eyesight; his ability to read and understand highway signs regulating, warning and directing traffic; his knowledge of the traffic laws; and an actual demonstration of his ability to exercise ordinary and reasonable control in the operation of a motor vehicle. The person to be examined shall furnish a motor vehicle in safe operating condition, and shall appear at such time and place in the city or village of or nearest his residence as the department or its agent may designate.

(d) The commissioner may in his discretion require a special examination by such

agencies as the commissioner may direct, of any applicant for learner's permit or operator's license, or of any licensed operator to determine incompetency, physical or mental disability, or disease or any other condition which might prevent such person from exercising reasonable and ordinary control over a motor vehicle. When the department shall require a physical examination of the applicant the applicant shall pay the cost of the same, but no physician shall charge more than \$2 therefor.

(e) Whenever an examination shall be conducted by any police department or sheriff's department pursuant to this subsection, the fee paid pursuant to subsection (18) by the person so examined shall be transmitted to the motor vehicle department but the state shall reimburse the municipality or county whose department conducted such examination, 75 per cent of such fee for the cost of conducting the examination. The motor vehicle department shall certify to the secretary of state amounts due municipalities and counties under this paragraph and the secretary of state shall draw his warrant in favor of the municipality or county for the amount certified and charge same to the proper appropriation under section 20.052 (2a) or 20.06 (12).

(13) LICENSES ISSUED TO OPERATORS. (a) The department shall assign a distinguishing number to each license and keep a proper record of all licenses issued, which record shall be open to public inspection. A license card shall be issued to each licensee in such form as the department may determine, including either a facsimile of the licensee's signature or a space for the licensee to indorse his usual signature thereon in ink. No license shall be valid until it has been so signed by the licensee.

(14) LICENSE TO BE CARRIED; VERIFICATION OF SIGNATURE. (a) Every licensee shall have his license in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand from a justice of the peace, judge, police officer, magistrate, a peace officer, a field deputy, officer of the department or county traffic officer. However, no person charged with violating this section shall be convicted if he produces in court or the office of the arresting officer a license theretofore issued to him and valid at the time of his arrest.

(b) For the purposes of verification, any justice of the peace, judge, police justice, magistrate, a peace officer, field deputy, officer of the department or county traffic officer, may require the licensee to write his signature in the presence of such officer.

(15) RESTRICTED LICENSES. (a) The department upon issuing a license shall have authority whenever good cause appears, to impose restrictions suitable to the licensee's operating ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate, or such other restrictions applicable to the licensee as the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee. Restricted licenses issued by the department shall be of such form or color so that they will be readily distinguishable from the regular licenses.

(b) The department shall, upon receiving satisfactory evidence of any violation of the restriction of such license, suspend or revoke the same but the licensee shall be entitled to a hearing as upon a suspension or revocation under this section.

(16) DUPLICATE LICENSES AND PERMITS. In event that an instruction permit or license issued under the provisions of this section is lost or destroyed, the person to whom the same was issued may obtain a duplicate or substitute thereof upon furnishing proof satisfactory to the department that such permit or license has been lost or destroyed. In the event that the original license is found it shall immediately be transmitted to the department.

(17) EXPIRATION OF LICENSE. (a) All licenses validly outstanding and issued under section 85.08 repealed by this act [1941 c. 206] shall be renewed between September 1 and November 1, 1941.

(b) 1. Beginning September 1, 1945, all validly outstanding licenses shall be renewed in such number and at such times as may be deemed advisable by the motor vehicle department in order to gain a uniform rate of renewal of driver's licenses. Licenses so renewed shall be valid for a period of 4 years from the date of issue of such renewal license. It shall be the duty of the motor vehicle department to mail to the last-known address of a licensee at least 30 days prior to the expiration of his renewal license notice of the date upon which such license must be renewed.

2. The expiration of all validly outstanding licenses on September 1, 1945, is extended until declared to expire and to be renewable by the motor vehicle department.

3. Any person who holds a valid driver's license and who is unable to make a renewal application within the period declared by the motor vehicle department due to his serving with any branch of the armed services shall be permitted to apply for a renewal operator's license at any time within 6 months from date of his discharge from such services. Such person shall be issued a renewal license at the regular fee of 25 cents.

(c) Every such license renewal or duplicate shall be made upon a verified application to the department in such form as the department shall prescribe and upon satisfactory proof the licensee is qualified under this section to receive such license.

(d) Every license and instruction permit issued shall show the date upon which such license or permit expires.

(18) COST OF LICENSES, RENEWALS, DUPLICATES AND PHYSICAL EXAMINATIONS. Each application for a license, reinstatement, renewal, instruction permit or duplicate shall be accompanied by a fee, as follows:

(a) For any person not previously licensed in this state, for each 4 years or part thereof, \$1.

(b) For reinstating a license, \$1.

(c) For a license renewal, 25 cents.

(d) For an instruction permit, 50 cents.

(e) For a duplicate license, 25 cents.

(19) NOTICE OF CHANGE OF ADDRESS OR NAME. Whenever any person, after applying for or receiving a license shall move from the address named in such application or in the license issued to him, he shall immediately indorse his new address on his license and inform the department of such change, or when the name of the licensee is changed by marriage or otherwise, such person shall within ten days thereafter notify the department in writing of such former or new names, and the number of any license then held by him. No fee shall be charged for licenses issued solely for change of name when the original license is returned with such application. Proper fee shall be forwarded with such application when the original license is not returned.

(20) RECORDS TO BE KEPT BY THE DEPARTMENT. The department shall file every application for license received by it and shall maintain suitable indices containing:

(a) All applications denied, and on each thereof note the reason for such denial;

(b) The name of every licensee whose license has been suspended, revoked or canceled by the department and note thereon the reason for such action;

(c) The department shall maintain a file for each licensee so that such file shall contain the application for license, a copy of the license issued, a record of reports or abstract of convictions, and a record of any reportable accident in which the licensee has been involved. This information must be filed by the department so that the complete operator's record is available for the use of the commissioner in determining whether the operating privileges of such person shall be suspended, revoked, canceled or withheld in the interest of public safety. Such reports and records may be accumulative beyond the period for which a license is granted but the commissioner of the motor vehicle department, in exercising the power of suspension granted him under subsection (27m), shall consider only those reports and records entered during the 4-year period immediately preceding the exercise of such power of suspension.

(21) FRAUD VOIDS LICENSE. Any license or instruction permit issued upon any application which is untrue, or which contains any false statements as to any material matter, shall be void from the date of its issuance, and any such license card so issued shall forthwith be surrendered to the department or its agent upon demand.

(22) SUSPENDING PRIVILEGES OF NONRESIDENTS AND REPORTING CONVICTIONS. (a) The privilege of operating a motor vehicle on the highways of this state given to a nonresident hereunder shall be subject to suspension or revocation by the commissioner in like manner and for like cause as a license issued hereunder may be suspended or revoked.

(b) The commissioner is further authorized, upon receiving a record of the conviction in this state of a nonresident operator of a motor vehicle of any offense which is grounds for suspension or revocation under the laws of this state, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

(23) REVOKING OR SUSPENDING RESIDENT'S LICENSE UPON CONVICTION IN ANOTHER STATE AND RELEASE THEREFROM. (a) The commissioner shall suspend or revoke the license of any resident of this state or if such resident has not been issued a license, the commissioner shall suspend or revoke the privilege of such resident to secure a license or the privilege of a nonresident to operate a motor vehicle in this state upon receiving notice of the conviction of such person in another state, for an offense therein, which if committed in this state, would be grounds for suspension or revocation of the license of an operator.

(b) The commissioner shall upon receipt of proper evidence of release of the suspension or revocation of the operating privileges by the proper authority of the state in which the offense was committed, release such person's suspension or revocation in this state.

## (24) WHEN COURT TO FORWARD LICENSE TO DEPARTMENT AND REPORT CONVICTIONS.

(a) Whenever any person is convicted of any offense for which this section makes mandatory the revocation by the department of a license or the privilege to secure a license, the court in which such conviction is had, shall require the surrender to it of all licenses, certificates of registration and license plates then held by the person so convicted, and the court shall thereupon forward the same together with a record of such conviction to the department. The court shall report in addition thereto whether such party was involved in an accident at the time of the offense.

(b) Every court having jurisdiction over offenses committed under this section, or any other law of this state, county, city or village ordinance which is in conformity with state law regulating the operation of motor vehicles on highways, shall forward to the department a record of the conviction of any person in such court for any moving traffic violation of chapter 85 or any local ordinance which is in conformity therewith.

(c) It shall be the duty of the clerk of such court or the justice of the peace, judge or magistrate of such court not having a clerk, to comply with the provisions of paragraphs (a) and (b) and the failure of such person whose duty it is to make such entry or to forward such record of conviction or appeal thereof to the department within 48 hours thereafter, shall be imputed as a misdemeanor and the commissioner shall cause to be brought such action against such court as the statutes provide.

(d) Whenever the driving privilege of any person is suspended, revoked or denied, the department shall thereupon forward the name and address of such person to the sheriff of the county, chiefs of police, and county traffic department in the county in which such person resides; and once each month furnish the sheriff of each county, the chief of police of each city, and all county traffic officers, a list of the names and addresses of all operators whose licenses have been suspended or revoked during the preceding month under this section and the periods thereof.

(25) MANDATORY REVOCATION OF LICENSE. Whenever an operator is convicted under a state law or under a county, city or village ordinance which is in conformity to the state law, the commissioner shall forthwith revoke the operator's license and the motor vehicle registration plates, registration certificate, registration plate inserts and windshield regulation stickers of such operator upon receiving the record of such operator's conviction of any of the following offenses when such conviction has become final:

(a) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(b) Operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic drug except as provided in subsection (25c);

(c) Any felony in the commission of which a motor vehicle is used;

(d) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another or in serious property damage;

(e) Perjury or the making of a false affidavit or statement under oath to the department under this section or any other law relating to the ownership or operation of motor vehicles.

(f) Operating a motor vehicle while driving privileges are suspended or revoked or operating a motor vehicle when proof of financial responsibility is required without furnishing such proof.

(g) Whenever the report of conviction, provided in subsection (24) (a) shall show that the party convicted was involved in a motor vehicle accident at the time of the offense, the commissioner shall, in lieu of immediate revocation as provided herein, temporarily suspend said operator's licenses until the accident case has been duly processed and the party has complied with section 85.09 or until his failure of compliance has resulted in an order of suspension thereunder. Upon issuing such order of suspension the commissioner shall in addition revoke the operator's license as provided in this subsection. When such license has been both suspended and revoked, no operator's license or registration shall again be issued to such person until he has complied with this section and section 85.09.

(25a) INSTRUCTION TO ACCUSED. Before taking the plea of any person charged with any violation of law which requires the revocation upon conviction of the accused's operator's license and motor vehicle registration plates, registration certificate, registration plate inserts, and windshield registration stickers as provided in section 85.08 (25), it shall be the duty of the presiding judge or justice to instruct the accused as to the provisions of said section.

(25c) OCCUPATIONAL LICENSES. The presiding judge or justice at the time of conviction of any person on a charge of violating any state law or county, city or village ordinance prohibiting a person from operating a motor vehicle while under the influence

of intoxicating liquor may order the commissioner of the motor vehicle department to issue an occupational license to such person provided that such person has not been convicted of any such offense within the preceding 12-month period. Such occupational order shall be mailed to the motor vehicle department with the report of conviction and operator's license of the convicted operator. No occupational license shall be ordered or issued until after 90 days following the date of the conviction unless the conviction resulted from a nonoccupational operation. An occupational license means authority to operate a motor vehicle only where such operation is an essential part of the occupation or trade. The order for issuance of an occupational license shall contain definite restrictions as to hours of the day, type of occupation, areas or routes of travel to be permitted under such license. If the order for an occupational license permits the convicted operator to operate vehicles other than those registered in the name of the person or company by which he is employed, the commissioner of the motor vehicle department shall not issue an occupational license to such person until such person has filed acceptable proof of his financial responsibility as specified in section 85.09. The period of restricted operation under an occupational license shall be for one year from the date of conviction. Where a restricted license is issued and is not revoked during the year the department shall return to the operator the license which was surrendered at the time of conviction. Any operator who was denied an occupational license at the time of his conviction, who has since gained employment requiring him to operate a motor vehicle, may petition the convicting judge or justice for an occupational license. The judge or justice, upon the facts presented by such petition, may, if it is deemed necessary, order the commissioner of the motor vehicle department to issue an occupational license for that portion of the year which has not elapsed since the original conviction. In the event that an occupational licensee is convicted for operating in violation of his restrictions, a serious traffic violation, or the judge or justice does not, upon the facts, see fit to permit such person to retain such occupational license, the commissioner of the motor vehicle department shall, upon receipt of notice thereof, revoke all operators' and motor vehicle licenses of such licensee. Such revocation shall be effective as of the date of such violation, conviction or withdrawal order and shall continue with the same force and effect as other revocations made by the commissioner under subsection (25). Any person convicted for violation of any restriction of an occupational license shall in addition to the immediate revocation of such licenses be punished by a fine not to exceed \$100 or by imprisonment in the county or municipal jail for not more than 6 months or by both such fine and imprisonment.

(26) LICENSE AFTER REVOCATION. Any person whose license has been duly revoked is not entitled to apply for a new license until the period of such revocation has been terminated, and then only upon such person's meeting with the following requirements:

(a) The filing of financial responsibility as required by section 85.09 as specified in subsection (31) of this section;

(b) The filing of an application for a new license; and

(c) The passing of an operating or any other test which the commissioner may deem necessary.

(27) COMMISSIONER TO SUSPEND LICENSES. Whenever an operator is convicted under a state law or under a county, city or village ordinance which is in conformity to the state law, the commissioner shall suspend the license of such operator without preliminary hearing, upon receiving the record of such operator's conviction of a traffic violation which is the cause of an accident resulting in death or personal injury of another or of permitting an unlawful or fraudulent use of such license.

(27m) SUSPENSION OF LICENSES IN OTHER CASES. Whenever any operator appears by the records of the department to be an habitually reckless or negligent operator of a motor vehicle or an habitual violator of any of the state traffic laws or of any of the county, city or village ordinances which are in conformity to the state traffic laws, the commissioner may suspend such operator's license, but the commissioner shall suspend any operator's license upon being directed to do so by any court after conviction of such operator therein of any of the state traffic laws or of any of the county, city or village ordinances which are in conformity to the state traffic laws.

(28) HEARING ON SUSPENSION. Upon suspending the license of any person as hereinbefore in this section authorized, the department shall immediately notify the licensee in writing and upon his request shall afford him an opportunity to a hearing as early as practicable within not to exceed 20 days after receipt of such request. The place of such hearing shall be set by the commissioner as close as practicable to the residence of the applicant and in no case shall it be set for a place not in a county of the applicant's residence or a county contiguous to such county, unless another place is mutually agreed upon; in the event that the applicant's residence is without the state then the commissioner

shall fix the place of hearing. The department may refuse to hold a hearing if satisfied that the records and information in its possession do not warrant such hearing. Any person who shall without cause fail to appear at the time and place specified in the notice served on him shall forfeit his right to a hearing. Upon such hearing the commissioner or his duly authorized agent may administer oaths, issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the license. No law enforcement officer or other witness produced by the person who has requested a hearing to testify on his behalf shall be paid a witness fee by the department; nor shall any law enforcement officer called to appear for the department be paid any witness fee by the department. All testimony shall be taken and transcribed. After such hearing the department shall make findings of fact and either rescind its order of suspension or, upon good cause appearing therefor, may extend the suspension of such license or revoke such license. The provisions of this subsection shall not apply to any operator whose license has been suspended pursuant to direction from any court as provided in subsection (27m).

(29) REINSTATEMENT AFTER SUSPENSION. Any person whose license has been duly suspended may regain such license after the period of suspension has terminated upon meeting the following requirements:

(a) The filing of proof of financial responsibility as required by section 85.09 as specified in subsection (31) of this section;

(b) The filing of application for reinstatement of his license; and

(c) The demonstration of ability to satisfactorily operate a motor vehicle or any other tests which the commissioner may deem necessary.

(30) PERIOD OF SUSPENSION OR REVOCATION. No license shall be suspended for a period of more than one year. After revocation the department shall not grant a new license until the expiration of one year after the date of such revocation.

(31) PERIOD FOR WHICH FINANCIAL RESPONSIBILITY IS REQUIRED. The department shall not issue a new license to any person whose license has been revoked at any time during the 2 years immediately following the date of expiration of such revocation, unless such person shall have filed financial responsibility in the amounts, form and manner specified in section 85.09 for that time of such 2-year period during which he is granted a license; nor shall the department reinstate an operator's license which has been suspended at any time during one year immediately following the date of expiration of such suspension, unless such person shall have filed financial responsibility in the amounts, form and manner specified in section 85.09 for that time of such one-year period during which such license is reinstated.

(32) SURRENDER AND RETURN OF LICENSES, CERTIFICATES OF REGISTRATION AND MOTOR VEHICLE LICENSE PLATES. The commissioner or his duly appointed agent is authorized to take possession of any license, certificate of registration or registration plate upon the suspension or revocation thereof under the provisions of this section or to direct any person empowered to enforce the provisions of chapter 85 to take possession thereof and to return the same to the office of the commissioner. Upon receipt of notice of the suspension or revocation of any person's license to operate a motor vehicle, the license, certificate of registration and motor vehicle license plates issued to or in the possession of such person, shall be immediately surrendered to the department.

(33) COMMISSIONER MAY REQUIRE REEXAMINATION. The commissioner having good cause to believe that a licensed operator is incompetent or otherwise not qualified to be licensed, may upon written notice of at least 5 days to the licensee require him to submit to an examination. Upon the conclusion of such examination the commissioner shall take action as may be appropriate and may require the surrender of such license of such person or permit him to retain such license subject to any restriction he may order. Refusal or neglect of the licensee to submit to such examination shall be grounds for requiring the surrender of such license.

(34) NO OPERATION UNDER FOREIGN LICENSE DURING SUSPENSION OR REVOCATION IN THIS STATE. Any resident or nonresident whose license or right or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this section, shall not operate a motor vehicle in this state under a license, permit or certificate of registration issued by any other jurisdiction or otherwise during such suspension or revocation until a new license is obtained when and as permitted under this section.

(34a) RIGHT OF REVIEW. The denial of a license, or the suspension, revocation or cancellation thereof, unless mandatory under this section, shall be subject to review in the manner provided in chapter 227, except that if the appellant resides in Wisconsin the place of review shall be the circuit court of the county in which he resides.

(35) UNLAWFUL USE OF LICENSE. It is a misdemeanor for any person:

(a) To display or cause or permit to be displayed or have in his possession any suspended, revoked, canceled, fictitious or fraudulently altered operator's license;

(b) To lend his operator's license to any other person or knowingly permit the use thereof by another;

(c) To display or represent as one's own any operator's license not issued to him;

(d) To fail or refuse to surrender to the department upon its lawful demand any operator's license which has been suspended, revoked, canceled or obtained by fraudulent representations in his application for the same;

(e) To use a false or fictitious name in any application for an operator's license or to knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application;

(f) To permit any unlawful use of an operator's license issued to him; or

(g) To do any act forbidden or fail to perform any act required by this section.

(h) To reproduce by any means whatever a copy of an operator's license.

(36) MAKING FALSE AFFIDAVIT, PERJURY. Any person who makes any false affidavit, or knowingly swears or affirms falsely to any matter or thing required by the terms of this section to be sworn to or affirmed, is guilty of perjury and upon conviction shall be punishable as other persons committing perjury are punishable.

(38) PERMITTING UNAUTHORIZED MINOR TO OPERATE A MOTOR VEHICLE. No person shall cause or knowingly permit his child or ward under the age of 18 years to operate a motor vehicle upon any highway when such minor is not authorized hereunder or in violation of any of the provisions of this section.

(39) PERMITTING UNAUTHORIZED PERSON TO OPERATE A MOTOR VEHICLE. No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be operated upon any highway by any person who is not authorized hereunder or in violation of any of the provisions of this section.

(40) RENTING VEHICLES TO ANOTHER. (a) No person shall rent a motor vehicle, trailer or semitrailer to another person unless the person who operates such vehicle is then duly licensed hereunder, or in the case of a nonresident, the person who shall operate such vehicle shall then be duly licensed under the laws of the state or country of his residence, except a nonresident whose home state or country does not require that a person be licensed.

(b) No person shall rent a motor vehicle, trailer or semitrailer to another until he has inspected the license of the person who is to operate the vehicle and compare and verify the signature thereon with the signature of such person written in his presence.

(c) Every person renting a motor vehicle, trailer or semitrailer to another shall keep a record of the registration number of the motor vehicle so rented or in the case of a trailer or semitrailer the registration number of the motor vehicle to which such trailer or semitrailer is to be attached, the name and address of the person who is to operate such rented vehicle, the number of the license of such person and the date and place, when and where such license was issued. Such record shall be open to inspection by any police officer or inspector or employe of the department.

(41) PENALTY FOR MISDEMEANOR. (a) It is a misdemeanor for any person to violate any of the provisions of this section unless such violation is by this section or other law of this state declared to be a felony.

(b) Unless another penalty is in this section or by the laws of this state provided, every person convicted of a misdemeanor for the violation of this section shall be punished by a fine of not more than \$100 or imprisonment of not more than 6 months, or by both such fine and imprisonment.

(42) REVOCATION AND SUSPENSION BY COURTS. All operators' licenses ordered suspended or revoked by a justice of the peace or other court of competent jurisdiction shall be suspended or revoked in accordance with the provisions of this section.

(43) INTERPRETATION; SHORT TITLE; CONSTITUTIONALITY. (a) This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(b) This action may be cited as the "Uniform Motor Vehicle Operators' License Act."

(c) If any part or parts of this section shall be held to be unconstitutional such unconstitutionality shall not affect the validity of the remaining parts of this section. The legislature declares that it would have passed the remaining parts of this section if it had known that such part or parts thereof would be declared unconstitutional. [1931 c. 62, 478; 1939 c. 410; 1941 c. 206; 1943 c. 169; 1943 c. 275 s. 36; 1943 c. 375 s. 20; 1943 c. 521, 536; 1943 c. 553 s. 25; 1945 c. 293, 417, 586; 1947 c. 25, 181, 400, 528, 605, 614]

**Note:** A provision of an automobile liability policy expressly excluding liability to the part of the insurer while the car was being driven by any person under sixteen years of age, is construed as applicable to any driver under sixteen years whomsoever.

and as excluding from the coverage the operation of the car by the fifteen-year-old son of the insured at the time of a casualty. (85.08 (1a), Stats. 1929.) *Cullen v. Travelers Ins. Co.*, 214 W 467, 253 NW 382.

An owner's act of loaning his automobile to a fifteen-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. (85.08, Stats. 1935.) *Canzoneri v. Heckert*, 223 W 25, 269 NW 716.

The provision of (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.

In action on automobile indemnity policy for injuries received at night in collision with insured automobile, driving thereof by fifteen-year-old boy held in violation of statute prohibiting licensee of his age from driving at night, and within clause of policy excluding coverage if automobile was driven in violation of law as to age. (85.08, Stats. 1935.) *Witzko v. Koenig*, 224 W 674, 272 NW 864.

Under (10), Stats. 1931, registration is suspended only as to vehicles registered in name of person convicted of offenses therein enumerated. 20 Atty. Gen. 900.

One whose driver's license and auto registration are suspended under 85.08, Stats. 1931, because of unpaid judgment for negligent driving may not have them reinstated within three years without furnishing proof, if he has car registered, of responsibility as to such car and other designated cars that he may drive; if he has no car registered, of responsibility as to any car. 20 Atty. Gen. 915.

Conviction of traffic offense under municipal ordinance will not result in suspension of driver's license or registration certificates. (85.08, Stats. 1931.) 20 Atty. Gen. 931.

Under (20), Stats. 1931, when secretary of state is satisfied of bad faith, suspended certificate of registration of motor vehicle shall not be transferred, except upon proof of financial ability of transferee. 20 Atty. Gen. 1227.

When judgment is rendered under 85.08, Stats. 1933, jointly against driver of motor vehicle and corporation owning vehicle, secretary of state may suspend driver's license and corporation's right to operate vehicles. If judgment is against corporation only, right of corporation to operate motor vehicle on Wisconsin highways may be suspended. If corporation is public utility, secretary of state may require it to file financial proof in same manner as filing is required of persons. 23 Atty. Gen. 136.

Secretary of state must suspend license for automobile when owner has been convicted under (10) (a) to (j), Stats. 1935, when he receives notice of such conviction, although court has not ordered revocation. 24 Atty. Gen. 706.

Recommended procedure to effect suspension of revocation of driver's license after conviction of traffic offense under municipal ordinance is through issuance of state warrant for same offense. (85.08, Stats. 1937.) 26 Atty. Gen. 250.

Residents of South Beloit, Illinois, whose cars are registered in that state and who are not required by laws of that state to have operator's license must obtain Wisconsin operator's license to operate their cars upon highways of this state in excess of thirty days in any one year. (Stats. 1937.) 27 Atty. Gen. 514.

Legal consequences of conviction of crime are absolved by full pardon and person convicted for driving while intoxicated should

have his driver's license restored when pardoned, upon application, without furnishing proof of financial responsibility required under (10) (j), Stats. 1937. 27 Atty. Gen. 331; 27 Atty. Gen. 623.

85.08 (11) (a), Stats. 1939, and 85.135 are in pari materia and under said sections driver's license and certificate are suspended until such time as judgment for damages has been paid and even though judgment is paid within three-year period after entry, suspension is not lifted during such three-year period until defendant has furnished proof of ability to respond in damages. 28 Atty. Gen. 146.

Costs may not be taxed against officer making complaint under (13), Stats. 1939, in absence of showing of malice or bad faith in making complaint in event that hearing upon complaint results in nonrevocation of license. 28 Atty. Gen. 677.

85.08, created by ch. 206, Laws 1941, applies to all convictions occurring after it goes into effect (Sept. 1, 1941) regardless of whether offense took place before or after that date. 30 Atty. Gen. 269.

Functions, powers, duties, etc., of commissioner of motor vehicle department and of judges and magistrates analyzed with respect to (25c), created by ch. 206, Laws 1941. 30 Atty. Gen. 418.

(27) (a), Stats. 1931, authorizing commissioner of motor vehicle department to suspend licenses of automobile operators under certain circumstances, has no application to conviction for driving while under influence of intoxicating liquor resulting in restricted occupational operator's license under (25c). Under (25) (b) it is duty of commissioner to forthwith revoke license of operator upon receipt of record of his conviction for driving while under influence of intoxicating liquor, unless such operator has obtained stay order under (25c). Appeal to circuit court does not in and of itself operate as stay. 31 Atty. Gen. 69.

Under (31), Stats. 1931, at expiration of two years immediately following date of expiration of revocation period or at expiration of one year immediately following date of expiration of suspension period, person whose license has been revoked or suspended is entitled to license regardless of whether such person ever filed proof of responsibility during such period or whether, having filed during such period, such proof was maintained throughout unexpired portion of such period. 31 Atty. Gen. 257.

Where suspension of license under (27) is mandatory, right to hearing before motor vehicle department under (28), Stats. 1931, may be denied where department is satisfied from records and information that no hearing is warranted. 32 Atty. Gen. 2.

In order to stay suspension of driving privileges, under 85.08 (27k), Stats. 1931, and 85.135 (5) (d), of person against whom judgment is had in civil court for Milwaukee county for damages arising out of negligent operation of motor vehicle, pending appeal to circuit court from such judgment, there must be filed with motor vehicle department certified copy of notice of appeal and certified copy of undertaking to stay execution. 32 Atty. Gen. 31.

Motor vehicle operator who refuses or neglects to qualify for restricted (occupational) operator's license which has been ordered issued by the court under (25c), Stats. 1943, stands in same position at end of year following revocation as operator for whom no restricted license has been ordered, and accordingly must furnish proof of financial responsibility under (26). 33 Atty. Gen. 42.

Conviction of holder of restricted (occupational) motor vehicle operator's license for violation of restrictions requires mandatory revocation of all licenses, license plates and registration certificates under (24) (a), Stats. 1943. Court or judge has no power to permit such person to retain occupational license under (25c). 34 Atty. Gen. 1.

Where revocation of operator's license has been stayed pending appeal to supreme

court from judgment of conviction for operating under influence of intoxicating liquor upon trial de novo in circuit court (following appeal from inferior court pursuant to justice court practice) and such circuit court judgment is affirmed by supreme court, it is mandatory for motor vehicle department to revoke such operator's unrestricted license for one year following receipt of notification of affirmation of judgment by supreme court. Assuming operator's ability to satisfy requirements of (25c), 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.

Motor vehicle operator's license of person convicted of operating a road grader under influence of intoxicating liquor in violation of city ordinance enacted in conformity to state statute is subject to mandatory revocation under (25) (b). 35 Atty. Gen. 173.

Neither 360.26 and 360.27 nor 26 Atty. Gen. 600 construing said sections relieve justices of the peace from the duty to comply with 85.08 (24) (a) and (b). Compliance is mandatory, punishable as misdemeanor for violation and enforceable by mandamus proceedings. Bail or appearance money forfeiture is equivalent to "conviction" under said statute. 35 Atty. Gen. 180.

**85.09 Motor vehicle responsibility.** (1) **DEFINITIONS.** The following words and phrases, when used in this section, shall, for the purposes of this section, have the meanings respectively ascribed to them in this subsection and as used in sections 85.08 and 85.10, except in those instances where the context clearly indicates a different meaning:

(a) *Commissioner.* The commissioner of motor vehicles of this state.

(b) *Judgment.* Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(c) *License.* Any operator's license, temporary instruction permit or temporary license issued under the laws of this state pertaining to the licensing of operators.

(d) *Motor vehicle.* Every self-propelled vehicle which is designed for use upon a highway including trailers designed for use with such vehicles (except traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers).

(e) *Nonresident.* Every person who is not a resident of this state.

(f) *Nonresident's operating privilege.* The privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him of a motor vehicle, or the use of a motor vehicle owned by him, in this state.

(g) *Operator.* Every person who is in actual or constructive physical control of a motor vehicle including a person who has parked the same and including a driver or person pushing or towing such vehicle in case there is no person actually driving and controlling the vehicle being pushed or towed.

(h) *Owner.* A person who holds the legal title of a motor vehicle, or in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of this section.

(i) *Person.* Every natural person, firm, copartnership, association or corporation.

(j) *Proof of financial responsibility.* Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of \$5,000 because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of \$10,000 because of bodily injury to or death of 2 or more persons in any one accident, and in the amount of \$1,000 because of injury to or destruction of property of others in any one accident.

(jm) *Safety responsibility.* Depositing security under subsection (5) (a) for prior accidents.

(k) *Registration.* Registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.

(l) *State.* Any state, territory or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

(2) **COMMISSIONER TO ADMINISTER; COURT REVIEW.** (a) The commissioner shall administer and enforce the provisions of this section and may make rules and regulations necessary for its administration. The commissioner may, in his discretion, appoint any employe in the department as his representative to affix his signature to the administrative letters, notices and orders to enforce the provisions of the law and authorize such employe to affix the facsimile signature of the commissioner adopted by him as a facsimile signature.

(b) Any person aggrieved by an order or act of the commissioner, under the provisions of chapter 227, may, within 10 days after notice thereof, file a petition in the circuit court of Dane county for a review thereof; but the filing of such a petition shall not suspend the order or act unless a stay thereof shall be allowed by a judge of said court pending final determination of the review. The court shall summarily hear the petition and may make any appropriate order or decree.

(c) Notwithstanding any other provision of this section, when so ordered by the court wherein the conviction occurred or wherein a judgment for damages was had or pursuant to petition of the registrant to the court when there is no conviction or judgment, the commissioner shall not revoke or suspend registration or require the surrender or direct any person to take possession of, the registration plates, registration certificates, registration plate inserts or windshield regulation stickers of the registrant involved. Upon receiving information, other than of a conviction or judgment for damages in a court of this state, that would be cause for suspension or revocation of registration, the commissioner shall notify the registrant of his intention to suspend or revoke such registration. The registrant may thereupon petition any court of record in his county for an order enjoining the commissioner's contemplated action, whereupon the judge of such court shall grant an order restraining the commissioner in the matter until the petition is finally determined by the court. If such petition and order are served upon the commissioner within 10 days after the date of such commissioner's notice, or before the commissioner has taken any action, the commissioner shall await the final determination of the court. The commissioner shall be given notice of the hearing. Upon a showing that it would result in undue hardship upon the petitioner to have any such registration revoked or suspended the court shall issue an order restraining the commissioner from revoking or suspending the registration.

(3) COMMISSIONER TO FURNISH OPERATING RECORD. The commissioner shall upon request furnish any person a certified abstract of the operating record of any person subject to the provisions of this section, which abstract shall also fully designate the motor vehicles, if any, registered in the name of such person, and, if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the commissioner shall so certify. Such abstracts shall not be admissible as evidence in any action for damages or criminal proceedings arising out of a motor vehicle accident.

(4) REPORT OF ACCIDENT REQUIRED. Failure to report an accident as provided by section 85.141, unless in the judgment of the commissioner there was excusable cause for such failure to report, or failure to give correctly the information required of him by the commissioner in connection with such report shall be a misdemeanor and, in the event of injury or damage to the person or property of another in such accident, shall also constitute a ground for suspension or revocation of:

- (a) The license or registration for any motor vehicle, or of all such licenses and registrations of the person failing to make such report as herein required, and
- (b) The nonresident's operating privilege of such person.

#### SAFETY RESPONSIBILITY LAW

(5) SECURITY REQUIRED FOLLOWING ACCIDENT UNLESS EVIDENCE OF INSURANCE; SUSPENSION FOR FAILURE TO DEPOSIT SECURITY. (a) Within 60 days after the receipt of each individual report of a motor vehicle accident within this state which has resulted in bodily injury or death, or damage to the property of any other person in excess of \$50, the commissioner shall suspend the license of each operator and all registrations of each owner of a motor vehicle in any manner involved in such accident, and if such operator is a nonresident the privilege of operating a motor vehicle within this state, and if such owner is a nonresident the privilege of the use within this state of any motor vehicle owned by him, unless such operator or owner or both deposit security in a sum which shall be sufficient in the judgment of the commissioner to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against such operator or owner; provided notice of such suspension shall be sent by the commissioner to such operator and owner not less than 10 days prior to the effective date of such suspension and shall state the amount required as security. Upon request of such owner or operator, the commissioner may extend such effective date of suspension not to exceed 20 additional days.

(am) The commissioner may request such further information, sworn statement or other evidence relating to property damage, personal injury or death in motor vehicle accidents as he deems necessary to aid in determining the amount to be deposited as security under this section from any of the persons, including passengers and pedestrians, involved in such accident. Failure to comply with such request shall constitute

ground for suspension of such person's operating privileges. No suspension shall be made on such grounds until one follow-up request has been made and not less than 20 days from mailing of the first request.

(b) This section shall not apply:

1. To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

2. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him;

3. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the commissioner, covered by any other form of liability insurance policy or bond; or

4. To the operator or owner of any vehicle the owner of which has qualified as a self-insurer under subsection (6m).

(c) No such policy or bond shall be effective under this subsection unless issued by an insurance company or surety company authorized to do business in this state, except that if such motor vehicle was not registered in this state, or was a motor vehicle which was registered elsewhere than in this state at the effective date of the policy or bond, or the most recent renewal thereof, such policy or bond shall not be effective under this subsection unless the insurance company or surety company if not authorized to do business in this state shall execute a power of attorney authorizing the commissioner to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than \$5,000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than \$10,000 because of bodily injury to or death of 2 or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than \$1,000 because of injury to or destruction of property of others in any one accident.

(d) Upon receipt of notice of such accident, the insurance company or surety company which issued such policy or bond shall furnish for filing with the commissioner a written notice that such policy or bond was in effect at the time of such accident.

(6) EXCEPTIONS TO REQUIREMENT OF SECURITY. The requirements as to security and suspension in subsection (5) shall not apply:

(a) To the operator or the owner of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of any one other than such operator or owner.

(b) To the operator or the owner of a motor vehicle legally parked at the time of the accident. Such operator and owner shall not be exempt hereunder unless the operator of the other vehicle or vehicles involved admits that such vehicle was legally parked, or other proof of such fact to the satisfaction of the commissioner is filed.

(c) To the owner of a motor vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such motor vehicle without such permission. The commissioner shall require such proof as he deems necessary to establish such facts.

(d) If, prior to the date that the commissioner would otherwise suspend license and registration or nonresident's operating privilege under subsection (5), there shall be filed with the commissioner evidence satisfactory to him that the person who would otherwise have to file security has been released from liability or been finally adjudicated not to be liable or has executed a warrant for confession of judgment, payable when and in such instalments as the parties have agreed to, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in instalments, with respect to all claims for injuries or damages resulting from the accident.

(6m) SELF-INSURERS. (a) Any person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the commissioner as provided in paragraph (b).

(b) The commissioner may, in his discretion, upon the application of such a person, issue a certificate of self-insurance when he is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

(c) Upon not less than 5 days' notice and a hearing pursuant to such notice, the commissioner may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within 30 days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

(7) DURATION OF SUSPENSION. The license and registration and nonresident's operating privilege suspended as provided in subsection (5) shall remain so suspended and shall not be renewed nor shall any such license or registration be issued to such person until

(a) Such person shall deposit or there shall be deposited on his behalf the security required under subsection (5); or

(b) One year shall have elapsed following the date of such accident and evidence satisfactory to the commissioner has been filed with him that during such period no action for damages arising out of such accident has been instituted; or

(c) Evidence satisfactory to the commissioner has been filed with him of a release from liability, or a final adjudication of nonliability, or a warrant for confession of judgment, or a duly acknowledged written agreement, in accordance with subsection (6) (d), provided, however, in the event there shall be any default in the payment of any instalment under any confession of judgment, then, upon notice of such default, the commissioner shall forthwith suspend the license and registration or nonresident's operating privilege of such person defaulting which shall not be restored unless and until the entire amount provided for in said confession of judgment has been paid; and provided, further that in the event there shall be any default in the payment of any instalment under any duly acknowledged written agreement, then, upon notice of such default, the commissioner shall forthwith suspend the license and registration or nonresident's operating privilege of such person defaulting which shall not be restored unless and until (1) such person deposits and thereafter maintains security as required under subsection (5) in such amount as the commissioner may then determine, or (2) one year shall have elapsed following the date when such security was required and during such period no action upon such agreement has been instituted in a court in this state.

(8) APPLICATION TO NONRESIDENTS, UNLICENSED DRIVERS AND UNREGISTERED MOTOR VEHICLES. In case the operator or the owner of a motor vehicle involved in an accident within this state has no license or registration, he shall not be allowed a license or registration until he has complied with the requirements of this section to the same extent that would be necessary if, at the time of the accident, he had held a license and registration.

(9) FORM AND AMOUNT OF SECURITY. (a) The security required under this section shall be in such form and in such amount as the commissioner may require but in no case in excess of the limits specified in subsection (5). The person depositing security shall specify in writing the person or persons on whose behalf the deposit is made and, at any time while such deposit is in the custody of the commissioner or state treasurer, the person depositing it may, in writing, amend the specification of the person or persons on whose behalf the deposit is made to include an additional person or persons; provided, however, that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident.

(b) The commissioner may reduce the amount of security ordered in any case within 6 months after the date of the accident if, in his judgment, the amount ordered is excessive. In case the security originally ordered has been deposited the excess deposited over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith, notwithstanding the provisions of subsection (10).

(c) In all cases where the commissioner accepts security in the form of lien on real estate, the party owning such real estate shall prepare the proper instrument to effect such lien, payable to the state and all persons entitled to the same under section 85.09, and shall record the same in the office of the register of deeds in the county where the real estate is situated. The commissioner may require that the party shall furnish the commissioner an abstract of merchantable title showing the same to be a first lien on the premises. The recorded instrument and abstract, when required, shall be deposited by the commissioner with the state treasurer. Time for compliance may be extended under subsection (5) (a). In all cases where a judgment has been entered against a person involved in a motor vehicle accident and it remains unsatisfied 60 days after it has become final, the judgment creditor may for his own use and benefit and at his sole expense, bring an action to foreclose such lien in the name of the state for his use and benefit under this section. The costs of such foreclosure may be estimated by the commissioner and added to the amount required to be posted. In the foreclosure of such lien, the provisions of chapter 278 for the foreclosure of real estate mortgages shall apply as far as applicable.

(d) In all cases where the commissioner accepts security in the form of a lien on personal property, the party owning such personal property shall prepare the proper instrument to effect such lien payable to the state and all persons entitled to the same under section 85.09 and shall file the same in the office of the register of deeds in the county where such property is kept. He shall furnish the commissioner with a certified

copy and if required by the commissioner, a chattel abstract from the register of deeds showing the same to be a first lien on such property. The certified copy and abstract shall be deposited by the commissioner with the state treasurer. Time for compliance may be extended under subsection (5) (a). In all cases where a judgment has been entered against a person involved in a motor vehicle accident and it remains unsatisfied 60 days after it has become final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action to foreclose such lien in the name of the state for his use and benefit under this section. The costs of such foreclosure shall be estimated by the commissioner and added to the amount required to be posted. In foreclosure of such lien the provisions of section 241.13 for the foreclosure of chattel mortgages shall apply as far as applicable.

(e) In all cases where the commissioner has accepted security in the form of a lien on real estate or personal property the state treasurer shall satisfy such lien of record, on order of the commissioner to return said security upon the party's compliance with this chapter, by executing a satisfaction in the legal form in the name of the state by state treasurer, custodian security "Motor Vehicle Safety Responsibility Act". The treasurer shall note on the satisfaction that the commissioner has issued such order, which shall be prima facie evidence of such issuance. The treasurer shall record or file such satisfaction with the proper register of deeds.

(10) CUSTODY, DISPOSITION AND RETURN OF SECURITY. (a) Security deposited in compliance with the requirements of this section shall be placed by the commissioner in the custody of the state treasurer and shall be applicable only to the payment of a judgment or judgments rendered against the person or persons on whose behalf the deposit was made, for damages arising out of the accident in question in an action at law, begun not later than one year after the date of such accident, or within one year after the date of deposit of any security under subsection (7) (c); or to the payment of a duly acknowledged assignment by the person or persons on whose behalf the deposit was made (to a property owner where the case involves only damage to the property of one person or to a sole pedestrian or his legal representative where the case involves only the pedestrian) for damages arising out of such accident or to the payment of a duly acknowledged assignment or assignments by the person or persons on whose behalf the deposit was made (to all parties in interest in such cases where the amount of the deposit is equal to or greater than the total amount of such assignment or assignments) for damages arising out of such accident. In all cases involving assignments a release or releases of liability from all parties in interest shall accompany such assignment or assignments.

(b) To the extent of such security in his custody, the state treasurer shall pay such judgment upon a duly issued execution, properly served upon him.

(c) Such deposit or any balance thereof shall be returned to the depositor or his personal representative when evidence satisfactory to the commissioner has been filed with him that there has been a release from liability, or a final adjudication of nonliability, or a warrant for confession of judgment or a duly acknowledged agreement, in accordance with subsection (6) (d) or whenever, after the expiration of one year from the date of the accident, or within one year after the date of deposit of any security under subsection (7) (c), the commissioner shall be given reasonable evidence that there is no such action pending and no judgment rendered in such action left unpaid.

(11) MATTERS NOT TO BE EVIDENCED IN CIVIL SUITS. Neither the report required by subsection (4), the action taken by the commissioner pursuant to this section, the findings, if any, of the commissioner upon which such action is based, nor the security filed as provided in this section shall be referred to in any way, nor be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages. This subsection shall not be construed as excluding a notice of insurance filed under subsection (5) (d) from being admissible in evidence where it would otherwise be material and admissible under the rules of evidence.

(12) COURTS TO REPORT NONPAYMENT OF JUDGMENT (AND CONVICTIONS). (a) Whenever any person fails within 60 days to satisfy any judgment in excess of \$50 for damages arising out of a motor vehicle accident, it shall be the duty of the clerk of the court (or of the judge of a court which has no clerk) in which such judgment is rendered, to forward to the commissioner immediately after the expiration of said 60 days, a certified copy of such judgment.

(b) If the defendant named in any certified copy of a judgment reported to the commissioner is a nonresident, the commissioner shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident.

(13) SUSPENSION FOR NONPAYMENT OF JUDGMENTS. (a) Upon the receipt of a certified copy of a judgment for damages in excess of \$50 arising out of a motor vehicle acci-

dent, the commissioner shall forthwith suspend, except as provided in subsection (16), the license and registration and the nonresident's operating privilege of any person against whom such judgment was rendered.

(b) If the judgment creditor consents in writing, in such form as the commissioner may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the commissioner, in his discretion, for 6 months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any instalments thereof prescribed in subsection (16), provided the judgment debtor furnishes proof of financial responsibility.

(14) **SUSPENSION TO CONTINUE UNTIL JUDGMENTS PAID AND PROOF GIVEN.** Such license, registration and nonresident's operating privilege shall, except as provided in subsection (16), remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied or discharged, except that a discharge in bankruptcy shall not be deemed a satisfaction of such judgment, and until the said person gives proof of financial responsibility.

(15) **PAYMENTS SUFFICIENT TO SATISFY REQUIREMENTS.** Judgments in excess of the amounts specified in subsection (1) (j) shall, for the purpose of this section only, be deemed satisfied when payments in the amounts so specified have been credited thereon; provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the respective amounts so specified.

(16) **INSTALMENT PAYMENT OF JUDGMENTS; DEFAULT.** (a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in instalments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the instalments.

(b) The commissioner shall not suspend a license, registration or a nonresident's operating privilege, and shall restore any license, registration or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in instalments, and while the payment of any said instalment is not in default.

(c) In the event the judgment debtor fails to pay any instalment as specified by such order, then upon notice of such default, the commissioner shall forthwith suspend the license, registration or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this section.

(16m) **TRANSFER OF REGISTRATION TO DEFEAT PURPOSE; PROHIBITED.** In all motor vehicle accident cases within this state reportable under section 85.141 (6) no registration of the owner of a motor vehicle involved shall be transferred to another vehicle nor shall the title to such vehicle involved be transferred until the provisions of this act are complied with or until the commissioner is satisfied that such transfer is proposed in good faith and not for the purpose or with the effect of defeating the purposes of this section. Nothing in this subsection shall be held to apply to or affect the registration of any motor vehicle sold by a person who, pursuant to the terms or conditions of any written instrument giving a right of repossession, has exercised such right and has repossessed such motor vehicle from a person whose registration has been suspended under the provisions of this section.

#### FINANCIAL RESPONSIBILITY LAW

(17) **PROOF REQUIRED UPON CERTAIN CONVICTIONS.** (a) Whenever the commissioner, under any law of this state, suspends or revokes the license of any person upon receiving record of a conviction or a forfeiture of bail, the commissioner shall also suspend the registration for all motor vehicles registered in the name of such person, except that he shall not suspend such registration, unless otherwise required by law, if such person has previously given or shall immediately give and thereafter maintain proof of financial responsibility with respect to all motor vehicles registered by such person.

(b) Such license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person, nor shall any motor vehicle be thereafter registered in the name of such person until permitted under chapter 85 and not then unless and until he shall give and thereafter maintain proof of financial responsibility.

(d) Whenever the commissioner suspends or revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so

suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility.

(18) ALTERNATE METHODS OF GIVING PROOF. Proof of financial responsibility shall be furnished for each motor vehicle registered by any person required to give such proof and may be given by filing:

- (a) A certificate of insurance as provided in subsection (19) or subsection (20) or
- (b) A bond as provided in subsection (24) or
- (c) A certificate of deposit of money or securities as provided in subsection (25) or
- (d) A certificate of self-insurance as provided in subsection (6m).

(19) CERTIFICATE OF INSURANCE AS PROOF. (a) Proof of financial responsibility may be furnished by filing with the commissioner the written certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle.

(b) No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such motor vehicle is so designated in such a certificate.

(20) CERTIFICATE FURNISHED BY NONRESIDENT AS PROOF. (a) The nonresident owner of a motor vehicle not registered in this state may give proof of financial responsibility by filing with the commissioner a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the motor vehicle or motor vehicles described in such certificate is registered, or if such nonresident does not own a motor vehicle, then in the state in which the insured resides, provided such certificate otherwise conforms to the provisions of this section, and the commissioner shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

1. Said insurance carrier shall execute a power of attorney authorizing the commissioner to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this state;

2. Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued herein.

(b) If any insurance carrier not authorized to transact business in this state, which has qualified to furnish proof of financial responsibility, defaults in any said undertakings or agreements, the commissioner shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues.

(21) "MOTOR VEHICLE LIABILITY POLICY" DEFINED. (a) A "motor vehicle liability policy" as said term is used in this section shall mean an owner's or an operator's policy of liability insurance, certified as provided in subsection (19) or (20) as proof of financial responsibility, and issued, except as otherwise provided in subsection (20), by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance

1. Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and

2. Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: \$5,000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, \$10,000 because of bodily injury to or death of 2 or more persons in any one accident, and \$1,000 because of injury to or destruction of property of others in any one accident.

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same

territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be indorsed that insurance is provided thereunder in accordance with the coverage defined in this section as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this section.

(e) Such motor vehicle liability policy shall not insure any liability under any workmen's compensation law as provided in chapter 102 nor any liability on account of bodily injury to or death of an employe of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

1. The policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of any injury or damage covered by said motor vehicle liability policy.

2. The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

3. The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in paragraph (b) 2 hereof.

4. The policy, the written application therefor, if any, and any rider or indorsement which does not conflict with the provisions of the section shall constitute the entire contract between the parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this section. With respect to a policy which grants such excess of additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this subsection.

(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this section.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

(22) NOTICE OF CANCELLATION OR TERMINATION OF CERTIFIED POLICY. When an insurance carrier has certified a motor vehicle liability policy under subsection (19) or a policy under subsection (20), the insurance so certified shall not be canceled or terminated until at least 10 days after a notice of cancellation or termination of the insurance so certified shall be filed in the office of the commissioner, except that such a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

(23) NOT TO AFFECT OTHER POLICIES. (a) This section shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this state, and such policies, if they contain an agreement or are indorsed to conform to the requirements of this section, may be certified as proof of financial responsibility under this section.

(b) This section shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of motor vehicles not owned by the insured.

(24) BOND AS PROOF. (a) Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within this state, or a bond with at least 2 individual sureties each owning real estate within this state, which real estate shall be scheduled in the bond approved by a judge of a court of record, which said

bond shall be conditioned for payment of the amounts specified in subsection (1) (j). Such bond shall be filed with the commissioner and shall not be cancelable except after 10 days' written notice to the commissioner. Such bond shall constitute a lien in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such bond, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle after such bond was filed, upon the filing of notice to that effect by the commissioner in the office of the proper clerk or court of the county or city where such real estate shall be located as provided in chapter 235.

(b) If such a judgment, rendered against the principal on such bond, shall not be satisfied within 60 days after it has become final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action or actions in the name of the state against the company or persons executing such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond. In the foreclosure of the lien mentioned herein, the provisions of chapter 278 for the foreclosure of real estate mortgages shall apply as far as possible.

(25) MONEY OR SECURITIES AS PROOF. (a) Proof of financial responsibility may be evidenced by the certificate of the state treasurer that the person named therein has deposited with him \$11,000 in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of \$11,000. The state treasurer shall not accept any such deposit and issue a certificate therefor and the commissioner shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(b) Such deposit shall be held by the state treasurer to satisfy, in accordance with the provisions of this section, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid.

(26) OWNER MAY GIVE PROOF FOR OTHERS. Whenever any person required to give proof of financial responsibility hereunder is or later becomes an operator in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the commissioner shall accept proof given by such owner in lieu of proof by such other person to permit such other person to operate a motor vehicle for which the owner has given proof as herein provided. The commissioner shall designate the restrictions imposed by this subsection on the face of such person's license.

(27) SUBSTITUTION OF PROOF. The commissioner shall consent to the cancellation of any bond or certificate of insurance or the commissioner shall direct and the state treasurer shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this section.

(28) OTHER PROOF MAY BE REQUIRED. Whenever any proof of financial responsibility filed under the provisions of this section no longer fulfills the purposes for which required, the commissioner shall for the purpose of this section, require other proof as required by this section and shall suspend the license and registration or the nonresident's operating privilege pending the filing of such other proof.

(29) DURATION OF PROOF; WHEN PROOF MAY BE CANCELED OR RETURNED. (a) The commissioner shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the commissioner shall direct and the state treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this section as proof of financial responsibility, or the commissioner shall waive the requirement of filing proof, in any of the following events:

1. At any time after 3 years from the date such proof was required when, during the 3-year period preceding the request, the commissioner has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license, registration or nonresident's operating privilege of the person by or for whom such proof was furnished; or

2. In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

3. In the event the person who has given proof surrenders his license and registration to the commissioner.

(b) Provided, however, that the commissioner shall not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money or securities has, within one year immediately preceding such request been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the non-existence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the commissioner.

(c) Whenever any person whose proof has been canceled or returned under subdivision 3 applies for a license or registration within a period of 3 years from the date proof was originally required, any such application shall be refused unless the applicant shall re-establish such proof for the remainder of such 3-year period.

GENERAL PROVISIONS, SAFETY AND FINANCIAL RESPONSIBILITY

(31) SURRENDER OF LICENSE AND REGISTRATION. Any person whose license or registration shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this section, shall have been canceled or terminated, or who shall neglect to furnish other proof upon request of the commissioner shall immediately return his license and registration to the commissioner. If any person shall fail to return to the commissioner the license or registration as provided herein, the commissioner shall forthwith direct any peace officer to secure possession thereof and to return the same to the commissioner.

(32) OTHER VIOLATIONS; PENALTIES. (a) Any person whose license or registration or nonresident's operating privileges has been suspended or revoked under this chapter and who, during such suspension or revocation or thereafter but before filing proof of financial responsibility drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this section, shall be deemed guilty of a misdemeanor and be fined not less than \$10 nor more than \$500 or imprisoned not exceeding 6 months, or both.

(b) Any person willfully failing to return license or registration as required in subsection (31) shall be deemed guilty of a misdemeanor and be fined not more than \$500 or imprisoned not to exceed 30 days, or both.

(c) Any person who shall forge or, without authority, sign any notice provided for under subsection (5) that a policy or bond is in effect, or any evidence of proof of financial responsibility, or who files or offers for filing any such notice or evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be deemed guilty of a misdemeanor and be fined not more than \$1,000 or imprisoned not more than one year, or both.

(d) Any person who shall violate any provision of this section for which no penalty is otherwise provided shall be fined not more than \$500 or imprisoned not more than 90 days, or both.

(33) EXCEPTIONS. This section shall not apply with respect to any motor vehicle owned by the United States, this state or any political subdivision of this state or any municipality therein; nor, except for subsections (4) and (26), with respect to any motor vehicle which is subject to the requirements of sections 40.345, 194.41 and 194.42 nor to taxicabs in the city of Milwaukee as long as the owners thereof comply with the financial responsibility requirements of the ordinances of that city.

(35) REPEAL. The existing section 85.09 is hereby repealed except with respect to any accident, or judgment arising therefrom, or violation of the motor vehicle laws of this state, occurring prior to January 1, 1946.

(36) PAST APPLICATION. This section shall not apply with respect to any accident, or judgment arising therefrom, or violation of the motor vehicle laws of this state, occurring prior to January 1, 1946.

(37) ACT NOT TO PREVENT OTHER PROCESS. Nothing in this section shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law.

(38) UNIFORMITY OF INTERPRETATION. This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

(39) CONSTITUTIONALITY. If any part or parts of this section shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this section. The legislature hereby declares that it would have passed the remaining parts

of this section if it had known that such part or parts thereof would be declared unconstitutional.

(40) TITLE. This section may be cited as the "Motor Vehicle Safety Responsibility Act." [1941 c. 206; 1945 c. 375, 417, 536; 1947 c. 400, 528, 614]

**Note:** Provisions of 85.09 (15), as created by ch. 206, Laws 1941, and relating to releases of proof of financial responsibility by commissioner of motor vehicle department in cases involving suspension or revocation of drivers' licenses, apply only to offenses resulting in suspension or revocation where such offenses were committed subsequent to September 1, 1941, effective date of ch. 206, Laws 1941. By virtue of 85.137, provisions of 85.09 (19), Stats. 1939, still apply where offense was committed prior to September 1, 1941. 31 Atty. Gen. 111.

Foreign insurance carriers must be licensed by insurance commissioner in order to qualify under 85.09 (6), Stats. 1941, as "an insurance carrier authorized to transact business in this state." Lloyd's must be licensed by commissioner in order to qualify under same section. Domestic companies are not required to be licensed and hence qualify under said section until such time as commissioner takes some affirmative action directed at compelling company to cease doing business. 203.55 relates only to fire insurance and has no bearing upon whether company is qualified under 85.09 (6). 31 Atty. Gen. 253.

Where unlicensed operator is convicted of operating motor vehicle without it being properly registered, motor vehicle department may require proof of financial responsibility on application for registration by virtue of (17) (c), Stats. 1945. However, proof of financial responsibility may not be required of person who possessed valid operator's license when convicted of operating an unregistered vehicle, there being no statute authorizing such requirement. 35 Atty. Gen. 171.

Under (9), Stats. 1945, commissioner of motor vehicle department has discretion to determine form of "security" therein required, and is not bound by (24) and (25)

which relate to altogether different circumstances. 35 Atty. Gen. 200.

It is the absolute duty of commissioner of motor vehicle department to suspend the license and registration of the owner and operator of a motor vehicle described in (5) (a), Stats. 1945, within 60 days after the receipt of a report of accident coming within the class of accidents described in the statute quoted. If, for any reason, he is prevented from suspending, fails or neglects to suspend within the 60-day period, his duty continues after that period until fulfilled. "Automobile liability policy" as used and referred to in (5) (b) 1 and 2 and (d) means any policy which may lawfully be written and issued in Wisconsin. It may contain so-called "policy defenses" not otherwise prohibited by law; it does not mean a policy of "absolute coverage". 35 Atty. Gen. 210.

Federal soldiers' and sailors' civil relief act of 1940 does not apply to suspension of drivers' licenses and automobile registrations by state motor vehicle commissioner under this section. 35 Atty. Gen. 221.

Self-insurers under (34) (b), Stats. 1945 [85.09 (6m)], are not required to establish an insurance reserve. Commissioner of the motor vehicle department, acting in good faith and in honest exercise of judgment, is not liable for damages for the erroneous issuance of certificate of self-insurance. 35 Atty. Gen. 374.

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

**85.095 Motor vehicle accidents, state and municipal liability.** (1) As used in this section unless the context otherwise requires:

(a) "Municipality" means the state, any county, city, village, town, school district (as enumerated in section 67.01 (1)), sewer district, drainage district, community center, and without restriction because of failure of enumeration, any other political subdivision of the state.

(b) "Governing body" means the state legislature, county or town board, the legislative body of a city or village and the board of any district, center or other municipality enumerated in paragraph (a).

(c) "Business" means any business whether governmental or proprietary.

(2) Any person, firm or corporation suffering any damage proximately resulting from the negligent operation of a motor vehicle owned and operated by any municipality, and which damage is occasioned by the operation of such motor vehicle in the performance of its business, may file a claim therefor against such municipality and the governing body thereof shall have the right to allow, compromise, settle and pay the same.

(3) The manner and form of and the place for filing claims shall be:

(a) If against the state, as provided in section 14.38, with the director of budget and accounts.

(b) If against any county, as provided in sections 59.76 and 59.77 (1), with the county clerk.

(c) If against any city, as provided in section 62.25, with the city clerk.

(d) If against any village, as provided in section 61.51, with the village clerk.

(e) If against any town, as provided in section 60.36, with the town clerk.

(f) If against any school district, as provided in section 40.18.

(g) If against any other municipality, the claim shall be filed with the person who performs the duties of a clerk or secretary and shall state the time and place of the accident and an itemized statement of the damages sought.

(4) Failure of the governing body to pass upon the claim within 60 days after presentation shall constitute a disallowance. Disallowance by the governing body shall bar any action founded on the claim unless brought within 6 months after disallowance.

Actions against the state and payment of the amount recovered shall be as provided in sections 285.01 and 285.04. For the purposes of this section, judgments against other municipalities shall be certified, filed and collected as provided in section 66.09 whether named therein or not.

(5) If the allowance of claim is by or the judgment is against any municipality lying in more than one town, city, village or county, the governing body of the debtor municipality shall prorate the amount of the claim allowed or the judgment and so certify to the proper officials for tax levy, so that the taxable property of the debtor municipality will equitably bear the amount of the claim or judgment.

(6) This section does not create any liability against a county for any act of the sheriff where such liability is prohibited by article VI, section 4 of the state constitution. [1947 c. 9, 183]

**Note:** 66.095, Stats, 1931, is construed as creating liability in the discharge of a governmental function. *Schumacher v. Milwaukee*, 209 W 43, 243 NW 756.

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

66.095, Stats, 1941, renders inapplicable, when a city is operating a motor vehicle in the performance of municipal business, the common law rule of nonliability of a municipal corporation for negligence of its employes while engaged in the performance of a "municipal function." *Huettner v. Eau Claire*, 243 W 80, 9 NW (2d) 533.

**85.10 Definitions.** The following words and phrases, when used in sections 85.10 to 85.86 and 85.91 shall, for the purpose of said sections, have the meaning respectively ascribed to them except in those instances where the context clearly indicates a different meaning:

(1) **VEHICLE.** Every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting, unless specifically included, vehicles used exclusively upon stationary rails or tracks or any vehicle propelled by the use of electricity obtained from overhead trolley structures.

(2) **MOTOR VEHICLE.** Every vehicle as herein defined which is self propelled.

(3) **AUTOMOBILE.** Every motor vehicle, excepting motor driven cycles, designed for the purpose of transporting not more than 7 persons including the operator and not used for the purpose of transporting persons or goods for hire.

(4) **MOTOR DRIVEN CYCLES.** Motor driven cycles are motor vehicles designed to travel on not more than 3 wheels in contact with the ground, having a seat for the use of the rider, including motor cycles, power driven cycles, and motor bicycles, but excluding tractors as herein defined. Motor cycles, power driven cycles and motor bicycles are further defined as follows:

(a) A power driven cycle is a motor driven cycle, weighing between 100 and 300 pounds avoirdupois, fully equipped, without gasoline or oil, designed to travel not over 35 miles per hour, with a 150-pound rider on a dry, level, hard surface with no wind, having brakes as specified in section 85.67 and having lights as specified in section 85.06.

(b) A motor bicycle is a bicycle to which a motor has been added to form a motor driven cycle as distinguished from a power driven cycle or motor cycle in which the motor is an integral part of the original vehicle.

(c) A motor cycle, or motorecycle, is a motor driven cycle not otherwise classified.

(5) **MOTOR TRUCK.** Every motor vehicle used for commercial purposes carrying its load as a single unit with a nondetachable propelling power except those vehicles operating on rails or those motor vehicles used for transporting persons exclusively.

(5a) **FARM TRUCK.** Every motor truck owned and operated by a farmer and used exclusively for the transportation of farm products from the licensee's farm to market or for the transportation of supplies to his farm.

(6) **TRUCK TRACTOR.** Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(7) **ROAD TRACTOR.** Every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of the vehicle or load so drawn.

(8) **FARM TRACTOR.** Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry.

(9) **STREET CAR.** Every vehicle traveling exclusively on rails other than cars or trains propelled or moved by gas or steam.

(10) **SLOW MOVING VEHICLE.** Every vehicle being operated or moved upon a highway at a speed less than the maximum speed then and there permissible.

(11) **TRAILER.** Every vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle.

(12) SEMITRAILER. Every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another vehicle.

(13) WAGON. Every animal-drawn vehicle except those operating on rails.

(14) AUTHORIZED EMERGENCY VEHICLES. Vehicles of the fire department, fire patrol, police vehicles, conservation wardens' vehicles, foresters' trucks, such emergency vehicles of municipal, county or state departments or public service corporations and such ambulances as are so designated or authorized by local authorities.

(15) TIRES; CLASSIFICATION AND DEFINITION. (a) Pneumatic tire is one inflated with compressed air.

(b) Solid rubber tire is one made of rubber other than a pneumatic tire.

(c) Metal tire is one the surface of which in contact with the highway is wholly or partially of metal or other hard, nonresilient material.

(16) OWNER. A person who holds the legal title of a vehicle; or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the condition stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner.

(17) OPERATOR. Any person who is in actual physical control of a vehicle.

(18) PEDESTRIAN. Any person afoot.

(19) TRAFFIC OFFICER. Every officer legally authorized to direct or regulate traffic or to make arrests for violation of traffic regulation.

(20) LOCAL AUTHORITIES. Every county board, city council, town or village board or other local board or body having authority to adopt traffic regulations under the constitution and laws of this state.

(21) KINDS OF HIGHWAYS DEFINED. (a) A highway is every way or place of whatever nature open to the use of the public as a matter of right for the purposes of vehicular travel. The term "highway" shall not be deemed to include a roadway or driveway upon grounds owned by private persons, colleges, universities or other institutions.

(b) A street is every highway except alleys within the corporate limits of any city or village.

(c) An alley is every highway of whatever nature within a city or village open for vehicular travel, not a street and not for the use of through traffic.

(d) A private highway, alley or driveway is every highway, alley or driveway not open to the use of the public for the purposes of vehicular traffic.

(e) Roadway is that portion of a highway between the regularly established curb lines or that portion which is commonly used by vehicular traffic.

(f) Divided highway is a highway with two or more roadways separated by spaces not used by vehicular traffic.

(22) INTERSECTION. The area embraced within the prolongation of the lateral curb lines or, if none, then within the lateral boundary lines of two or more highways which join one another at an angle, whether or not one such highway crosses the other.

(23) CROSSWALK. That portion of the highway ordinarily included within the prolongation of the curb and property lines at intersections or any other portion of a highway clearly indicated for pedestrian crossing by lines or other markers on the surface.

(24) SIDEWALK. That portion of a highway between the curb lines and the adjacent property lines, unless local authorities designate otherwise.

(25) SAFETY ZONE. The area or space officially set apart within a highway for the exclusive use of pedestrians or passengers or prospective passengers of public conveyances, and which is protected or is so marked or indicated by adequate signs or marks as to be plainly visible at all times when set apart as a safety zone.

(26) SAFETY ISLAND. Any safety zone that is elevated above the highway level.

(27) LOADING ZONE. That portion of a highway adjacent to a curb or property line reserved for the exclusive use of vehicles for the purpose of loading or unloading passengers or material.

(28) BUSINESS DISTRICT. The territory contiguous to a highway when fifty per cent or more of the frontage thereon for a distance of three hundred feet or more is occupied by buildings in use for business.

(29) RESIDENCE DISTRICT. The territory contiguous to a highway not comprising a business district where the frontage on such highway for a distance of three hundred feet or more is mainly occupied by dwellings or by dwellings and buildings in use for business.

(30) PARKING. The stopping or standing of a vehicle, whether occupied or not, upon a highway otherwise than in obedience to traffic regulations or official traffic signs or signals.

(31) **TRAFFIC.** Pedestrians, ridden or herded or driven animals, vehicles, street cars and other conveyances, either singly or together, while using any highway for the purpose of travel.

(32) **THROUGH TRAFFIC.** All traffic the intention of which is to traverse that portion of the highway upon which it is operating without parking, loading or unloading persons or property.

(33) **HEAVY TRAFFIC.** All vehicles designated or used for the purpose of transporting material of any nature when the gross weight of such vehicle shall be three tons or greater, or any vehicle not operating completely upon pneumatic tires. Motor busses completely equipped with pneumatic tires shall not be considered heavy traffic.

(34) **TRAFFIC LANE.** That portion of a roadway paralleling the center line of the roadway having a width of not less than seven feet and not more than ten feet, whether or not such portion is indicated by marks or markers.

(35) **RIGHT OF WAY.** The privilege of the immediate use of the highway.

(36) **WEIGHTS.** (a) The net weight of a vehicle is the weight of the vehicle equipped for service.

(b) The tare weight of a vehicle is that weight which the vehicle is equipped to carry as a load.

(c) The gross weight of a vehicle is the sum of the net and tare weights.

(37) **OFFICIAL TRAFFIC SIGNS.** All signs and markings other than signals, not inconsistent with this chapter, placed or erected by authority of a public body or official having jurisdiction for the purpose of guiding, directing, warning or regulating traffic.

(38) **OFFICIAL TRAFFIC SIGNALS.** All signals not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction for the purpose of directing, warning or regulating traffic.

(39) **TRAFFIC CONTROL SIGNALS.** Any device using colored lights, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to go.

(40) **PERSON.** Every natural person, firm, copartnership, association or corporation.

(41) **COMMISSIONER.** The motor vehicle commissioner of this state.

(42) **DEPARTMENT.** The motor vehicle department of this state acting directly or through its duly authorized officer or agents. [1931 c. 372 s. 2; 1937 c. 106; 1941 c. 206; 1943 c. 329; 1947 c. 13, 528, 605, 614]

**Note:** The negligence of the motorist in suddenly turning his car without warning to the right across the path of the car approaching from the rear but traveling nearer the curb, forcing the latter car to turn across a sidewalk, striking the plaintiff, constituted a proximate cause of the injury to the plaintiff. *Balzer v. Caldwell*, 220 W 270, 263 NW 705.

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

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

Occupancy of at least over fifty per cent of the frontage by dwellings or by dwellings and business buildings is required in order to constitute the territory a "residence district." An instruction that the place where the collision occurred was a "residence district", which was erroneous because the place was not a "residence district", was prejudicial to the defendant motorist on the question of his negligence as to speed where he had admitted to traveling at a speed of forty miles per hour; and it was also prejudicial to the defendant because of its bearing on the questions of the plaintiff's negligence as to management and control of his car and as to turning left across the path of the defendant's oncoming car. *McGill v. Baumgart*, 233 W 86, 288 NW 799.

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

road. *Petersen v. Jansen*, 236 W 292, 295 NW 30.

Where a host stopped her 2-door car on the roadway to permit guests in the back seat to alight, and the car stood there not exceeding 5 minutes while one guest in the front seat searched for a key which she had dropped, both guests in the front seat got out to enable those in the back seat to get out, and then got back in, and the car was struck from behind by another when the host was ready to start again, injuring the guests—the stopping of the car was for the purpose of "unloading," within the permission of 85.10 (30), and the time that the car stood on the roadway was reasonable for that purpose under the circumstances, and hence the host was not negligent as for violation of the parking and stopping provisions of 85.19 (1), although it was practical to stop off the roadway, particularly where there was no violation because of insufficient space on the roadway to the left of the standing car or because of obstructed view. *Gast v. Dallmann*, 240 W 103, 2 NW (2d) 716.

As to conflict between 85.10 (22) and 85.17 (2), see note to 85.17, citing *Eberdt v. Muller*, 240 W 341, 2 NW (2d) 367.

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

The driver of a motor vehicle intending to turn left in the middle of a block to enter a private driveway is not in an "intersection" as that term is defined in 85.10 (21), (22). *McCauley v. Balsley*, 242 W 528, 8 NW (2d) 299.

Under (23), the crosswalk at a street intersection, where there are surface markers, is the space between the markers, regardless of whether the resulting crosswalk is of greater width or of lesser width than that portion of the highway included within the prolongation of the curb and property lines. *Smith v. Superior & Duluth Transfer Co.* 243 W 292, 10 NW (2d) 153.

**85.11 Motor vehicle road rights.** The operator of every vehicle shall have equal rights upon all highways with other users of such highways, subject to the provisions of this chapter.

**85.12 Obedience, direction and exemptions in traffic signs and signals. (1) OFFICERS TO DIRECT TRAFFIC.** It shall be the duty of the police and traffic departments of every political unit of government and each authorized department of the state to enforce the provisions of sections 85.10 to 85.86 and 85.91. Such officers are authorized to direct all traffic within their respective jurisdictions either in person or by means of visual or audible signal in accordance with the provisions of said sections; but in the event of a fire or other emergency, officers of the police, traffic or fire department may direct traffic as conditions may require notwithstanding the provisions of said section.

(2) **OBEDIENCE TO TRAFFIC OFFICERS.** It shall be unlawful for any person to refuse or fail to comply with any lawful order, signal or direction of a traffic officer.

(3) **OBEDIENCE TO TRAFFIC SIGNS AND SIGNALS.** It shall be unlawful for the operator of any motor vehicle or for the operator of any street car to disobey the instructions of any official traffic sign or signal placed in accordance with the provisions of said sections unless otherwise directed by a traffic officer.

(4) **PUBLIC EMPLOYEES TO OBEY TRAFFIC REGULATIONS.** The provisions of said sections shall apply to the operator of any vehicle owned by or used in the service of the United States government, or of this state or any political subdivision thereof, and it shall be unlawful for any said operator to violate any of said provisions except as otherwise provided.

(5) **EXEMPTIONS TO AUTHORIZED EMERGENCY VEHICLES.** The provisions of said sections regulating the movement, parking and standing of vehicles shall not apply to authorized emergency vehicles while the operator of such vehicle is operating the same in an emergency in the necessary performance of public duties. This exemption shall not, however, protect the operator of any such vehicle from the consequence of a reckless disregard of the safety of others.

(6) **PERSONS PROPELLING PUSH CARTS OR RIDING BICYCLES OR ANIMALS TO OBEY TRAFFIC REGULATIONS.** Every person propelling any push cart, bicycle, or riding a bicycle or animal, or driving or leading any animal upon a roadway shall be subject to the provisions of said sections, applicable to the operator of any vehicle, except those provisions with reference to the equipment of vehicles and except those provisions which by their very nature would have no application.

**85.13 Intoxicated persons or users of narcotic drugs prohibited from operating vehicles.** It shall be unlawful for any person who is a habitual user of narcotic drugs, or who is subject to epilepsy, or any person who is under the influence of an intoxicating liquor or narcotic drug, to operate any vehicle, including a street car used on stationary rails or tracks, or any vehicle propelled by the use of electricity obtained from overhead trolley structures upon any highway. [1947 c. 13]

**Note:** The statutory duty not to drive an automobile upon a highway while under the influence of intoxicating liquor is absolute, and where there is the necessary causal relation between a person's injury and his violation of the statute, such violation constitutes contributory negligence on his part. *Devine v. Bischel*, 215 W 331, 254 NW 521. Beer is "intoxicating liquor" in meaning of drunken-driving statute, 85.13, notwithstanding its exclusion from definition of that term as used in chapter 176. 31 Atty. Gen. 199.

[85.135 Stats. 1945 repealed by 1947 c. 528]

**85.137 Certain rights saved.** The repeal of section 85.08 of the statutes of 1939 repealed by this act [1941 c. 206] shall not remit, defeat or impair any civil or criminal liability for offenses committed, penalties or forfeitures incurred or rights of action accrued under such section before the repeal thereof, whether or not in course of prosecution or action at the time of such repeal; but all such offenses, penalties, forfeitures and rights of action created by or founded on such sections, liability wherefor shall have been incurred before the time of such repeal thereof, shall be preserved and remain in force notwithstanding such repeal. And criminal prosecutions and actions at law or in equity founded upon such repealed sections, whether instituted before or after the repeal thereof, shall not be defeated or impaired by such repeal but shall, notwithstanding such repeal, proceed to judgment in the same manner and to the like purpose and effect as if such repealed sections continued in full force to the time of final judgment thereon. For the purpose of this section the provisions of subsection (19) of section 85.08 of the statutes of 1939 repealed by this act continue to apply to bonds, proofs of insurance and money and collateral filed, furnished or deposited pursuant to section 85.08 of the statutes of 1939 repealed by this act. [1941 c. 206]

**85.14 Prohibited signs and signals. (1) DISPLAY OF UNAUTHORIZED SIGNS AND SIGNALS PROHIBITED.** It shall be unlawful for any person to place or maintain or display upon or in view of any highway or steam or electric railway crossing any sign,

red light or reflector (other than as one of warning), signal or device, which purports to be or is an imitation of or resembles or may be mistaken as an official traffic sign or signal, or which attempts to direct the movement of traffic or which hides from view any official sign or signal; excepting that a federal yellow flag, 24 inches by 24 inches, bearing either the words "Safety Patrol" or "School," attached to a light weight pole 8 feet or less in length, may be used by members of school safety patrols standing adjacent to but off the highway to warn traffic that children are about to cross the street. Every such prohibited sign, signal or device is declared to be a public nuisance and any police or traffic officer is empowered to remove the same, or cause the same to be removed, without notice.

(2) INTERFERENCE WITH SIGNS AND SIGNALS PROHIBITED. It shall be unlawful for any person to wilfully deface, injure, move, obstruct or interfere with any official sign or signal. [1939 c. 235; 1947 c. 5]

85.141 Accidents involving vehicles. (1) ACCIDENTS INVOLVING DEATH OR PERSONAL INJURIES. (a) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of subsection (3) of this section. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person failing to stop or to comply with said requirements under such circumstances shall upon conviction be punished by imprisonment for not less than ten days, nor more than one year or by fine of not less than five dollars nor more than five thousand dollars, or by both such fine and imprisonment.

(2) ACCIDENT INVOLVING DAMAGE TO VEHICLE. (a) The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of subsection (3) of this section. Every such stop shall be made without obstructing traffic more than is necessary. Any such person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor.

(b) Any person failing to stop or to comply with said requirements under such circumstances shall upon conviction be punished by a fine of not more than \$200 or by imprisonment for not more than 6 months, or both.

(3) DUTY TO GIVE INFORMATION AND RENDER AID. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving and shall upon request and if available exhibit his driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such a person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

(4) DUTY UPON STRIKING UNATTENDED VEHICLE. (a) The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck, a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

(b) Any person failing to stop or to comply with said requirements under such circumstances shall upon conviction be punished by a fine of not more than \$200 or by imprisonment for not more than 6 months or both.

(5) DUTY UPON STRIKING FIXTURES UPON A HIGHWAY. (a) The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his driver's license and shall make report of such accident when and as required in subsection (6) hereof.

(b) Any person failing to stop or to comply with said requirements under such circumstances shall upon conviction be punished by a fine of not more than \$200 or by imprisonment for not more than 6 months, or both.

(6) DUTY TO REPORT ACCIDENTS. (a) The driver of a vehicle involved in an accident resulting in injury to or death of any person or total property damage to an apparent extent of \$50 or more shall, as soon as reasonably possible, report such accident to the local authorities and within 10 days after such accident, forward a written report of such accident to the state motor vehicle department.

(ag) Whenever the driver of a vehicle is physically incapable of making a required accident report and there was another occupant in the vehicle at the time of the accident capable of making a report, such occupant shall make or cause to be made said report.

(am) If there is no other occupant of the vehicle, or such occupant is physically or mentally incapable of making such report, the owner of the motor vehicle involved in such accident, shall, as soon as he learns of the accident, forward such report.

(ar) For the purposes of this subsection the term "injury" is defined as an injury to a person of a physical nature resulting in death or the need of first aid or attention by a physician or surgeon, regardless of whether or not first aid or medical or surgical treatment was actually received. "Total property damage", as used in this subsection, is defined as the sum total cost of putting the property damaged in the condition it was in before the accident, if repair thereof is practical, and if not practical, the sum total cost of replacing such property.

(b) The department may require any driver, occupant, or owner of a vehicle involved in an accident of which report must be made as provided in this subsection to file supplemental reports whenever the original report is insufficient in the opinion of the department and may require witnesses of accidents to render reports to the department.

(c) Any person who shall falsely make and file an accident report, which must be made as provided in this subsection, or who shall knowingly make any false statement in any such report, shall be punished by a fine of not less than \$25 or more than \$50 for each offense, or by imprisonment in the county jail for a period of not less than 30 days nor more than 60 days, or by both such fine and imprisonment.

(8) ACCIDENT REPORT FORMS. (a) The motor vehicle department shall prepare and supply at its own expense to police departments, coroners, sheriffs and other suitable agencies or individuals, forms for accident reports required hereunder, which report shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing, and the persons and vehicles involved.

(b) Every required accident report shall be made on a form approved by the motor vehicle department.

(9) CORONERS TO REPORT. Every coroner or other official performing like functions shall on or before the tenth day of each month report in writing to the motor vehicle department the death of any person within his jurisdiction during the preceding calendar month as the result of an accident involving a motor vehicle and the circumstances of such accidents.

(10) ACCIDENT REPORTS CONFIDENTIAL. All required written accident reports including those required by county and municipal authorities and reports supplemental thereto shall be without prejudice to the individual so reporting and shall be for the confidential use of such department or authority except that the department or authority may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident. No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the department shall furnish upon demand of any person who has, or claims to have, made such a report or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the department solely to prove a compliance or a failure to comply with the requirement that such a report be made to the department.

(11) TO TABULATE AND ANALYZE ACCIDENT REPORTS. The department shall tabulate and may analyze all accident reports and shall publish annually or at more frequent intervals statistical information based thereon as to the number and circumstances of traffic accidents.

(12) MUNICIPALITY MAY REQUIRE ACCIDENT REPORTS. Any city, town, village or other municipality may by ordinance require that the driver of a vehicle involved in an accident shall also file with a designated municipal department or officer a report of such accident or a copy of any report herein required to be filed with the motor vehicle department. All such reports shall be for the confidential use of the department or officer and subject to the provisions of subsection (10) of this section. [1935 c. 427, 553; 1939 c. 410; 1941 c. 27; 1941 c. 206 s. 6; 1943 c. 221; 1945 c. 382; 1947 c. 194, 528]

Note: Sentence to state prison under (1) (b), which designates no place of imprisonment, is unauthorized. Violation of (1) (b) is not a felony. 25 Atty. Gen. 456.

Operator of bicycle does not come within (6) (a). 25 Atty. Gen. 500.

Total damage referred to in (6) (a) may embrace damage to one or more cars in accident. Reports made by police officer are not confidential unless he makes report in name of participant in accident as his agent under (10). 29 Atty. Gen. 347.

Report of motor accident pursuant to (c) whether privately or publicly owned. 35 (a), Stats. 1945, is required in case of all Atty Gen. 377. accidents on premises open to the public

**85.15 Operation of vehicles.** (1) **OPERATE ON THE RIGHT SIDE OF HIGHWAY.** Upon all highways of sufficient width, except upon one-way highways, the operator of a vehicle shall operate the same upon the right half of the roadway and shall operate a slow moving vehicle as closely as practical to the right-hand edge or curb of the roadway, unless it is impractical to travel on such side of the roadway and unless overtaking and passing another vehicle subject to the limitations applicable to overtaking and passing as set forth in this chapter except as provided in subsection (12) of section 85.18. The foregoing provisions of this subsection shall not be deemed to prevent the marking of lanes for traffic upon any roadway and the allocation of designated lanes to traffic moving in a particular direction or at designated speeds.

(2) **LIMITATIONS ON OVERTAKING AND PASSING.** It shall be unlawful for the operator of a vehicle to operate on any portion of the left side of a highway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety. The provisions of this subsection shall not apply upon one-way highways or upon highways laned for traffic; and in all cases of the latter, vehicles traveling in marked lanes shall move in the direction permitted in such lanes.

(3) **OPERATING ON DIVIDED HIGHWAYS.** On highways that are divided longitudinally by a parkway, viaduct, wall or other form of division, vehicles shall keep to the right of such division unless directed to do otherwise by an official traffic sign or signal or by a traffic officer.

(4) **MEETING OF VEHICLES.** Operators of vehicles proceeding in opposite directions shall pass each other to the right, each giving the other at least one-half of the main traveled portion of the roadway as nearly as possible.

**Note:** Ordinarily a motorist's failure to keep to the right of the center of the highway, especially when meeting another vehicle, constitutes negligence as a matter of law, but a motorist who is forced to the left side of the road by circumstances beyond his control is not negligent. Seligman v. Hammond, 205 W 199, 236 NW 115.

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

The driver of a motor vehicle may operate his vehicle on the assumption that other drivers will use due care in the operation of theirs, and especially that they will not violate a safety statute. DeKeyser v. Mil-

waukee Automobile Ins. Co. 236 W 419, 295 NW 755.

85.15 (1) requiring the operator of a vehicle to operate the same on the right half of the roadway, has for its design and purpose the keeping of cars on the right-hand side of the highway and is not a general management-control statute, and it does not apply to a situation where the operator of a car is operating the car on the right-hand side and the car goes into the ditch on that side. Baars v. Benda, 249 W 65, 23 NW (2d) 477.

The right of a driver of an automobile to proceed on the right half of a highway under 85.15 (1) is restricted by that same subsection to travel within a designated lane where such lanes have been marked. O'Leary v. Buhrow, 249 W 559, 25 NW (2d) 449.

This section applies only to public highways and not to park driveways or forest trails. 35 Atty. Gen. 410.

**85.16 Rules for passing.** (1) **SIGNALS FOR PASSING.** The operator of an overtaking motor vehicle not within a business or residence district shall give audible warning with his warning device before passing or attempting to pass a vehicle proceeding in the same direction.

(2) **VEHICLES TO KEEP IN TRAFFIC LANES.** The operator of a vehicle upon a roadway shall not deviate from the traffic lane in which he is operating without first ascertaining that such movement can be made with safety to other vehicles approaching from the rear.

(3) **OVERTAKING AND PASSING ANOTHER VEHICLE.** The operator of any vehicle overtaking another vehicle proceeding in the same direction shall pass such vehicle at a safe distance to the left thereof and shall not again operate to the right side of the roadway until safely clear of such overtaken vehicle.

(4) **CONDUCT OF OPERATOR BEING PASSED.** The operator of a vehicle about to be overtaken and passed by another vehicle approaching from the rear shall give way to the right if practical in favor of the overtaking vehicle on suitable and audible signal being given by the operator of the overtaking vehicle and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

(5) **PASSING ON CURVES AND GRADES RESTRICTED.** It shall be unlawful for the operator of a vehicle to operate on the left side of the highway upon any part of a grade or upon a curve in the highway where the operator's view along said highway is obstructed within a distance of one thousand feet.

(6) **PASSING AT RAILROAD GRADE CROSSING AND HIGHWAY INTERSECTIONS PROHIBITED.** It shall be unlawful for the operator of any vehicle to overtake and pass any other vehicle

proceeding in the same direction at any steam, gas or electric railway grade crossing or at an intersection of highways unless permitted to do so by a traffic officer or upon highways which are properly marked by traffic lanes.

(7) **PASSING STREET CARS ON TWO-WAY HIGHWAY.** It shall be unlawful for the operator of a vehicle on a two-way highway to overtake and pass upon the left any street car proceeding in the same direction whether such car is actually in motion or at rest.

(8) **PASSING STREET CARS ON ONE-WAY HIGHWAYS.** The operator of a vehicle on a one-way highway may pass on the left, any street car actually stopped for the purpose of receiving or discharging passengers, at a speed not greater than fifteen miles an hour and with due regard for the safety of pedestrians, except when directed to do otherwise by a traffic officer or official traffic signal.

(9) **PASSING STREET CAR WHILE LOADING OR UNLOADING PASSENGERS.** The operator of a vehicle overtaking any street car actually stopped for the purpose of receiving or discharging any passenger shall stop such vehicle to the rear of the nearest door of said car and shall remain stationary until any such passenger has boarded such car or reached the adjacent sidewalk, except that where a safety zone has been established, a vehicle need not be brought to a full stop before passing any such car but may proceed past such car at a speed that is reasonable and proper and in no event greater than fifteen miles an hour and with due regard for the safety of pedestrians. This provision shall apply to busses when at a safety zone.

(10) **PASSING VEHICLES AT INTERSECTIONS.** Whenever any vehicle has stopped at a marked or unmarked crosswalk or at any intersection to permit a pedestrian to cross the highway, it shall be unlawful for the operator of any other vehicle approaching from the rear to overtake and pass such stopped vehicle.

(11) **PASSING OR MEETING FRIGHTENED ANIMALS.** The operator of any vehicle upon any highway, upon a signal by putting up the hand or other signal of distress made by a person riding, driving or leading an animal which is frightened, shall cause such motor vehicle to stop unless a movement forward is necessary to avoid an accident or injury, and such operator shall, upon request, stop all motive power until such animal is under control.

(12) **PASSING SCHOOL BUSES WHILE LOADING OR UNLOADING CHILDREN.** The driver of a vehicle upon meeting or overtaking any school bus which has stopped on the highway for the purpose of receiving or discharging any school children shall approach or overtake such bus at a speed not to exceed 15 miles per hour. The term "school bus" as used in this subsection means any motor vehicle defined or referred to in section 110.035 or section 40.347 (1) and which is painted substantially as prescribed in section 40.347 (1). The provisions of this subsection shall not apply to passing school busses within the corporate limits of any city or village. [1945 c. 359]

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

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

For construction of (5), see note to 251.09, citing *Schuyler v. Kernan*, 209 W 236, 244 NW 575.

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

Subsection (2), prohibiting a motorist from deviating from his lane of traffic without first ascertaining that such movement can be made with safety to vehicles approaching from the rear, applies at intersections, although (6) prohibits passing at

intersections and is not intended solely to prevent injuries to vehicles, but imposes a duty to all persons in vehicles who are likely to be injured by violation of the statutory mandate. *Cherney v. Simonis*, 220 W 339, 265 NW 203.

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

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

In an action for injuries sustained in a collision when the defendant's truck attempted to pass the plaintiff's truck proceeding in the same direction, testimony of two occupants of the plaintiff's truck that they heard no horn or other warning was purely negative and was insufficient to raise a jury question as to alleged failure of the defendant's driver to give audible warning of intention to pass, where it did not appear that the witnesses were directing their senses and attention to determine whether the event was about to occur. *Hunter v. Srianni Candy Co.*, 233 W 130, 238 NW 766.

The requirement of (2), that a driver shall not deviate from his traffic lane with-

**85.17 Rules for turning.** (1) **TURNING RIGHT.** The operator of a vehicle intending to turn to the right at an intersection shall approach the point of turning in the traffic lane nearest the right-hand edge or curb of the highway and in turning shall keep as closely as practicable to the right-hand edge or curb of the highway.

(2) **TURNING LEFT.** The operator of a vehicle intending to turn to the left at an intersection or into a private highway shall make such turn from the traffic lane immediately to the right of and next to the center of the highway and shall pass immediately to the left of the center of the intersection, passing as closely as practicable to the left of the center of the intersection, and shall leave the intersection immediately to the right of the center of the intersecting highway.

(3) **WHEN NOT APPLICABLE.** The provisions of subsections (1) and (2) shall not apply to those vehicles that are required by local authorities to travel in such lanes that said provisions cannot be complied with.

(4) **TURNING AROUND AT CERTAIN INTERSECTIONS PROHIBITED.** At any intersection where traffic is controlled by a traffic control signal or by a traffic officer, it shall be unlawful for the operator of a vehicle to turn such vehicle at the intersection so as to proceed in the opposite direction.

(5) **TURNING AROUND IN MID-BLOCK PROHIBITED ON CERTAIN HIGHWAYS.** It shall be unlawful for the operator of any vehicle operating on any street in a business district or on any artery for through traffic in a residence district to turn his vehicle so as to proceed in the opposite direction at any place except at an intersection where such turns are permitted.

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

Where evidence would support finding of negligence other than motorist's violation of left turn statute, holding as matter of law that he was not contributorily negligent notwithstanding jury's affirmative answer to question whether he was guilty of "any negligence," was error, even though violation of left turn statute was not proximate cause of injury to car from street depression. *Morley v. Reedsburg*, 211 W 504, 248 NW 431.

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

In an action by a pedestrian, the act of a defendant motorist in suddenly turning his car without warning to the right across the path of a codefendant's car traveling in the same direction but nearer the curb than the defendant's car, forcing the codefendant's car to turn across a sidewalk, striking the plaintiff, is held to constitute actionable negligence. [*Young v. Nunn, Bush & Welton Shoe Co.*, 212 W 403; *Ramsay v. Biemert*,

out first ascertaining that such movement can be made with safety to other vehicles approaching from the rear, is applicable at intersections as well as at points other than intersections. *Stenson v. Schumacher*, 234 W 19, 290 NW 285.

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

216 W 631, distinguished.] *Balzer v. Caldwell*, 220 W 270, 263 NW 705.

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

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

85.10 (22), defining an "intersection" as the area within the prolongation of the lateral curb lines or, if none, then within the lateral boundary lines of 2 or more highways which join one another at an angle, must be interpreted as fixing the intersection, formed by a town road joining, but not crossing, an east-west county trunk highway from the south at a sharp angle curving to the left, as bounded by a quadrilateral made by the north line of the county trunk, a line extending the south line of the county trunk across the town road, and lines extending the two lateral lines of the town road across the county trunk, but the requirement of 85.17 (2) that a driver making a left turn at an intersection shall pass to the left of the center of the intersection is impossible of application as to a driver coming from such town road and making a left turn at the intersection in question. *Eberdt v. Muller*, 240 W 341, 2 NW (2d) 367.

**85.18 Right of way.** (1) **RIGHT OF WAY AT INTERSECTIONS.** When two vehicles approach or enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right, except as otherwise provided in this section. The driver of any vehicle driving at an unlawful speed shall forfeit any right of way which he might otherwise have hereunder. The driver of a vehicle approaching but not having entered an intersection shall yield the right of way to a vehicle

within such intersection and turning therein to the left across the line of travel of such first mentioned vehicle; provided, the driver of the vehicle turning left has given a plainly visible signal of intention to turn as aforesaid.

(4) **VEHICLES STOPPING FOR ARTERIES FOR THROUGH TRAFFIC.** The operator of any vehicle that has come to a full stop as required by section 85.69, upon entering an artery for through traffic, as well as operators of vehicles on such artery for through traffic, shall be subject to the provisions of subsection (1).

(5) **VEHICLES TURNING LEFT IN INTERSECTIONS.** The operator of a vehicle within an intersection intending to turn to the left across the path of any vehicle approaching from the opposite direction, may make such left turn where it is permitted only after affording a reasonable opportunity to the operator of such vehicle to avoid a collision.

(6) **RIGHT OF WAY OF FUNERAL PROCESSIONS.** Funeral processions shall have the right of way at intersections when vehicles comprising such procession shall have their headlights lighted, excepting in case of an emergency or when directed otherwise by a traffic officer. Such processions, however, shall be governed by traffic control signals except that when the leading vehicle has proceeded across an intersection in accordance with such signal, all vehicles in such procession may so proceed regardless of any change in such signal. It shall be unlawful for any vehicles to form a procession and have their headlights lighted for the purpose of securing the right of way granted by this subsection to funeral processions.

(7) **RIGHT OF WAY OF AUTHORIZED EMERGENCY VEHICLES.** It shall be unlawful for the operator of a vehicle upon a highway not to yield the right of way to an authorized emergency vehicle which is operating upon official business and the operator thereof sounds audible signal by means of a siren.

(8) **VEHICLES EMERGING FROM ALLEYS OR PRIVATE DRIVEWAYS TO STOP.** The operator of a vehicle emerging from an alley, private driveway or garage shall stop such vehicle immediately prior to moving on to the sidewalk or sidewalk area extending across the path of such vehicle, or if there is no sidewalk or sidewalk area then before crossing the near limits of the roadway.

(9) **EMERGING FROM ALLEY OR PRIVATE DRIVEWAY.** The operator of a vehicle entering a public highway from an alley, garage or private driveway shall yield the right of way to all vehicles approaching on such highway.

(10) **MOVING VEHICLES HAVE RIGHT OF WAY OVER PARKED VEHICLES.** The operator of any vehicle that has been parked shall while moving from such position yield the right of way to all vehicles approaching on such highway.

(11) **RIGHT OF WAY OF LIVE STOCK.** Live stock being driven over or along any highway shall have the right of way over any motor vehicle, but any person in charge of such live stock shall use reasonable care and diligence to open the roadway for vehicular traffic.

(12) **HIGHWAY MAINTENANCE VEHICLES.** Vehicles actually engaged in maintaining the highway are permitted to operate on the left hand side of the highway when they are designated or at night lighted according to the standard method of marking or lighting such vehicles as promulgated by the motor vehicle department. [1931 c. 98; 1931 c. 470 s. 5; 1939 c. 293, 410]

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

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

One stopping for an arterial highway as required by (1), must stop at a point from which he can see approaching traffic, and should yield the right of way even though a driver on the arterial, by excessive speed, has forfeited his right under 85.40 (4). *Paluczak v. Jones*, 209 W 640, 245 NW 655.

The driver might rightly assume that any driver approaching the intersection on a crossroad would be traveling at a lawful rate of speed and would see and obey the stop sign on the crossroad. *Zurn v. Whatley*, 213 W 365, 251 NW 435.

That right of way at intersection of motorist approaching from right was forfeited by his excessive speed did not give right of way to motorist approaching from left, if the two automobiles were approaching and entering intersection at approximately the same time, since in such situation neither motorist would have right of way as matter of law. Refusal to instruct that where two motorists approach intersection each with his automobile in control, motorist who by clear margin enters intersection first may rightly proceed, but, if other motorist is so close or coming at such dangerous speed that collision is apparently likely to occur if he proceeds, he must then yield or so keep control of his automobile as to be able to avoid interference held error in absence of any instruction limiting right of motorist first entering intersection. *Roellig v. Gear*, 217 W 651, 260 NW 232.

The driver of an automobile, who when twenty feet from the center of an intersection saw the driver of a truck approaching from the left about ninety feet away, and who had the right of way, might rightly assume in the circumstances that the driver of the truck would not interfere with his passage across the intersection. The evidence is held to show as a matter of law that the driver of the truck was negligent as to speed, lookout, position on the road, management

and control of the truck, and yielding of the right of way; that the driver of the automobile was not negligent in any respect; and that the negligence of the driver of the truck was the sole cause of the collision between the two vehicles at the intersection. *Ziemke v. Faber*, 221 W 512, 266 NW 217.

It was the duty of the driver to look to his right at a point where his view down the intersecting arterial highway was unobstructed before venturing to cross it, even if the defendant, approaching on such highway, had forfeited his right of way, under 85.18 (1), by excessive speed. *Canzoneri v. Heckert*, 223 W 25, 269 NW 716.

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

It is the duty of one approaching an arterial highway to stop at a point somewhere between the stop sign and the arterial where one may efficiently observe traffic approaching on the arterial highway. But see 85.69. *Gumm v. Koppke*, 227 W 635, 278 NW 447.

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

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

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

The purpose of (8) and (9) is to assure a proper lookout by the driver of the emerging vehicle; and the same degree of care as to lookout should be exercised by a motorist in turning into a driveway as is required in emerging from it, although in the former case he is not necessarily required to stop; and the purpose of (5) is to assure a proper lookout by the driver of the turning vehicle; and the same degree of care as to lookout should be exercised by a motorist in so turning left at points other than intersections as is required at intersections. *De Baker v. Austin*, 233 W 39, 287 NW 720.

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

In an action involving a collision between two automobiles crossing at right angles to each other at a street intersection, an instruction which (by reason of only partially quoting the provisions of (1), on right of way at intersections) erroneously implied that the first vehicle in the intersection necessarily had the right of way, was prejudicial to the plaintiff where the principal contested question (answered by the jury in favor of the defendant) was whether the defendant's car, approaching from the plaintiff's left, had arrived at the intersection sufficiently in advance of that of the plaintiff to entitle it to the right of way. *Beer v. Strauf*, 236 W 597, 296 NW 68.

Where a motorist entering an intersection had the right of way over a taxicab approaching the intersection on the left,

the motorist, unless negligent by reason of inefficient or careless observation on which he based his calculation that he could safely proceed, had a right to rely on the taxicab driver's yielding the right of way. *Uecker v. Anthony*, 243 W 587, 11 NW (2d) 183.

Subsection (12) does not permit parking on left side of highway. 20 Atty. Gen. 33.

Notwithstanding that a motorist gave a plainly visible signal of his intention to turn left within an intersection, as required by 85.18 (1), his right to invade the left half of the intersection in the path of an automobile approaching the intersection from the opposite direction was subject to his duty to afford the driver of that car a reasonable opportunity to avoid a collision, as required by (5), the provisions of (1) and (5) not being alternative in operation. *Barkdoll v. Wink*, 238 W 520, 300 NW 233.

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

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

Section 85.18 (5) has no application where a vehicle making a left turn within an intersection becomes involved in a collision with a vehicle approaching the intersection from the left. Subsection (1) did not of itself convict the plaintiff of a negligent failure to yield the right of way, there being no evidence as to whether the plaintiff made a plainly visible signal or, if he did, as to when he made it. *Stylov v. Milwaukee E. R. & T. Co.* 241 W 211, 5 NW (2d) 750.

In an action for injuries sustained when the automobile in which the plaintiff was riding with her husband collided with the blade of a snowplow, coupled ahead of a truck operated by the defendant, after the plaintiff's husband had turned his car to the left to avoid striking a preceding car which had collided with the truck as the truck snowplow came onto the highway from a private driveway, the evidence sustained the jury's finding that the defendant was causally negligent as to lookout for traffic approaching on the highway and was consequently under a duty to yield the right of way in entering the highway from a private driveway. *Landskron v. Hartford Acc. & Ind. Co.* 241 W 445, 6 NW (2d) 178.

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

the squeak of brakes. *Willson v. Koch*, 241 W 594, 6 NW (2d) 659.

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

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

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

When 2 cars approach or enter an intersection at approximately the same time, the

driver to the left has a statutory duty under (1) to yield the right of way, but the driver to the right is nevertheless negligent if he insists on claiming his right of way where it is evident that his competitor for the intersection is not going to respond to this duty. These are, however, separate items of negligence which exist concurrently and are to be measured and compared by the jury. The person who has the right of way does not transfer his right to his adversary by negligently insisting on it, but thereby simply becomes guilty of contributory negligence. *Reynolds v. Madison Bus Co.* 250 W 294, 26 NW (2d) 653.

As between a vehicle approaching an intersection on one street and a vehicle approaching on the intersecting street, there are no rights of way at intersections other than those contained in this section, and these are in relation to vehicles approaching or entering an intersection at approximately the same time, so that there is no right of way, statutory or otherwise, unless the 2 vehicles approach or enter the intersection at approximately the same time, and hence an instruction to the jury that the general rule is that the first entering an intersection has the right of way is erroneous. *Reynolds v. Madison Bus Co.* 250 W 294, 26 NW (2d) 653.

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

**85.19 Parking, stopping or standing.** (1) **PARKING ON HIGHWAY.** No person shall park, stop, or leave standing any vehicle, whether attended or unattended, upon any highway outside a business or residence district when it is practical to park, stop or leave such vehicle standing off the roadway of such highway, provided that in no event shall any person park, stop or leave standing any vehicle, whether attended or unattended, upon any highway unless a clear and unobstructed width of no less than fifteen feet upon the roadway of such highway opposite such standing vehicle shall be left for the free passage of other vehicles thereon, nor unless a clear view of such vehicle may be obtained from a distance of two hundred feet in each direction along such highway.

(2) **PARKING ON STREETS.** (a) No person shall park, stop, or leave standing any vehicle, whether attended or unattended, upon any street unless parallel to the edge of the street, headed in the direction of traffic, on the right side of the street, and with the right wheels of the vehicle within twelve inches of the curb or edge of the street except as provided in paragraphs (b) and (c).

(b) Upon those streets which have been marked or signed for angle parking by official markers or signs, vehicles shall be parked at the angle indicated by such markers or signs.

(c) Upon one-way streets, local authorities may by ordinance designate parking upon the left side of the street instead of the right side or may permit parking on both sides.

(3) **STOPPING PROHIBITED IN SPECIFIED PLACES.** It shall be unlawful for the operator of a vehicle to stop, stand or park such vehicle in any of the following places, except when necessary to avoid conflict with other traffic or to comply with the directions of a traffic officer or traffic control sign or signal:

(a) Within an intersection of highways.

(b) On a crosswalk.

(c) Between a safety zone and the adjacent curb, or within fifteen feet of a point on the curb immediately opposite the end of a safety zone unless a different distance is clearly indicated by an official traffic sign.

(d) On a sidewalk or sidewalk area except as provided in subsection (7) of this section.

(e) Alongside or opposite any highway excavation or obstruction when such stopping, standing or parking would obstruct traffic or when pedestrian traffic would be required to travel in the roadway.

(f) Upon any portion of a hill or curve in the highway outside of a business or residence district.

(g) On the roadway side of any other parked vehicle unless such double parking is clearly indicated by markers or official traffic signs.

(4) **PARKING PROHIBITED IN SPECIFIED PLACES.** It shall be unlawful for the operator of a vehicle to park such vehicle in any of the following places except to comply with the directions of a traffic officer or traffic control signal or sign:

- (a) In a loading zone.
- (b) In an alley in a business district.
- (c) Within fifteen feet of the driveway entrance to a fire station or directly across the highway from such entrance.
- (d) Within ten feet of a fire hydrant unless a greater distance is indicated by an official traffic sign.
- (e) In front of a private highway or alley.
- (f) Upon the near side of a highway adjacent to a schoolhouse during the hours of 7:30 A. M. to 4:30 P. M. during school days except that local authorities may permit parking adjacent to high schools, colleges or universities.
- (g) Upon any portion of a highway right of way when such highway is properly designated by an official "No Parking" sign placed by the local authorities, or by the officer in charge of maintenance or by a traffic officer.
- (h) On a highway adjacent to the entrance to a school, church, theatre, hotel, hospital, or any other place of public assemblage during the hours designated by an official sign.
- (i) Closer than two feet to another vehicle when parking parallel to the edge of the highway.
- (j) Closer than fifteen feet to the near limits of a crosswalk.

(5) **PARKING VEHICLES FOR SALE PROHIBITED.** It shall be unlawful for any person to park upon any highway any vehicle displayed for sale.

(6) **TRAFFIC OFFICER MAY MOVE VEHICLE PARKED ON HIGHWAY.** Whenever any traffic officer shall find a vehicle standing upon a highway in violation of the provisions of this section, he is authorized to move such vehicle or to require the operator in charge thereof to move such vehicle to a position permitted under this section.

(7) **LOCAL AUTHORITIES MAY PERMIT PARKING OF VEHICLES ON CERTAIN SIDEWALK AREAS.** Local authorities may permit parking of vehicles on such sidewalk areas as they may designate.

(8) **DISABLED VEHICLES UPON HIGHWAY.** The provisions of this section shall not apply to the operator of any vehicle which is disabled while on the highway in such a manner or to such extent that it is impossible to avoid stopping or temporarily leaving such vehicle in such position.

(9) **PARKING OR STOPPING ON LEFT SIDE OF HIGHWAY.** No vehicle shall be parked or stopped on the left side of the highway except as provided in paragraphs (b) and (c) of subsection (2) of this section.

(10) **NO PARKING SIGNS ON PRIVATE PROPERTY.** No person shall, without the permission of the owner or lessee of any private property, leave or park any motor vehicle thereon, if there is in plain view on such property a "No Parking" sign. [1935 c. 214 s. 3; 1943 c. 445]

**Note:** Motorist leaving stalled automobile parked on highway at night without lights, resulting in approaching motorist tipping over in attempting to avoid collision, held negligent. *Engbrecht v. Bradley*, 211 W 1, 247 NW 451.

Temporarily stopping a truck on the roadway to enable the driver to ascertain the cause of a rumbling was not unlawful within (1) and (8), nor negligence constituting a cause of the collision, but stopping there for several hours could under the evidence be considered a violation of the statute and negligence constituting a proximate cause of the collision; such "stopping" including the failure to remove the truck from the roadway. *Walker v. Kroger G. & B. Co.*, 214 W 519, 252 NW 721.

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

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

Operator, permitting highway grader to stand on roadway while changing scarifier teeth, which would require 10 to 15 minutes, when it was practical to move it off roadway,

held contributorily negligent where grader was struck by truck. *Kassela v. Hoseth*, 217 W 115, 258 NW 340.

The driver of a loaded truck and trailer did not violate the parking statute, §5.19 (1), (8), in failing to pull the trailer off the concrete onto the shoulder and temporarily leaving the trailer standing on the highway, where the shoulder was wet so that the truck would lose traction, another turn of the wheel would have caused the wheels to come off, and the driver used all feasible means of securing other tires. *Scheffler v. Bartben*, 223 W 341, 269 NW 537.

Where the jury, by finding that the defendant was negligent in not removing his disabled truck from the highway, inferentially found that subsection (1) did not apply, it was not necessary for the jury to answer a question based on that provision, but the fact that the jury found that the position of the truck left less than fifteen feet of clear space opposite it was not prejudicial, since the position of the truck with reference to clear space opposite it was a factor in fixing the degree of the defendant's negligence in not removing it. Great diligence must be used to guard against collisions when disabled vehicles are standing on the highway. *Knauf v. Diamond Cartage Co.*, 226 W 111, 275 NW 903.

The facts which warranted the jury in finding that the driver of a truck was negligent in failing to remove his disabled truck from the highway are stated. The fact that subsection (8) was not called to the attention

of the jury was not prejudicial where no objection was made to the form of the verdict before it was submitted, and no request was made for an instruction relating to the subsection. *Knauf v. Diamond Cartage Co.*, 226 W 111, 275 NW 903.

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

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

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

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

85.19 (1) does not apply to every case of stopping on a highway, since 85.10 (30), defining "parking," excepts therefrom the stopping or standing of a vehicle on the highway for certain purposes. *Gast v. Dallmann*, 240 W 103, 2 NW (2d) 716.

Where the driver of an automobile, intending to turn left into a private highway, kept a position in the traffic lane immediately to the right of and next to the center of the highway, and there stopped to wait for the passage of cars coming from the opposite direction, he was properly complying with the requirements of 85.17 (2) and 85.18 (5), and his stopping was within the permission of 85.10 (30), so that the provision of 85.19 (1) was inapplicable. *Bauer v. Bahr*, 240 W 129, 2 NW (2d) 698.

Under the express terms of 85.19 (1), the "stopping" as well as the "parking" of a vehicle on the highway is within the inhibitions thereunder, so that stopping on the highway even though merely temporarily, may contravene the statute, if not within

the exceptions of 85.10 (30). *Guderyon v. Wisconsin Telephone Co.*, 240 W 215, 2 NW (2d) 242.

In applying 85.19 (1) prohibiting the parking of a vehicle on a highway without leaving a clear width of 15 feet on the "roadway" of the highway opposite the parked vehicle the highway shoulders are not to be included as part of the roadway, the word "roadway" being defined in 85.10 (21) (e) as that portion of the highway between the regularly established curb lines or "that portion which is commonly used by vehicular traffic." [*Long v. Steffen*, 194 W 179, and *United Paper Corp. v. Lietz*, 198 W 278, distinguished by differences in statutes involved.] *Guderyon v. Wisconsin Telephone Co.*, 240 W 215, 2 NW (2d) 242.

The mere fact that the truck was parked on the east half of the roadway so as to face south, instead of facing north, could not in and of itself be considered a cause of a collision between the parked truck and a car approaching on the east half of the roadway from the south. *Guderyon v. Wisconsin Telephone Co.*, 240 W 215, 2 NW (2d) 242.

Under (8), excusing noncompliance with the provisions in (1) (if a motor vehicle is disabled while on the highway in such a manner or to such extent that it is impossible to avoid stopping or temporarily leaving such vehicle in such position) the only thing that disables is inability of the vehicle to be moved by its own power. *Weir v. Caffery*, 247 W 70, 18 NW (2d) 327.

Stopping a motor vehicle on the roadway in violation of the parking statute, operates as a proximate cause of a collision with the stopped car by a car approaching from the rear, and likewise operates as a proximate cause of a collision of a car approaching the stopped car with an approaching car, or of a collision with an object on the highway caused by effort to avoid the approaching car. *Weir v. Caffery*, 247 W 70, 18 NW (2d) 327.

Under the requirements in (1) that a vehicle is to be parked off the highway where "practical," ability to remove a vehicle under its own power is not the test of practicality of removal but, instead, the practicality of removal involves the exercise of reasonable judgment and discretion in view of all the circumstances. *Kline v. Johannesen*, 249 W 316, 24 NW (2d) 595.

Traffic officer acting under (6) may only move vehicle to position permitted by law and may not order its removal to police station and charge cost of such moving to defendant. 27 Atty. Gen. 250.

(4) (f), does not conflict with (4) (h), and effect must be given to both provisions. Extent of highway area adjacent to entrances of places of public assemblage in which parking may be prohibited at designated times by local officials under (4) (h) is discretionary and may be reasonably adjusted to meet varying conditions. 32 Atty. Gen. 112.

**85.20 What to do on approach of emergency vehicles.** (1) **VEHICLES.** Upon the approach of any authorized emergency vehicle giving audible signal by siren, the operator of every other vehicle shall immediately operate the same to a position as near as possible and parallel to the right-hand edge or curb of the roadway, clear of any intersection of highways, and shall stop and remain in such position unless otherwise directed by a traffic officer, until such authorized emergency vehicle shall have passed.

(2) **STREET CARS.** Upon the approach of any authorized emergency vehicle giving audible signal by a siren, the operator of every street car shall immediately stop such car clear of any intersection and keep it in such position until the authorized emergency vehicle shall have passed, unless otherwise directed by a traffic officer.

**85.21 Following emergency vehicle prohibited.** It shall be unlawful for the operator of any vehicle other than one on official business to follow any authorized emergency vehicle in response to a call or alarm, closer than five hundred feet, or to drive into or park any such vehicle within the block where fire apparatus has stopped in response to an alarm.

**85.215 Rent-a-car, indemnity bond.** (1) No person, firm or corporation shall for compensation rent any motor vehicle to be operated by or with the consent of the person renting the same, unless there shall be filed with the motor vehicle department a good and

sufficient bond or policy of insurance issued by a company or exchange organized under the laws of the state of Wisconsin, or duly authorized to transact business therein, which shall provide that the company or exchange issuing the same shall be liable to the person sustaining injury or damage to property, and shall pay all damages for injuries to persons not exceeding five thousand dollars for any one accident, or damages to property not exceeding one thousand dollars for any one accident due to the negligent operation of such motor vehicle.

(2) Any person, firm or corporation failing to comply with the provisions of this section shall be directly liable for all damages to persons or property caused by the negligence of the person operating such rented vehicle, to the extent that such liability could be established if this section had been complied with. [1931 c. 473; 1939 c. 410]

**Note:** This section in the statutes of 1929 violates the state federal constitution because it is an unlawful discrimination against residents of cities. There is no valid basis for such discrimination or classification. *Watts v. Rent-A-Ford Co.*, 205 W 140, 236 NW 521. damages from negligent operation thereof, imposes no obligation on a corporation renting a car in another state. *Carroll v. Minneapolis Drive Yourself System*, 206 W 237, 239 NW 501.

This section requiring those renting cars for compensation to file a bond covering

Violation of 85.215 (1) may be punished under 85.91 (1) regardless of civil liability imposed by 85.215 (2). 30 Atty. Gen. 27.

**85.216 Liability for damages by foreign rent-a-cars.** (1) Whenever any motor vehicle rented for compensation outside the state shall be operated in this state, the lessor of such motor vehicle shall be directly liable for all damages to person or property caused by the negligence of the person operating such rented vehicle for which such operator is liable, unless at the time when said injury or damage occurs the operation of the motor vehicle is effectively covered by a policy of insurance which shall provide that the insurer shall be liable for said damages to all persons suffering personal injury or death as a result of said negligence in an amount not exceeding \$5,000 for any one accident and for all of said damages to property caused by such negligence not exceeding \$1,000 in any one accident. The amount of liability imposed upon the lessor by this section shall not exceed \$5,000 for personal injury or death in any one accident or \$1,000 for damage to property in any one accident. The fact that the rented vehicle is operated in this state contrary to any understanding or agreement with the lessor shall not be a defense to any liability imposed by this section.

(2) In the event a motor vehicle rented for compensation outside the state is operated in this state, the lessor of said vehicle shall be deemed to have made an irrevocable appointment of the commissioner of the motor vehicle department as said lessor's agent or attorney binding upon any executor, administrator, personal representative, successors or assigns of said lessor, for the service of all legal process in any legal action or proceeding against said lessor or his executor, administrator, personal representative, successor or assigns growing out of the operation of said rented motor vehicle in this state, and the operation of said rented motor vehicle in the state of Wisconsin shall be a signification of said lessor's agreement that said legal process may be served upon him or his executor, administrator, personal representatives or assigns as herein provided and that when so served shall have the same legal force and validity as if personally served in this state on the lessor or his executor, administrator, personal representative, successors or assigns: Service of such legal process shall be made on the commissioner of the motor vehicle department in the same manner as provided in section 85.05 (3). Nothing contained in this section shall be deemed to negative the right to serve legal process on a nonresident operator of said rented motor vehicle as provided in section 85.05 (3) and (4).

(3) It is the intent of the legislature that the provisions of this section are separable and if any provision shall be held unconstitutional, such decision shall not affect the remainder of this section. [1947 c. 149, 601]

**85.22 Conduct at safety zones.** (1) **DRIVING THROUGH SAFETY ZONES PROHIBITED.** The operator of any vehicle shall not at any time operate through or over a safety zone when such safety zone is clearly indicated.

(2) **PASSING SAFETY ZONES.** The operator of any vehicle may pass on either side of a safety zone upon those highways having two street railway tracks, or upon one-way highways.

**85.23 Vehicles not to be driven upon sidewalk or sidewalk area.** The operator of a vehicle shall not operate his vehicle upon any sidewalk area except at a permanently or temporarily established driveway, unless permitted to do so by the local authorities.

**85.24 Races, speed or endurance contests prohibited.** No person shall participate in any race or speed or endurance contest with a motor vehicle upon any highway.

**85.25 Driving through funeral processions prohibited.** It shall be unlawful for the operator of any vehicle or street car to operate a vehicle between the vehicles compris-

ing a funeral procession as provided in subsection (6) of section 85.18, except when authorized to do so by a traffic officer.

**85.26 Use of coasters, roller skates, and similar devices restricted.** It shall be unlawful for any person upon roller skates or riding in or on a roller coaster, toy vehicle, hand sled, toboggan or similar device to go upon any roadway except while crossing a roadway at a crosswalk.

**85.27 Clinging to moving vehicles.** It shall be unlawful for any person riding upon a bicycle, motor cycle, coaster sled, roller skates, toboggan, toy vehicle or any other similar vehicle or device to cling to or attach himself or his vehicle to any other moving vehicle or street car upon a highway.

**85.28 Operating on street car tracks.** (1) **MID-BLOCK.** It shall be unlawful for the operator of any vehicle proceeding upon any street car tracks in front of a street car, upon any highway, to fail to remove such vehicle from the tracks as soon as practicable after signal from the street car operator.

(2) **INTERSECTION.** When a street car has started to cross an intersection, it shall be unlawful for the operator of any vehicle to operate upon or across the car tracks within the intersection in front of the street car.

**85.29 Throwing or placing missiles or circulars in vehicles prohibited.** No person shall throw any missile, circulars or pamphlets at the occupants of any vehicle or throw or place any missile, circular or pamphlet in or on any vehicle whether the vehicle is occupied or not.

**85.30 Placing of material injurious to tires or vehicles upon highways prohibited.** It shall be unlawful for any person to place or cause to be placed upon a highway any foreign substance which is or may be injurious to or damaging to any vehicle or any part thereof.

**Note:** Under the applicable definitions in 85.10 (21) (a) and (e) the place where the defendant broke a glass bottle on the entrance to an alley—all of the entrance to the alley from the paved roadway of the street, on which the alley opened, to a point beyond the place where the bottle was broken, lying within the exterior limits of the street as laid out and dedicated on the plat, and being paved and available for vehicular travel—constituted a "highway" within 85.30, making it an offense to place on a "highway" any foreign substance injurious or damaging to vehicles. *Poyer v. State*, 240 W 337, 3 NW (2d) 369.

**85.31 Limitations on backing.** The operator of a vehicle shall not back the same unless such movement can be made in safety, and it shall be unlawful for any operator to back his vehicle into an intersection of highways upon which complete turns are prohibited, for the purpose of making such complete turn.

**85.32 Distance between vehicles.** (1) **FOLLOWING TOO CLOSELY.** The operator of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon and the condition of the highway.

(2) **DISTANCE BETWEEN SLOW MOVING VEHICLES.** The operator of any slow moving vehicle when operating upon a highway outside of a business or residence district shall not follow another slow moving vehicle within three hundred feet, but this provision does not prevent one slow moving vehicle overtaking and passing another nor does it apply to funeral processions.

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

**85.33 Trucks to display signals while being towed.** All trucks, while being towed upon any highway, shall display a red flag from the rear during the daylight hours.

**85.34 Obstruction of operator's view or driving mechanism.** (1) **ILLEGAL TO OPERATE SUCH VEHICLE.** It shall be unlawful for the operator of any vehicle to operate the same when it is so loaded or when there are in the front seat such a number of persons, or any person so situated, as to obstruct the view of the operator to the front or to the sides, or to interfere with the operator having free use of both hands and feet to the operating mechanism or controls of the vehicle.

(2) **ILLEGAL RIDING.** It shall be unlawful for any passenger in a vehicle or street car to ride in such a position as to interfere with the operator's view ahead or to the sides or to interfere with the operator's control of the operating mechanism of the vehicle.

(3) **ONE ARM DRIVING.** No person while operating a motor vehicle shall be so engaged as to interfere with the safe operation of such vehicle. (14)

**85.35 Windshields and windows.** (1) **SIGNS ON WINDSHIELD AND WINDOWS PROHIBITED.** It shall be unlawful for any person to operate any vehicle upon a highway with

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any sign, poster or other nontransparent material upon the front windshield, side wings, side or rear windows of such motor vehicle other than a certificate or other paper required to be so displayed by law.

(2) **WINDSHIELD WIPERS, MOTOR VEHICLES TO BE EQUIPPED WITH.** Every windshield on a motor vehicle shall be equipped with a device for cleaning rain, snow or other moisture from the windshield and such device shall be so constructed as to be controlled or operated by the operator of the vehicle.

(3) **WINDSHIELD AND WINDOWS TO BE KEPT CLEAN.** The windshield, side wings and windows of all motor vehicles shall be kept reasonably clean at all times.

**85.355 Certain coloring prohibited.** No owner of any vehicle using the public highway for purposes other than the transportation of school children shall paint or in any way designate his vehicle in the manner described in section 40.347. Any person, firm or corporation violating this section is guilty of a misdemeanor and shall be punished by a fine not to exceed one hundred dollars or by imprisonment in the county jail not to exceed thirty days, or by both such fine and imprisonment. [1939 c. 237]

**85.36 Prevention of noise and smoke.** No person shall operate a motor vehicle upon any highway unless such motor vehicle is equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke.

**85.37 Muffler cut-out illegal.** It shall be unlawful to use a muffler cut-out on any motor vehicle upon a highway excepting authorized emergency vehicles.

**85.38 Spilling loads.** No vehicle shall be operated or moved on any highway unless such vehicle is so constructed and loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping therefrom.

**Note:** The mere violation of this section, escaping therefrom, and punishable as a misdemeanor, does not constitute "gross negligence." *Dach v. General Casualty Co.*, 241 W 34, 4 NW (2d) 170.

**85.39 Illegal riding.** (1) **UNLAWFUL TO OPERATE VEHICLE WITH PERSONS ON OUTSIDE OF VEHICLE.** It shall be unlawful for the operator of any vehicle to operate the same when any person is upon any portion thereof not designed or intended for the use of passengers when such vehicle is in motion.

(2) **UNLAWFUL TO RIDE ON OUTSIDE OF VEHICLE.** It shall be unlawful for any person to ride on any street car or vehicle upon any portion thereof not designed or intended for the use of passengers when the vehicle is in motion. This provision does not apply to an employe engaged in the necessary discharge of his duty nor to persons riding within truck bodies in space intended for merchandise.

(3) **LEADING ANIMALS FROM MOTOR VEHICLES PROHIBITED.** It shall be unlawful for any person to lead any animal upon a highway from a motor vehicle, trailer or semitrailer.

**85.40 Speed restrictions.** (1) Except as otherwise provided in this section, the speed of any vehicle shall not be in excess of the following:

(a) 25 miles per hour in any business or residence district.

(b) 35 miles per hour in outlying districts within any city, village or unincorporated village where on each of both sides of the highway there is an average distance of not less than 500 feet between buildings fronting thereon.

(c) 15 miles per hour when passing a schoolhouse at those times when children are going to or from school or are playing within the sidewalk area at or about the school.

(d) 15 miles per hour when passing an intersection properly marked with a "School Crossing" sign of a type approved by the state highway commission when children are crossing or are about to cross the highway.

(e) 15 miles per hour when passing a safety zone.

(f) 15 miles per hour when meeting or overtaking any school bus stopped outside the corporate limits of any city or village for the purpose of receiving or discharging school children.

(2) (a) At all other locations not enumerated in subsection (1), no person shall operate a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing. In every event the speed of the vehicle shall be so controlled as may be necessary to avoid colliding with any object, person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and using due care.

(b) The operator of every vehicle shall, consistent with the requirements of paragraph (a), operate at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway,

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when passing school children or other pedestrians, and when special hazard exists with regard to other traffic or by reasons of weather or highway conditions.

(c) The speed of all vehicles equipped with metal or solid rubber tires shall not exceed 15 miles per hour.

(3) (a) Whenever the state highway commission with respect to the state trunk highway system, and the local authorities with respect to highways under their jurisdiction, shall determine upon the basis of an engineering and traffic investigation that any speed limit hereinbefore set forth, except in subsection (1) (c), (d), (e) and (f), or the actual speed of vehicles on such highways, is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a highway, said commission and local authorities may determine and declare a reasonable and safe speed limit thereat, which shall be effective at all times, or at such times as may be determined and indicated by appropriate signs giving notice thereof. The speed limits determined as the result of such engineering surveys shall be applicable to not more than 2,000 miles of state trunk highways.

(b) Local authorities may increase speed limits as provided by this section, but may not decrease speed limits set forth in subsection (1) (a) and (b), nor establish speed limits at any location set forth in subsection (2) without the approval of the state highway commission, nor shall signs giving notice thereof be erected before such approval.

(c) All speed limit signs erected under the provisions of this section shall be of a type approved by the state highway commission.

(d) No liability shall attach to the state highway commission nor to the local authorities by reason of the posting of a speed limit under this section, nor shall such posting constitute a guarantee that it is reasonable and safe under all conditions.

(f) Local authorities shall place and maintain upon all highways where the permissible speed is increased or decreased by them in the manner provided in this subsection, standard signs giving notice of such speed.

(g) For the purposes of this section, the term local authorities shall mean county boards with respect to county trunk highways, town boards with respect to town highways, village boards with respect to village streets and city councils with respect to city streets.

(4) (a) The sheriff, chief of police, or clerk of the court having jurisdiction of violations of this section is authorized to receive at his office from any person who shall have been accused of violation of this section or any county ordinance enacted by authority of chapter 85, and who has been arrested therefor, a deposit in money not to exceed the amount of the maximum penalty, the imposing of which in such case may be authorized, and to release such person from arrest until the opening of the court having jurisdiction of such violation on the next succeeding day when such court may be in session, or until a time which may be fixed for the hearing of the case.

(b) In case the person so arrested and released shall fail to appear, personally or by an authorized attorney or agent, before said court at the time fixed for the hearing of the case, then the money deposited with the sheriff or clerk shall be retained and used for the payment of the penalty, which may be imposed after an ex parte hearing upon such person so arrested and depositing the same, together with the costs; and the surplus, if any there be, shall be refunded to the person who made such deposit upon his application; in case such person is acquitted, then the whole amount of such deposit shall be refunded to said depositor upon application.

(c) The provisions of paragraphs (a) and (b) shall not be construed so as to make the county or municipality in any case liable for the whole or any part of the money deposited with such sheriff, chief of police, or clerk of court.

(5) The speed limitations set forth in this section shall not apply to authorized emergency vehicles when responding to emergency calls and the operators thereof sound audible signal by siren or exhaust whistle, and when such emergency vehicle is equipped with at least one lighted lamp exhibiting red light visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle. This provision shall not relieve the operator of an authorized emergency vehicle from the duty to operate with due regard for the safety of all persons using the highway, nor shall it protect the operator of any such vehicle from the consequence of a reckless disregard of the safety of others. [1931 c. 213 s. 1; 1933 c. 352; 1939 c. 407; 1943 c. 376, 414, 433; 1945 c. 554; 1947 c. 407, 483, 614]

**Note:** Motorist approaching an intersection may rightfully proceed if he can see a sufficient distance to ascertain that anyone coming from beyond at a lawful rate will not interfere. The limitation of 15 miles per hour at an intersection (85.08 (2), Stats. 1927) creates a presumption in favor of a

motorist traveling more slowly. *Olk v. Marquardt*, 203 W 479, 234 NW 723.

An instruction that a collision occurred in a "business district" of an unincorporated village as defined by 85.10 (28), and that a speed in excess of 15 miles an hour was therefore unlawful under 85.40 (6), Stats.

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1929, is error, there being no evidence as to the amount of frontage occupied by the 4 or 5 business places within 300 feet of the place of collision, and the jury being thereby required under the evidence to find the defendant negligent. *Spice v. Kuxman*, 206 W 293, 239 NW 497.

Motorist tipping over in attempting to avoid collision with automobile parked on highway at night without lights, held contributorily negligent in failing to keep sufficient lookout and control of car. *Engelbrecht v. Bradley*, 211 W 1, 247 NW 451.

A driver of a truck, involved in a fatal head-on collision with an automobile at the top of a hill on a graveled road 17 feet in width, was not free from negligence as a matter of law where he approached the top of the hill, at 35 miles per hour, from which the jury might properly infer that he was unable to stop his truck within one-half the distance he could see ahead, as required by 85.40 (5), Stats. 1937, and where he was driving in the traveled tracks in the middle of the road when he reached the top of the hill, and thus was not keeping to the right of the center of the road, as required by 85.15 (1). *Schulz v. General Casualty Co.* 233 W 118, 288 NW 803.

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

A proper instruction to the jury on the question of speed outside of municipalities under 85.40 (1) and (4) [Stats. 1939] is "that no statute limits speed to a stated number of miles per hour." *Eberdt v. Muller*, 240 W 341, 2 NW (2d) 367.

Where the defendant, aware that a car was following him somewhere in the rear, followed a car ahead at a safe distance, slowed down when the car ahead slowed down, and, not passing because he believed a car was approaching from the opposite direction, brought his car to a stop a distance of 15 or 20 feet to the rear of the car ahead when that car was practically stopped, and the driver of the car behind, which had defective brakes, noticed for some distance that the defendant's car was slowing down, and the car behind was 50 or 60 feet to the rear when the defendant's brake lights went on, the evidence did not sustain the jury's

finding to the effect that the defendant brought his car to a sudden and unexpected stop and was causally negligent in so doing. [85.40 (1), Stats. 1939] *Cole v. Phephles*, 241 W 155, 5 NW (2d) 755.

On a preliminary examination of a motorist whose car struck and killed a young girl, who was either walking along the edge of the concrete highway with a young companion or was starting across the road, the evidence, in view of the commonly known traits of children of such age as to heedlessness when playing together or engaged in conversation, justified a finding of reasonable probability of the defendant's guilt of unlawful operation of a vehicle on the highway, in violation of 85.40 (1), Stats. 1941, in respect to driving carelessly and heedlessly or without due caution and circumspection, or so as to be likely to endanger life or limb, or without due regard to the traffic and other existing conditions. *State ex rel. Shields v. Portman*, 242 W 5, 6 NW (2d) 713.

Under (1), Stats. 1945, making it unlawful to operate a vehicle on a highway carelessly or heedlessly or without due caution or without due regard to the traffic and other existing conditions, the common-law rule required that the driver of an automobile on an arterial highway, as he neared an intersection formed by a side road leading off to his right, with his view ahead obstructed as he approached the crest of a grade, should be maintaining a speed such that he could stop in time to avoid injury to the driver of a car approaching from the opposite direction who might with due care be negotiating a left turn onto the side road. *Zigler v. Kinney*, 250 W 338, 27 NW (2d) 433.

85.40 (4), Stats. 1945, providing that in traversing intersections the speed of a vehicle shall not be greater than that in which it can be stopped within one half the distance the driver can see approaching traffic, expressly excepts a driver on an arterial highway where a driver on an intersecting road is compelled to stop before entering the intersection, and hence does not apply to a driver on an arterial highway where a stop sign is posted on the side road and a driver on that road is therefore required by 85.69 to stop. *Zigler v. Kinney*, 250 W 338, 27 NW (2d) 433.

Town officers having right to arrest for misdemeanors may arrest violators of speed laws on highways on Indian reservation who are not tribal Indians. 27 Atty Gen. 34.

If speed in excess of 35 miles per hour on particular highway is such as to endanger property, life or limb, prosecutions may be had under 85.40 (1), Stats. 1937. 27 Atty Gen. 625.

**85.41 Speed limitations on bridges and viaducts.** (1) **SPEED LIMITATIONS ON BRIDGES, CAUSEWAYS, VIADUCTS OR STRUCTURES.** The state highway commission upon request from any county highway committee or local authority shall, or it may upon its own initiative, conduct an investigation of any bridge, causeway, viaduct or structure or any highway, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speeds otherwise permitted under this section, the commission shall determine and declare the maximum speed of vehicles which such structure can withstand and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of one hundred feet before each end of such structure. The findings and determination of the commission shall be conclusive evidence of the maximum speed which can be maintained with safety to any such structure.

(2) **UNLAWFUL TO EXCEED SPEED LIMITATIONS ON BRIDGES, CAUSEWAYS, VIADUCTS OR STRUCTURES.** It shall be unlawful to operate any vehicle upon any structure mentioned in subsection (1) at a speed which is greater than the maximum speed which can be maintained with safety thereto when such structure is sign-posted as provided in said subsection.

**Note:** A motorist driving on a viaduct at a speed in excess of that permissible under 85.41 (2) and traversing a grade at a speed in excess of that permissible under 85.40 (5) because of the limited view existing, was negligent as a matter of law. *Kitter v. Leonard*, 235 W 411, 291 NW 814.

[85.42 Stats. 1945 repealed by 1947 c. 407]

[85.43 Stats. 1945 repealed by 1947 c. 407]

85.44 Pedestrian regulations. (1) PEDESTRIAN RIGHT OF WAY. The operator of any vehicle shall yield the right of way to a pedestrian crossing the highway within any marked or unmarked crosswalk at an intersection except at those intersections where the movement of traffic is being regulated by traffic officers or traffic control signals.

(2) PEDESTRIAN RIGHTS AND DUTIES AT CONTROLLED INTERSECTIONS. At intersections where traffic is controlled by traffic control signals or by traffic officers, operators of vehicles shall yield the right of way to pedestrians crossing or those who have started to cross the highway on a green or "GO" signal and in all other cases pedestrians shall yield the right of way to vehicles lawfully proceeding directly ahead on a green or "GO" signal.

(3) PEDESTRIANS ON DIVIDED HIGHWAYS. Upon the intersections of divided highways, or highways provided with safety zones where in either case, traffic is controlled by traffic control signals or by traffic officers, the pedestrian shall have the right of way only on that portion of the highway between the highway limits and the spaces not used by traffic or safety zone.

(4) PEDESTRIAN RIGHT OF WAY FORFEITED WHEN JAY WALKING. Every pedestrian crossing a highway at any point other than a marked or unmarked crosswalk shall yield the right of way to vehicles upon the highway.

(5) PEDESTRIANS ON SIDEWALKS. Pedestrians upon any sidewalk shall have the right of way over all vehicles crossing such sidewalk.

(6) PEDESTRIANS TO WALK ON LEFT SIDE OF HIGHWAY. Pedestrians using those highways not provided with sidewalks shall travel on and along the left side of such highway and the pedestrian, upon meeting a vehicle shall, if practicable, step off the traveled roadway.

(7) SOLICITING RIDES UNLAWFUL. It shall be unlawful for any person to be in the roadway for the purpose of soliciting a ride from the operator of any private vehicle.

(8) ALIGHTING FROM OR BOARDING MOVING STREET CARS OR VEHICLES PROHIBITED. It shall be unlawful for any person to alight from or board any street car or vehicle when such street car or vehicle is in motion.

(9) STANDING OR LOITERING ON ROADWAY PROHIBITED. No person shall stand or loiter on any roadway other than in a safety zone if such act interferes with the lawful movement of traffic. [1931 c. 372 s. 1]

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

Whether (6) requires a pedestrian to walk only on the left side of a narrow country highway on pain of being held guilty of contributory negligence as a matter of law if not so traveling is doubted. *Leckwe v. Ritter*, 207 W 333, 241 NW 339.

In an action for injuries to a pedestrian run down by an automobile, a nonsuit was improper under evidence from which a jury could have found that it was not "practicable" for the plaintiff to step off the traveled roadway on meeting a vehicle, within the meaning of (6). *Tillier v. Swette*, 207 W 373, 241 NW 341.

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

Pedestrian who failed to maintain such lookout as was reasonably necessary to enable her to yield right of way to approaching car while crossing street at place other than on crosswalk was contributorily negligent as matter of law. *Brewster v. Ludtke*, 211 W 344, 247 NW 449.

The decedent when attempting to recover his cap which had been thrown from the car in which he was riding ran back along the highway about two hundred feet, and while picking up his cap from the center of the highway where it finally lighted, was fatally

injured by a car which followed him as he ran to the cap. The question of decedent's contributory negligence was for the jury. This statute was not intended in any way to interfere with one's rights to recover property which accidentally gets into the highway. Under such circumstances the conduct of the actors must be regulated by the rules of ordinary care. *Bump v. Voights*, 212 W 256, 249 NW 568.

An infant pedestrian who made an observation of traffic before entering a city street intersection with the traffic lights in his favor, and another observation when he reached the center of the street, but who failed to see a truck until immediately before it struck him, although it was approaching in plain view within two hundred feet at the time of his first observation, was not guilty of contributory negligence, as a matter of law, for failure to keep a proper lookout, in view of (2), giving a pedestrian the right of way in all cases where he has started to cross on the "Go" signal, and \$5.75 and \$5.12 (3), dealing with a similar right. A pedestrian who crosses a busy street with the signal lights in his favor is entitled to entertain some feeling of security that his right to cross will not be contested by those to whom the traffic signals have closed the highway, and that others will respect the right of way given him by the statute. *Baumann v. Eva-Caroline H. Laundry*, 213 W 78, 250 NW 773.

Statutes requiring operator of any vehicle to yield right of way to pedestrian crossing highway within crosswalk at intersection do not require operator of street car to yield right of way to prospective passenger crossing street car track at intersection. *Peters v. Milwaukee E. R. & L. Co.*, 217 W 481, 259 NW 724.

Pedestrians crossing a highway elsewhere than at a crosswalk must yield the right of way to vehicles, and a pedestrian violating such absolute duty is negligent as

a matter of law. Subsection (4), providing that "at intersections" where traffic is controlled by signals or by officers, operators of vehicles shall yield the right of way to pedestrians crossing on the "Go" signal, is inapplicable to a pedestrian crossing at a distance of twenty-five feet or more from an intersection, and, in any event, would be controlled by (4), requiring pedestrians to yield the right of way when crossing elsewhere than at a crosswalk. *Engstrum v. Sentinel Co.*, 221 W 577, 267 NW 536.

Upon the undisputed evidence plaintiff was negligent in failing to comply with 85.44, which requires a pedestrian crossing a street at a point other than a crosswalk to yield the right of way to operators of motor vehicles. It is perfectly plain, upon his own testimony, that plaintiff did not do this. He was also negligent in failing to maintain a proper lookout. The defendant's car, whether its lights were in operation or not, was in plain view for a distance of at least a block, and plaintiff either did not look or did not see what was plainly visible. *Besser v. Hill*, 224 W 211, 271 NW 921.

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

Walking on the right shoulder of a paved highway is not negligent and is not forbidden by the statute. *Kaminski v. Standard Oil Co.*, 231 W 582, 286 NW 327.

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

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

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

**85.45 The size, weight, construction and equipment of vehicles.** (1) SCOPE AND EFFECT OF REGULATIONS IN THIS SECTION. The maximum limitations on width, length, height and weight of vehicles, imposed in this chapter, shall apply to the vehicle and load. It shall be unlawful for any person to operate or move or for the owner to cause or permit to be operated or moved on any highway any vehicle of a size or weight so loaded that the combination of vehicle and load shall exceed the limitations stated in this chapter or any vehicle which is not constructed or equipped as required by this chapter or by the rules and regulations adopted pursuant thereto; and the maximum size and weight of vehicles specified in this chapter shall be lawful throughout this state and local authorities shall have no power or authority to alter said limitations except as express authority may be granted in this chapter.

(2) SIZE OF VEHICLES. (a) No vehicle including any load thereon shall exceed a total outside width of 8 feet, except that the width of a farm tractor shall not exceed 9 feet and that the limitations as to the size of vehicle stated in this section shall not apply to implements of husbandry temporarily propelled or moved upon the highway or to those vehicles operating under special permits issued in accordance with section 85.53; and except further that such total width of motor trucks operated prior to July 1, 1929, on solid tires shall not exceed 8 feet 6 inches when equipped with dual pneumatic tires; and except

The plaintiff, crossing the street at a point other than a crosswalk, was negligent as a matter of law in failing to yield the right of way to the automobile which struck him, even if he had reached the marked center line of the street when struck, since the fact that a pedestrian has reached the marked center line of a street does not lessen his absolute duty, under 85.44 (4) to yield the right of way to vehicles. *Post v. Thomas*, 240 W 519, 3 NW (2d) 344.

Where a pedestrian, although starting to cross the street on the "go" sign at the intersection, was crossing at a place other than the crosswalk and thereby forfeited any right of way that she had over approaching vehicles if she had been on the crosswalk, the jury could find, under the evidence, that the pedestrian was negligent for not yielding the right of way to the defendant's automobile which struck her. *VanLydegraf v. Scholz*, 240 W 599, 4 NW (2d) 121.

Where the movement of traffic at the intersection involved was not regulated by traffic officers or by traffic signals, if a pedestrian crossing the street was on the crosswalk when struck by the defendant's truck, the defendant's driver was negligent as a matter of law under (1) in respect to yielding the right of way, but if the pedestrian was not on the crosswalk when struck, the pedestrian was negligent as a matter of law under (4) in respect to yielding the right of way, and hence the jury's findings that both parties were negligent in respect to yielding the right of way were inconsistent, requiring a new trial where there was a jury question whether the pedestrian was on the crosswalk when struck and no such question was submitted. *Smith v. Superior & Duluth Transfer Co.*, 243 W 292, 10 NW (2d) 153.

Although (4) places on a pedestrian crossing a street at a place other than a crosswalk the duty of yielding the right of way to a motor vehicle traveling on the street, a pedestrian so crossing is not barred from recovery for injuries as a matter of law if he was unconscious at the time of being struck by an automobile, since one who is unconscious cannot take the action necessary to yield the right of way and cannot be held responsible for the nonperformance of an act that is impossible for him to perform. *Kleiner v. Johnson*, 249 W 148, 23 NW (2d) 467.

Under (6) requiring a pedestrian using a highway, not provided with sidewalks, to travel on the left side, a pedestrian walking on a portion of the highway open to vehicular traffic, must walk on the left side of the highway or be found guilty of negligence, as a matter of law, whether the road be wide or narrow, and whether this increases or diminishes the danger to the pedestrian. *Panzer v. Hesse*, 249 W 340, 24 NW (2d) 613.

further that the total width of urban passenger busses, busses operated as auxiliary to or as a part of a street railway system in counties of 500,000 population or more and trackless trolleys shall not exceed 8 feet 8 inches, and the total width of load of pulp wood shall not exceed 8 feet 4 inches.

(b) The over-all length of a vehicle shall not exceed 35 feet. The over-all length of a semitrailer shall be measured from the rear thereof to the rear of the vehicle to which it is attached.

(c) No motor vehicle shall be driven upon any highway drawing or having attached thereto more than one other vehicle, and in no case shall the over-all length of such combination of vehicles exceed forty-five feet except as provided in subsection (3) of this section.

(d) The maximum over-all height of any motor vehicle, trailer or semitrailer shall not exceed twelve feet six inches, except as provided by section 85.53. The limitation of total height in this paragraph shall not be construed as requiring a clearance of such height or as relieving the owners of vehicles not exceeding such total height from liability for any damage.

(3) PERMITS FOR TRAILER TRAINS. The commissioner of public works of any city of the first class or in other units of government the officer in charge of the maintenance of the highway desired to be used, is authorized to issue permits for the operation of trains consisting of truck tractors, tractors, trailers, semitrailers or wagons when such train does not exceed a total length of one hundred feet on such highways as may be designated in the permit. When highways outside of the corporate limits of cities and villages are used, such permit shall have the approval of the state highway commission. Whenever a trailer train operating under this subsection or under a special permit crosses an intersection of an artery for through traffic or a street railway, such intersection shall be flagged. This subsection does not apply to wagons used in connection with seasonal agricultural industries.

(4) LIGHT EQUIPMENT FOR TRAILER TRAINS. Trains operating under subsection (3) of this section shall carry in addition to the lights prescribed by sections 85.06 and 85.07 and by the existing ordinances of the municipalities in which they are operating, a red light or approved reflective signal on each side of each trailer so placed as to make the trailer visible from all sides.

(5) INFLAMMABLE LIQUIDS, TRANSPORTATION. It shall be unlawful to transport in or on any motor vehicle, trailer or semitrailer upon the public highways any gasoline, naphtha, benzine, fuel oil, crude oil, kerosene or other inflammable liquids, which are herein defined as any liquid which gives off inflammable vapors as determined by flash point by Tagliabue's open cup tester, as used for tests of burning oils at or below a temperature of 80 degrees Fahrenheit, except by tank mounted on, or attached to, or structurally a part of, a motor vehicle, trailer or semitrailer plainly marked so as to show that inflammable substances or liquids are being transported therein. This subsection shall not apply to transportation by the consumer of the liquids here referred to, as freight only, from the place of purchase to the place of consumption, provided such liquids are transported in drums or other containers having a capacity of not more than 100 gallons each, and provided further that the total amount of said liquids so transported in said drums or containers in any one vehicle or combination of vehicles, shall not exceed 500 gallons. [1931 c. 369; 1933 c. 249; 1933 c. 297 s. 1, 2; 1935 c. 382; 1941 c. 76, 233; 1943 c. 38, 403, 412, 545; 1945 c. 385; 1947 c. 483]

**Revisor's Note, 1947:** By ch. 483, laws of 1947, 85.45 (5) as amended by ch. 545, laws of 1943, becomes effective April 1, 1949. It will then read as follows:

(5) It shall be unlawful to transport in or on any motor vehicle, trailer or semitrailer upon the public highways any gasoline, naphtha, benzine, fuel oil, crude oil, kerosene or other inflammable liquids, which are herein defined as any liquid which gives off inflammable vapors as determined by flash point by Tagliabue's open cup tester, as used for tests of burning oils at or below a temperature of 80 degrees Fahrenheit, except by tank mounted on, or attached to, or structurally a part of, a motor vehicle, trailer or semitrailer plainly marked so as to show that inflammable substances or liquids are being transported therein and except that deliveries of such inflammable substances or liquids in excess of 2,000 gallons shall be made only to bulk plants or consumer terminals having bulk plant facilities. Service stations and filling stations selling or distributing inflammable liquids at retail shall not be considered bulk plants. This subsection shall not apply to transportation by the consumer of the liquids here referred to, as freight only, from the place of purchase to the place of consumption, provided such liquids are transported in drums or other containers having a capacity of not more than 100 gallons each, and provided further that the total amount of said liquids so transported in said drums or containers in any one vehicle or combination of vehicles shall not exceed 500 gallons.

**Note:** In a prosecution for violating (2) (b) regulating the over-all length of vehicles on highways, a stipulation that a combination of truck and semitrailer actually used was safer than that permitted by the statute was not binding on the court, and, at most, the stipulation and the testimony upon which it was based could be considered only in determining whether the statute has reasonable relation to safety. The statute, applying equally to both interstate and intrastate commerce, is not unconstitutional as imposing an unreasonable burden upon interstate commerce without necessity from

the standpoint of safety; neither does it violate the due process or equal protection of the law clauses of the federal or state constitutions. Nor are its provisions, or those of 85.53, exempting certain classes of vehicles under specified conditions from the limitation of length, unreasonable or discriminatory within such constitutional provisions. The power vested in the highway commission and municipal officers to issue permits for operating trains of vehicles under special circumstances is not unconstitutional, such power being administrative rather than legislative and discretionary rather than arbitrary power being thereby vested. *State v. Wetzel*, 203 W 603, 243 NW 768.

Exception contained in (2) (a) exempts farmer from eight-foot load width restrictions in hauling loose hay or straw or like

in ordinary farming operations where temporary use is made of highway. 28 Atty. Gen. 311.

Wagon or trailer temporarily propelled by farm tractor and engaged exclusively in transporting agricultural commodities over highways is not necessarily "implement of husbandry" within meaning of (2) (a) unless its operation is incidental to and part of farming operations. 30 Atty. Gen. 312.

Combination of motor vehicle drawing or having attached thereto more than one other vehicle is prohibited by (2) (c), unless permit granted under (3). Granting of permit is to be controlled by considerations of public safety on the highway, rather than convenience to operator or economy of operation. 34 Atty. Gen. 244.

**85.46 Gross weight of vehicles.** (1) CLASSIFICATION OF HIGHWAYS FOR VEHICLES. The highways maintained by the state or by the counties, insofar as the limitations upon the use of vehicles upon such highways are concerned, shall be divided into class "A" and class "B."

(2) AUTHORITY TO CLASSIFY HIGHWAYS. The class into which any portion of highway shall fall shall be determined by the state highway commission if said portion of highway is a part of the maintained United States or state highway system; by the county highway committee if said portion is a part of a highway not a United States or state highway but maintained by the county; by the local authorities if said portion is a part of a highway maintained by a municipality over which is routed a United States, state or county highway.

(3) MAP OF HIGHWAY CLASSIFICATIONS. The state highway commission shall cause to be prepared and published a map designating the classification of all United States and state highways as provided in subsection (1). Said maps shall be available for distribution on or before January 1 of each year.

**85.47 Weight limitations on Class "A" highways.** (1) No vehicle or combination of vehicles shall be operated upon Class "A" highways of this state with gross weights exceeding the following limitations: The gross weight of any axle shall not exceed 19,000 pounds. The gross weight on any 2 or more axles shall not exceed 26,000 pounds plus 1,000 pounds for each foot of distance measured longitudinally to the nearest foot between the foremost and rearmost of the axles under consideration. An axle as used in this section is defined as comprising all wheels the centers of which may be included between 2 parallel transverse vertical planes 40 inches apart.

(2) Any city of the first class may by ordinance increase the maximum weight specified in this section which may be carried on any vehicle when operated on the streets of such city. [1931 c. 367; 1933 c. 297 s. 1, 2; 1937 c. 59; 1939 c. 71; 1943 c. 403; 1945 c. 385]

85.475 [Repealed by 1945 c. 385]

**85.48 Weight limitations on Class "B" highways.** (1) No vehicle or combination of vehicles shall be operated upon Class "B" highways of this state with gross weights exceeding the following limitations: The gross weight on any axle shall not exceed 12,000 pounds. The gross weight on any 2 or more axles shall not exceed 16,000 pounds plus 600 pounds for each foot of distance measured longitudinally to the nearest foot between the foremost and rearmost of the axles under consideration. An axle as used in this section is defined as comprising all wheels the centers of which may be included between 2 parallel transverse vertical planes 40 inches apart.

(2) Any city of the first class may by ordinance increase the maximum weight specified in this section which may be carried on any vehicle when operated on the streets of such city. [1931 c. 367; 1933 c. 297 s. 1, 2; 1937 c. 59; 1945 c. 385]

**85.49 Weight distribution limitations.** (1) WEIGHT PER INCH OF TIRE WIDTH. No vehicle shall be operated when the gross weight carried by any one wheel shall exceed 800 pounds per inch of the tire according to the manufacturer's rated width.

(2) WHEEL WEIGHT. The gross weight carried on any vehicle wheel shall not exceed 9,500 pounds on a class "A" highway and 6,000 pounds on a class "B" highway. [1945 c. 385]

**85.50 Weights to appear on sides of certain types of vehicles.** No motor truck, truck tractor, tractor or bus, or trailer or semitrailer used in connection therewith, shall be operated upon any highway unless it shall have attached to or lettered upon each side thereof a sign giving its net weight, the tare weight and the gross weight of vehicle and load. The weights indicated on any such vehicles shall correspond with the weights for which said vehicle is registered under paragraph (c) of subsection (4) of section 85.01.

**Note:** Weight must appear on sides of section applies to truck with total weight of automobile which has been remodeled so as 2,200 pounds and carrying capacity of not to haul not more than 12 cans of milk. This more than 1,000 pounds. 20 Atty. Gen. 340.

**85.51 Vehicles carrying loads in excess of fees paid.** In case any motor truck, truck tractor, tractor, bus, trailer or semitrailer shall be registered with the motor vehicle department at a lower net carrying capacity or gross weight than is indicated thereon, as required in section 85.50, the owner thereof shall be required to register the same in conformity with the actual load carrying capacity for which the vehicle is equipped, and pay only the additional fee required for the increased carrying capacity of the vehicle; and such additional load shall in no case be so large as to be the direct cause of mechanical failure of the vehicle. In addition thereto the penalties provided for the violation of this section may also be imposed. [1939 c. 375, 410]

**85.52 Traffic officers may weigh vehicle and require removal of excess load.** Any traffic officer, having reason to believe that the gross weight of a vehicle is illegal, is authorized to weigh the same either by means of portable or stationary scales; or, if such officer so demands, the operator of any such vehicle shall convey the same to a public scale for the purpose of ascertaining the gross weight of such vehicle. If upon such weighing it is found that the gross weight is in excess of the maximum permitted by law, the operator shall immediately upon demand of such officer unload such portion of the load as may be necessary to decrease the gross weight of such vehicle to the maximum weight which is permitted upon the highway over which the vehicle is operated or shall reduce the load to within those limits for which the motor vehicle has been licensed.

**85.53 Special permits. (1) FOR LOADS OF EXCESSIVE SIZE AND WEIGHT. (a)** Whenever it is necessary to transport a single article which cannot reasonably be divided and which exceeds the maximum permissible load or weight or dimensions or both, the same shall be done, except as herein provided, only after the issuance of a special permit for a single trip designating the loads to be transported, pursuant to authority granted in this section. Where such trip is wholly or partly over the state trunk system in more than one county, such permit may be given by the state highway commission. The owner or operator of any vehicle engaged in the business of transporting articles, requiring the use of trailers, or other similar equipment of such size and weight as to require special permits, may obtain from the state highway commission an annual permit for such transporting. A separate permit shall be required for each trailer used by any permittee. The issuance of such annual permit shall be in lieu of all other permits required under this section, but shall not release the permittee from observance of any restrictions imposed under section 85.54.

(b) Any industry owning and operating motor vehicles and trailers in connection with its interplant operations in this state, which exceed the maximum permissible dimensions set out in paragraphs (b) and (c) of subsection (2) of section 85.45, may obtain from the state highway commission an annual permit for the operation of such trailers or other similar equipment on the highways of this state, over designated routes. A separate permit shall be required for each trailer used by any permittee, and the issuance of such annual permit shall be in lieu of all other permits required under this section, but shall not release the permittee from observance of any restrictions imposed under section 85.54. The commissioner of public works in cities of the first class, and the officers in charge of highway maintenance in other cities, towns and villages shall designate the routes over which such vehicles shall be operated within the same.

(c) Application for any permit under this subsection shall be made on forms prescribed by the state highway commission, which may impose such reasonable conditions as it shall deem necessary for the safety of travel, and for the protection of the highways, including a bond, or in lieu thereof, a certificate of insurance, approved by it to protect the state and any county, city, village or town against any damage which may result from such transporting. Such permit may be revoked by the commission for good cause, after having given the permittee reasonable opportunity for a hearing.

**(2) ISSUANCE OF SPECIAL PERMITS.** The commissioner of public works in cities of the first class, and in other cities and in towns and villages the officer in charge of highway maintenance therein and the county highway commissioner in each county, are authorized in their discretion, upon proper application in writing, to grant such special permits for the moving of any such single article, except as provided in subsection (3).

**(3) TRANSPORTATION OF POLES, GIRDERS, ETC. (a)** The provisions of paragraph (b) of subsection (2) of section 85.45 shall not apply to any public service corporation in the transportation of poles and other similar material used in its business. Such public service corporation shall obtain from the state highway commission an annual permit for transporting such poles or other similar material.

(b) The state highway commission in its discretion may require a bond to protect the various counties and municipalities against damage which may result because of such transportation.

(4) BONDS MAY BE REQUIRED. The officer issuing a special permit may require the person, firm or corporation making application therefor to furnish a bond or certified check in a suitable sum, running to the unit of government granting the permit, and conditioned to save such unit through which such article is transported, harmless from any claim, loss or damage that may result from the granting of such permit or that may arise from or on account of any act done pursuant thereto, and further conditioned that the grantee shall restore to a condition satisfactory to the officer in charge of the maintenance of any such highway any pavement, bridge, culvert, sewer pipe or other improvement that may be injured by reason of the transportation of such heavy article, under such permit. If, after such article has been transported over the highway, no damage is found to have resulted therefrom, the certified check or bond shall be returned to the person, firm or corporation furnishing same, but in the event of any damage having resulted therefrom the officer in charge shall report the same, or if necessary, replace the damaged portion of the highway and the cost thereof shall be paid by the owner of the vehicle causing such damage and for failure to pay such cost the officer issuing the permit shall deduct the same from the proceeds of the certified check or shall enforce the bond and for that purpose may maintain an action upon such bond.

(5) SPECIAL PROVISIONS. Every such permit shall designate the route to be traversed and may contain any other condition or restriction deemed necessary by the officer granting the permit. Whenever the officer deems it necessary to have a traffic officer accompany such vehicle through his municipality or county, a reasonable charge for such officer's services shall be paid by the person to whom the permit is issued.

(6) GENERAL PERMITS FOR EXCESSIVE LOADS. For good cause in specified instances for specified construction operations or for a specified period, the officer in charge of maintenance may allow loads to be hauled on either class of highway in excess of those herein provided for; provided, that no such officer shall allow such excess loads to be hauled except on highways the cost of the maintenance of which is paid by the municipality which said officer represents.

(7) EXCESSIVE LOADS OF MILK. Any registered motor truck of the gross weight of five tons or less and loaded exclusively with fluid milk or cream is permitted during the months of May, June and July to carry upon and along public highways of this state from the point of production of such milk to the primary market therefor fifteen hundred pounds or less in excess of the gross weight for which such motor truck is registered under paragraph (c) of subsection (4) of section 85.01 subject, however, to all the limitations and restrictions of sections 85.49 and 85.54. No such motor truck shall be required to be reregistered by reason of such excess loading. [1933 c. 310; 1935 c. 155; 1939 c. 190]

**Note:** Liability of any one moving excessive load over bridge is, except for penalties, unaffected by whether he had special permit or not, or whether permit was issued without requiring bond. State v. Yellow B. & T. Co., 211 W 391, 247 NW 310.

Other traffic rules are not applicable to the transportation of a single article occupying more than half of the roadway while being transported under a special permit. *Hohensee v. Acheson*, 213 W 316, 251 NW 234.

Motor vehicle department can collect registration fees in case of trucks and trailers based upon gross weights in excess of maximum permissible gross weights prescribed by 85.47, 85.48 and 85.49, where such trucks and trailers operate under special permits as provided by 85.53. When physical characteristics of vehicle or combination are

such that it may be operated without special permit under 85.53, just that mileage which does not require special permit is taxable under 194.48 and 194.49, Stats. 1939. When trailer is subject to 85.53 but truck operated in connection therewith is not, truck is not exempt from taxation under 194.48 and 194.49, Stats. 1939, 29 Atty. Gen. 391.

Neither state nor state highway commission is liable for damages to property or persons resulting from accidents on highways involving trucks or trailers operating under special permits for excessive loads issued by state highway commission pursuant to 85.53, and applicants for such permits may not be required to furnish insurance to cover such nonexistent liability. 32 Atty. Gen. 176.

**85.54 When loads may be restricted.** (1) SEASONAL RESTRICTIONS. The officer in charge of maintenance of highways maintained by a town, city or village, subject to the approval of the county highway commissioner, and the county highway commissioner or county highway committee in case of highways maintained by the county, and the state highway commission in the case of highways maintained by the state, may further restrict the gross weight of vehicles upon any such highway whenever the public interest so requires by erecting gross weight limitation signs on or along the highway upon which the gross weight is so restricted sufficient to give reasonable notice that such restriction is in effect. All gross weight limitation signs shall be standard as prescribed by the state highway commission. The transportation of unmanufactured forest products shall not be restricted because of gross weight limitations during the winter months when the highways are so frozen that no damage may result thereto by reason of such transportation. If at any time any person is so transporting unmanufactured forest products upon a class "A" highway in such frozen condition then he may likewise use a class "B" highway

without other limitation, except that chains and other traction devices are prohibited on class "A" highways but such chains and devices may be used in cases of necessity. The officers in charge of maintenance of highways as herein designated upon determination of such frozen condition and freedom of damage to such highways by such transportation forthwith shall grant such operating right. Any person transporting any such product over any highway of this state under the provisions of 85.54 (1) shall be liable to the state for any damage caused to such highway.

(2) GENERAL RESTRICTIONS. If at any time any person is operating upon any highway any vehicle which is causing or is likely to cause injury to such highway or is visibly injuring the permanence thereof or the public investment therein, the officer in charge of the maintenance of highways maintained by a town, city or village and the county highway commissioner or county highway committee or any member of such committee in the case of highways maintained by the county, and any traffic officer may summarily suspend the operation of such vehicle on such highway, and the owner or operator thereof shall forthwith comply with such suspension.

(3) RESTRICTION ON BRIDGES. The officer in charge of maintenance of highways maintained by a city, village or town, subject to the approval of the governing body of such city, village or town, and the county highway commissioner, subject to the approval of the county highway committee in the case of highways maintained by the county, and the state highway commission in the case of highways maintained by the state, may indicate the maximum gross vehicle or axle weight considered safe for passage over any bridge or culvert, where such gross weight is less than otherwise permitted by statute, by erecting gross weight limitation signs on or within 100 feet before each end of such structure. [1933 c. 310; 1941 c. 200; 1945 c. 297]

**85.55 Cities and villages may direct heavy traffic.** Cities and villages may by ordinance or resolution set aside any highway under their jurisdiction and declare the same to be heavy traffic routes and may provide for the use thereof and regulate the same by placing proper signs thereon. Whenever any city or village shall set aside and designate highways as heavy traffic routes, they may provide for the use of and regulate traffic on any such highway and designate what character and type of vehicle may travel thereon, provided that no city or village shall prohibit the ordinary use of any highway for the purpose of obtaining orders for and delivering or moving supplies or other necessary commodities to or from any place of business or residence fronting on such highway.

**85.56 Trailer hitch and following in line.** Whenever a semitrailer or trailer or both are used in connection with a motor vehicle upon the highway, the attachment shall be of such construction as to cause the semitrailer or trailer or both to follow in a direct line with the propelling vehicle. The trailer hitch shall also be of such construction as to eliminate any dangerous side swing or wobbling of the trailer or trailers.

**85.57 Motor vehicle tire equipment.** All motor vehicles, trailers and semitrailers shall have tires of rubber or of some material or construction of equal resiliency of a width provided for in this chapter. After July 1, 1934, no automobile, motor truck, motor bus, truck tractor, trailer, or semitrailer shall be used on any highway or street in this state unless such vehicle is completely equipped with pneumatic tires. This section shall not apply to:

- (a) Fire fighting vehicles;
- (b) Farm tractors or farm vehicles used in connection with seasonal industries;
- (c) Tractors moved along the highway temporarily;
- (d) Vehicles engaged in highway construction or maintenance operation on those portions of the highway under construction or maintenance;
- (e) Trailers or other similar equipment with a net weight of over twenty thousand pounds and which are operated on the highways under special permit;
- (f) Semitrailers designed and used for pick-up and delivery service within the limits of any incorporated village or city as a part of rail transportation and actually carried by rail as containers of merchandise. Provided, however, that such semitrailers so used as a part of rail transportation shall not be operated on any public street or highway at a rate of speed in excess of ten miles per hour;
- (g) Vehicles purchased prior to January 1, 1931, operated solely within the corporate limits of any city or village. [1931 c. 281; 1933 c. 310]

**85.58 Restriction of tire equipment.** Every solid rubber tire of a vehicle moved upon any highway shall have rubber on its entire traction surface at least one inch in thickness above the edge of the flange of the entire periphery. No solid rubber tire having flat spots of three inches or more in dimension, when measured on the circumference of the tire, shall be permitted upon the highway.

**85.59 Flanges, cleats and lugs on wheels.** Except when engaged in actual highway construction or maintenance on unfinished highways, no person shall propel or draw upon any highway any motor vehicle or tractor engine equipped with any flange, cleat, lug, spud, rim or any other projection extending more than two inches beyond the outside surface of any wheel or tractive rim thereof. No flange, cleat, lug, spud, rim or other projection on any wheel or tractive rim thereof shall come to a sharp edge or point and no angle iron or V-shaped cleat or rim shall be used unless so mounted that the ends of both lugs of such angle irons or V-shaped cleats are on the wheel or tractive rim. The cleats and lugs shall be so arranged on all driving wheels that two or more cleats or lugs are in contact with the road surface at all times and the weight on any wheel or tractive rim shall not exceed eight hundred pounds per inch of tire width.

**85.60 Sale of certain vehicles prohibited; optional in counties.** No wagon or other vehicle having metal tires less than three inches in width, except animal-drawn pleasure vehicles seating less than eight persons, shall be operated on any highway in this state. This provision shall not be in effect in any county whose county board shall by a majority vote of all members thereof determine that the provisions of this section shall not apply to wagons used in said counties.

**85.61 Protection of tractor wheels.** No vehicle of the tractor type shall be operated unless the driving wheels are protected by suitable fenders.

**85.62 Distance between axles, semitrailer axles and motor vehicle axles.** The distance between the axle centers of any one or more vehicles shall not be less than forty inches.

**85.63 Drawbar or towrope length.** The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, shall not exceed twelve feet in length.

**85.64 Loads extending beyond front of vehicles.** No vehicle or train of vehicles shall carry any load extending more than three feet beyond the front of the motor vehicle.

**85.65 Loads on sides of vehicles.** No motor vehicle, trailer or semitrailer shall carry any load extending beyond the line of fender on the left side of such vehicle nor extending more than six inches beyond the line of fender on the right side thereof. In the case of trucks the fender line shall be considered as the rear fenders, flare boards or floor of body. [1933 c. 105]

**85.66 Flag or light at end of load.** Whenever the load on any vehicle shall extend more than four feet beyond the rear of the bed or body thereof there shall be displayed at the end of such load in such position as to be clearly visible at all times from the rear of such load, a red flag not less than twelve inches in length and width during the daytime. From one-half hour after sunset until one-half hour before sunrise the rear of such load shall be marked with a red light plainly visible three hundred feet from the rear of the vehicle. This provision shall not apply to vehicles loaded with loose hay or straw. [1933 c. 105]

**85.665 Trucking logs on highways.** No automobile, truck, trailer or semitrailer shall carry logs on any public highway, unless the logs are securely fastened and wrapped by chains to the vehicle or the vehicle is equipped with stakes which are securely fastened by chains and the top of the load is lower than the top of the stakes. Any person violating this section shall be fined not more than \$50. [1931 c. 193; 1943 c. 334 s. 137]

**85.67 Equipment of vehicles. (1) BRAKES.** Every motor vehicle, when operated upon a highway, shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle, including 2 separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least 2 wheels, except that a motor driven cycle need be equipped with only one brake. All such brakes shall be maintained in good working order and shall be considered efficient if the vehicle can be stopped under normal conditions within 50 feet when traveling at a rate of speed of 20 miles per hour. A power driven cycle shall be equipped with an inclosed brake of sound design, with the disc or brake drum directly connected to or integral with the rear wheel; with internal-expanding brake shoes or engaging discs. The brake shall be operated by a foot pedal which shall be connected to the brake by means of a brake rod. Design shall permit simple and easy adjustment to compensate for wear. The machine, with 150-pound rider, traveling 20 miles per hour, on level, dry, hard surface free from loose material with no wind, must be capable of being brought to a complete stop in 35 feet.

**(2) HORNS AND WARNING DEVICES.** Every motor vehicle, when operated upon a highway, shall be equipped with a horn in good working order, capable of emitting sound audible under normal conditions for a distance of not less than 200 feet and it shall be unlawful, except as otherwise provided in this section, for any vehicle to be equipped

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with, or for any person to use upon a vehicle, any siren or compression spark plug whistle, or for any person at any time to use a horn otherwise than as a reasonable warning or to make any unnecessary or unreasonably loud or harsh sound by means of a horn or other warning device. When authorized by the common council of any city or the board of any town or village, it shall be lawful for members of volunteer or part volunteer fire departments to equip their privately owned motor vehicles with a siren or red warning lights, provided such volunteer firemen shall only use such siren or red warning lights while traveling to the scene of a fire or during a public emergency.

(3) **USE OF SIRENS.** An authorized emergency vehicle shall be equipped with a siren.

(4) **MIRRORS.** No person shall operate any motor vehicle upon a highway unless such vehicle is equipped with a mirror so located as to reflect to the operator a view of the roadway for a distance of two hundred feet to the rear of such vehicle.

(5) **TRAILER BRAKES.** Every trailer, semitrailer or other vehicle manufactured after January 1, 1942, having a gross weight of 3,000 pounds or more when drawn or pulled upon a highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle and of design approved by the motor vehicle department, excepting trailers owned by farmers when transporting agricultural products produced on the owner's farm, supplies or equipment back to the farm of the owner of the trailer, and except disabled vehicles being towed to a place of repair and except passenger automobiles and trucks while being towed. All such brakes shall be maintained in good working order and shall be considered efficient if the vehicle can be stopped under normal conditions within 50 feet when traveling at a rate of speed of 20 miles per hour.

(6) **CABIN TRAILER HITCHES.** Whenever a cabin trailer is used in connection with a motor vehicle upon the highway it shall be attached so as to follow in a direct line with the propelling vehicle, without sideswing or wobble. The hitch shall conform to the regulations of the motor vehicle department, as provided in subsection (4a) of section 85.06, [1931 c. 348; 1933 c. 182; 1939 c. 410, 507; 1941 c. 96, 260; 1947 c. 605]

**85.68 Who may declare highways arteries for through traffic.** (1) **STATE.** The state highway commission may, when it deems it necessary for the public safety, by order declare any United States or state highway or any portion thereof or any highway within a city or village not a portion of the United States or state highway system but selected and marked as a connecting street through such city or village between portions of said system, to be an artery for through traffic.

(2) **COUNTY.** Every county highway committee may, when it deems it necessary for the public safety, by order declare any county trunk highway or any portion thereof to be an artery for through traffic except where state highways are involved in which case such order shall be subject to the approval of the state highway commission.

(3) **MUNICIPALITY.** Every local authority may, when it deems it necessary for the public safety, by ordinance or resolution declare any highway or any portion thereof under its exclusive jurisdiction, to be an artery for through traffic.

**Note:** State highway commission has exclusive power to declare as arterial highways selected and marked connecting streets in cities between portions of United States or state highway system. 19 Atty. Gen. 296. Designation of highway by commission as arterial applies to relocated portions of such highway and to marked detours thereof without additional action by commission. 20 Atty. Gen. 377.

Town officials do not have authority to place stop signs on United States or state trunk highways without consent of state highway commission. 22 Atty. Gen. 495.

City does not have exclusive jurisdiction over United States, state or county roads and their designated connecting streets, and hence cannot designate them as arterials. 25 Atty. Gen. 525.

**85.69 Vehicles to stop at artery for through traffic signs.** It shall be unlawful for the operator of any vehicle, and every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, to fail to come to a full and complete stop within 30 feet of the near limits of an intersection at which has been erected an official stop sign or traffic signal designating an artery for through traffic. [1943 c. 152]

**Note:** Local authorities may not require point which is not a street intersection. 20 traffic to stop in front of schoolhouse at Atty. Gen. 987.

**85.70 Stop signs or traffic control signals must be installed before stop is legal.** No order, ordinance or resolution declaring any highway to be an artery for through traffic shall be effective until the official stop sign or traffic signal has been installed thereat.

**85.71 Stop signs and traffic control signals to be standard.** (1) Every place where traffic crossing or entering an artery for through traffic is required to stop under the provisions of this chapter, shall be plainly marked by an official stop sign directing traffic to stop.

(2) Within 90 days after passage of this section the state highway commission shall prescribe and publish regulations for the design, installation and operation of traffic

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control signals and stop signs in accordance with subsection (3) and as it shall deem necessary the said commission may prescribe and publish revised regulations which shall have the full force of law 30 days after publication in the official state paper.

(3) Stop signs and traffic control signals and their installation shall be uniform throughout the state as prescribed by the state highway commission.

(4) All new stop signs and traffic control signals installed or erected after the publication of the regulations of the state highway commission shall conform to said regulations.

(5) All stop signs and traffic control signals including those presently installed or erected shall conform to the regulations of the state highway commission on and after January 1, 1950. [1945 c. 430, 586]

**Note:** The mere fact that a nonarterial highway, at its intersection with an arterial highway, is not marked by an official stop sign or traffic signal does not render applicable the provision in 85.18 (1) that when 2 vehicles approach or enter an intersection at approximately the same time the driver of the vehicle on the left shall yield the right of way to the vehicle on the right. *Schmit v. Jansen*, 247 W 648, 20 NW (2d) 542. In this case, involving a collision, at an intersection of a nonarterial with an arterial street, between a motorist approaching on

the arterial, and a motorist, unfamiliar with the arterial, who entered the intersection from the nonarterial without stopping for the stop sign, which had been turned so that its edge was facing him, the evidence required the conclusion that neither motorist was negligent in respect to entering the intersection, and that the defendant motorist, approaching from the left on the arterial, was not negligent in respect to her conduct after both cars were in the intersection. *Schmit v. Jansen*, 247 W 648, 20 NW (2d) 542.

**85.72 Use of additional stop signs.** Nothing in this chapter shall prohibit local authorities from placing additional stop signs on the roadway provided that such signs shall not interfere with the free movement of vehicles over or about such signs.

**85.73 Cost of stop signs and traffic control signals.** The cost of any stop sign or traffic control signal installed by reason of an order of the state highway commission, a county highway committee, or any local authority, shall be paid for from any funds available for the maintenance of the arteries for through traffic.

**85.74 State may furnish signs and signals.** The state highway commission may when requested furnish official traffic control devices at cost to any county or municipality. [1939 c. 410; 1945 c. 430]

**85.75 Traffic sign and signal legend.** (1) **TRAFFIC CONTROL SIGNAL LEGEND.** Whenever traffic is controlled by traffic control signals exhibiting the words "Go", "Caution" or "Stop" or exhibiting different colored lights successively, or with arrows, the following colors shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) *Green or "Go"*. 1. Vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn, but vehicular traffic shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

2. Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(b) *Yellow or "Caution"*. When shown with or following the green, traffic facing this signal shall stop before entering the intersection unless so close to it that a stop cannot be made in safety.

(c) *Red or "Stop"*. 1. Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of an intersection, or if none, then before entering the intersection or at such other point as may be indicated by a clearly visible sign or marking, and shall remain standing until green or "Go" is shown.

2. No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(d) *Green arrow*. 1. Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right of way to pedestrians lawfully within a crosswalk, and with regard to vehicular traffic the rules of right of way as stated in section 85.18 shall apply.

2. No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(2) **FLASHING SIGNALS.** Whenever flashing red or yellow signals are used they shall require obedience by vehicular traffic as follows:

(a) *Flashing red (stop signal)*. When a red lens is illuminated by rapid intermittent flashes, operators of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(b) *Flashing yellow (caution signal)*. When a yellow lens is illuminated with rapid intermittent flashes, operators of vehicles may proceed through the intersection or past such signal only with caution.

(3) **APPLICATION OF SECTION**. In the event an official traffic signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application.

(4) **WHISTLE SIGNALS**. Whenever traffic is alternately being directed to stop and to proceed by a traffic officer using a whistle, said officer shall use the following whistle signals which shall signify as follows:

(a) *One whistle blast*. One blast of the whistle shall mean that all traffic not within the intersection shall stop.

(b) *Two whistle blasts*. Two blasts of the whistle shall mean that traffic which had been stopped prior to the one blast shall proceed through the intersection and that the traffic which had been stopped by the one blast shall remain stopped.

(c) *Interval between blasts*. The interval between the one and the 2 blasts shall be regulated by the traffic officer so as to permit traffic that is legally within the intersection to clear the intersection. [1945 c. 430]

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

**85.76 One-way highways and alleys**. The state highway commission, the several county highway committees, and local authorities may by order, ordinance or resolution designate and declare highways or alleys or any portion thereof under their respective jurisdictions to be one-way highways and alleys and compel all vehicles except street cars to go in one direction on such highways and alleys.

**85.77 Safety zones**. The state highway commission, county highway committees and local authorities may designate by mark or markers certain places in highways under their respective jurisdictions as safety zones and may regulate and control traffic with respect to such safety zones not inconsistent with the provisions set forth in subsections (8) and (9) of section 85.16.

**85.78 Islands of safety**. The state highway commission, county highway committees and local authorities may erect and maintain or cause to be erected and maintained, islands of safety and may regulate and control traffic with respect to such islands of safety not inconsistent with subsections (8) and (9) of section 85.16.

**85.79 Prohibition of turns**. The state highway commission, county highway committees and local authorities may prohibit turns of any nature upon the highways under their respective jurisdictions not inconsistent with the provisions set forth in section 85.17.

**85.80 Owner's liability for act of operator**. The owners of every vehicle, operating upon any highway for the conveyance of passengers for hire, shall be liable, jointly and severally, to the party injured for all injuries and damage done by any person in the employment of such owners as an operator, while operating such vehicle, whether the act occasioning such injuries or damage be willful, negligent or otherwise, in the same manner as such operator would be liable.

**85.801 Hayrack and sleigh rides licensed**. In counties containing a city of the first or second class, the owners of every vehicle operating upon any highway for hire for the purpose of transporting persons in what is commonly known as a hayrack ride, a sleigh, box sled or bobsled ride or a ride of similar nature, shall obtain a license from the county board which is authorized to issue such license for a fee of \$1. No such license shall be issued until the applicant shall exhibit proof that he is a person of good moral character and that he carries liability insurance for the protection of his passengers in the minimum amount of \$10,000 for any one passenger and \$50,000 for any single accident. If such owner operates such vehicle by an agent or servant, such agent or servant must likewise obtain such license. The county board may revoke any such license after notice and hearing accorded the licensee, whenever in their judgment the public safety requires. Any person operating any vehicle for hire for the purposes hereinabove described without first obtaining such a license, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed \$100 or by imprisonment in the county jail for not more than 30 days, or both. The provisions of section 85.93 shall be applicable to the insurance required under this section, whether the vehicle used for the purposes hereinabove specified be a motor vehicle or propelled in any other manner. Such vehicles shall be equipped at the 2 rear corners with red reflective

signals and at the 2 front corners and at the end of the tongue or pole thereof with blue reflective signals of a type approved by the motor vehicle department. [1945 c. 299; 1947 c. 29]

**85.81 Drunken operators.** (1) **EMPLOYMENT OF DRUNKEN OPERATORS.** Any person who owns or has direct control of any vehicle operating upon any highway for the conveyance of passengers for hire, and who employs as an operator of such vehicle and retains in his employment any person who is addicted to drunkenness or the excessive use of intoxicating liquor, shall forfeit five dollars for each day such operator shall have been retained in his employ.

(2) **DISCHARGE OF DRUNKEN OPERATORS.** If any operator mentioned in subsection (1), while actually employed in operating such vehicle, shall be convicted of intoxication, the owner or person having the charge or control of such vehicle shall, upon conviction of such operator, discharge such operator from such employment and every person who shall retain or have in such service any operator within six months after such conviction, shall forfeit five dollars for each day such operator was retained in his employment after such conviction.

(3) **RECKLESS OPERATION OF VEHICLES.** Any person, who, while operating any vehicle in a drunken condition, or in a reckless, wilful or wanton disregard of the rights or safety of others, shall inflict injury upon any person, shall be guilty of criminal negligence, and upon conviction shall be punished by imprisonment in the county or municipal jail for not less than 30 days nor more than one year.

(4) **DEFINITION OF VEHICLE.** As used in this section the word "vehicle" includes also a street car operated on a highway on stationary rails or tracks or any vehicle propelled by the use of electricity obtained from overhead trolley structures. [1935 c. 516; 1941 c. 206; 1947 c. 13]

**Note:** Although the so-called "constructive" intent that is implied from wilful and reckless conduct or violation of criminal statutes, such as 85.81 (3), 340.10 and 340.25, constitutes gross negligence and precludes the defense of contributory negligence, such rule does not extend to exempting an automobile guest suing his host in the guest's own right, or the guest's administrator, from the defense of the guest's assumption of risk when the guest himself has been guilty of the same kind of misconduct, such as intoxication, that constitutes the gross negligence of the defendant host. *Schubring v. Weggen*, 234 W 517, 291 NW 788. See note to 85.91, citing 24 Atty. Gen. 683.

**85.82 Municipalities may license taxicab operators and taxicabs.** The council of every city and every village board may regulate and license chauffeurs and operators of taxicabs used for hire and may also regulate and license the taxicab business by licensing each taxicab used for hire and may require that no person shall operate any motor vehicle for hire upon the highways of such city or village, unless such person is licensed as a chauffeur and operator and unless such taxicab business is licensed by the licensing of each taxicab, and may revoke any such license when in their judgment the public safety requires such revocation. Any person licensed by any city or village as a chauffeur and operator shall not be required to procure either a chauffeur's and operator's license or a taxicab license in any other municipality for the purpose of carrying taxicab passengers for hire from one municipality to another, but this exception shall not permit such chauffeur or operator to operate a taxicab wholly within the limits of any municipality in which such chauffeur or operator is not licensed. [1947 c. 593]

**85.83 Traffic officers not to profit from arrests.** No deputy sheriff, constable, marshal, traffic officer, policeman or other police officer shall demand, solicit, receive or be paid any remuneration whatsoever upon the basis of number of arrests made, convictions obtained or the amount of fines collected except as otherwise provided in subsection (1) of section 85.01.

**85.84 Regulations by local authorities forbidden; exceptions.** No local authority shall have power to enact, pass, enforce or maintain any ordinance, resolution, rule or regulation requiring local registration or other requirements inconsistent with the provisions of this chapter, or in any manner excluding or prohibiting any motor vehicle, trailer or semitrailer, whose owner has complied with the provisions of this chapter, from the free use of all highways except as provided by section 66.45; but the provisions of this section shall not apply to corporations organized pursuant to chapter 55 of the laws of 1899. Except for the suspension or revocation of motor vehicle operators' licenses, any local authority may pass any ordinance, resolution, rule or regulation in strict conformity with the provisions of this chapter but the penalty for a violation of any of its provisions shall be limited to a fine or a forfeiture and any such ordinance, resolution, rule or regulation so adopted must be in strict conformity with provisions of this chapter except as above provided. [1937 c. 419; 1943 c. 223; 1947 c. 572]

**Note:** 85.84, Stats. 1941, authorizing local authorities to pass ordinances in strict conformity with statutory ch. 85, relating to the law of the road, and to impose the same penalty for violation, is, so far as it delegates to municipal and county authorities the power to create a crime, that is, to treat the violation of an ordinance as a misdemeanor and

impose imprisonment as a punishment, void as an attempt to confer sovereignty on local authorities. State ex rel. Keefe v. Schmiege, 521 W 79, 28 NW (2d) 345.

not prohibited by 85.84 and 85.85. 27 Atty. Gen. 1.

Use of parking meters by municipality in regulation of parking on streets is valid and

This section, as amended in 1937, does not authorize municipality to adopt ordinance providing for revocation of operator's license. 23 Atty. Gen. 337.

85.845 Use of parking meters in cities and villages. It is hereby declared to be the public policy of the state that the use of parking meters to measure the time for parking vehicles on city streets is a local matter to be determined by local authority and local authorities in cities and villages may use the revenues of parking meters not only to meet the cost of regulation of parking but also to make provision for additional parking places off the street and such other expenses and purposes as the local authority deems reasonably necessary to provide for the convenience, safety and welfare of persons using the streets and highways of the municipality for vehicular traffic. Local authorities may also by ordinance, resolution, rule or regulation provide for the installation and operation of parking meters on the streets or highways within the limits of the municipality and may provide for the use of moneys collected from such parking meters for general street and highway maintenance, repair and construction, traffic regulations and for the purchase and operation of municipally owned, off-street parking lots. This section shall not apply to cities of the first class. [1945 c. 313]

85.85 Powers of local authorities. Local authorities, except as expressly authorized by the provisions of this chapter, shall have no power or authority to enact or enforce any rule, ordinance or regulation contrary to the provisions of this chapter; provided, that any city or village may limit the use of the streets by vehicles equipped with other than pneumatic tires, and may restrict the use of specified streets by heavy traffic except as to streets over which are routed state or federal trunk highways. [1939 c. 247]

85.86 Uniformity of interpretation. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the traffic law of this state, and of all local units of government.

85.91 Penalties. (1) Any person violating any provision of sections 85.11, 85.12 (2), (3), (4) and (6), 85.15 (4), 85.16 (1), (2) and (8), 85.17 (1), (2), (4) and (5), 85.18 (1), (4) to (6) and (8) to (11), 85.19 (2), (3) and (4), 85.21 to 85.23, 85.25 to 85.28, 85.31, 85.33, 85.34 (1) and (2), 85.35, 85.39 (1) and (2), 85.44, 85.50, 85.61, 85.63 to 85.66, 85.67 (2) to (6) and 85.69 shall be punished by a fine not to exceed \$10 for the first offense and for the second or each subsequent conviction within one year thereafter, by a fine not to exceed \$25.

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(2) Any person violating any of the provisions of section 85.14 (2), section 85.15 (1), (2) and (3), section 85.16 (3) to (7) and (9), (10), (11) and (12), section 85.18 (7), section 85.19 (1), (5) and (9), sections 85.20, 85.24, 85.29, 85.30 and 85.32, section 85.34 (3), sections 85.36 to 85.38, section 85.39 (3), section 85.40 (1) (a) and (b) and (2) (c), section 85.41 (2), sections 85.45, 85.47, 85.48, 85.49, 85.51, 85.52, 85.54 to 85.60 and 85.62 and section 85.67 (1) shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not to exceed \$25 for the first offense and for the second or each subsequent conviction within one year thereafter, by a fine not to exceed \$100 or by imprisonment in the county or municipal jail for not more than 30 days or by both such fine and imprisonment.

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(3) Any person violating any provision of sections 85.13, 85.135, 85.14 (1), 85.40 (1) (c), (d), (e), (f) and (2) (a) and (b) and (3), 85.81 and 85.83 shall be punished, in addition to any other penalty provided by law, by a fine not to exceed \$100 or by imprisonment in the county or municipal jail for not more than 6 months, or by both such fine and imprisonment. For the second or each subsequent conviction within one year thereafter such person shall be punished by a fine not to exceed \$200 or by such imprisonment not to exceed one year, or by both such fine and imprisonment.

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(4) Any person violating any provision of section 85.06 (2) (j) or 85.19 (10) shall be punished by a fine of not less than \$1 and not more than \$5 or by imprisonment in the county jail not to exceed 5 days.

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(5) Any person violating any provision of section 85.141 as to which no penalty is provided in section 85.141 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine of not less than \$10 nor more than \$100, and for the second or each subsequent offense within one year thereafter by a fine of not less than \$25 nor more than \$200. [1931 c. 213; 1933 c. 159 s. 18; 1935 c. 141, 427, 489, 553; 43.08 (2); 1939 c. 235, 507; 1941 c. 206; 1943 c. 275 s. 37; 1943 c. 445; 1945 c. 33, 322, 359; 1947 c. 407]

Revisor's Note, 1933: Subsection (1a) conflicts with penalty provision in 85.01 (4) (i) and (i) is the latest enactment. Subsection (1a) was created by chapter 312 and (i) by

chapter 422, Laws 1931. (Bill No. 52 S, s. 18) Penalty in 85.81 (3), amended by chapter 516, Laws 1935, being later enactment than amendment of 85.91 (3) by chapter 489, Laws

1935, is controlling. Repeater statute is applicable since there is no specific penalty for second offense in 85.81 (3). 24 Atty. Gen. 683.

After effective date of ch. 206, Laws 1941, justices of peace will have jurisdiction of all violations of ch. 85, Stats., punishment for

which does not exceed 6 months imprisonment in county jail or fine of \$100 or both, notwithstanding such conviction may require commissioner of motor vehicles to revoke or suspend driver's license of person convicted. 30 Atty. Gen. 269.

**85.92 Busses stop at railroads.** Any person operating any motor vehicle described in sections 40.34 and 194.01 who shall operate, run or drive any such vehicle on or across a grade crossing with the main line tracks of any railroad or interurban railway company, unless such crossing is protected by crossing gates or by flagmen, without coming to a full stop at a distance from such tracks of at least twenty and not more than forty feet, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars nor more than one hundred dollars for each offense, or be imprisoned in the county jail for not less than ten nor more than ninety days, or be punished by both such fine and imprisonment, but the provisions of this section shall not apply to crossings with interurban railroad tracks which are laid on or along public streets within the corporate limits of any incorporated city or village. The school board or public service commission may refuse to accept the bond of any person who has been convicted of a violation of the provisions of this section, and may cancel any such bond theretofore issued if it believes that the safety of the public requires such action. [1939 c. 181]

**Note:** Upon record disclosing that driver of truck approached crossing with unobstructed view on clear day, and that he was a carrier of freight with statutory duty to stop before crossing railroad crossings, court determined that his negligence in approaching crossing and colliding with train when whistle had been sounded was, as a matter of law, as great as negligence of railroad company in failing only to ring bell; precluding recovery for death of truck driver. *Zenner v. Chicago, St. P., M. & O. R. Co.*, 219 W 124, 262 NW 581.

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

**85.93 Accident insurance, liability of insurer.** Any bond or policy of insurance covering liability to others by reason of the operation of a motor vehicle shall be deemed and construed to contain the following conditions: That the insurer shall be liable to the persons entitled to recover for the death of any person, or for injury to person or property, irrespective of whether such liability be in praesenti or contingent and to become fixed or certain by final judgment against the insured, when caused by the negligent operation, maintenance, use or defective construction of the vehicle described therein, such liability not to exceed the amount named in said bond or policy.

**Cross Reference:** As to insurers being joined as defendants, see 260.11.

**Note:** Notwithstanding 85.93, Stats. 1929, a provision in a policy postponing the time for the commencement of action against the insurer until damages are ascertained against the insured is effective. *Bergstein v. Popkin*, 202 W 625, 233 NW 572.

The insurer under an automobile liability policy, which by the very provisions of the statute must be considered as containing the conditions required, whether actually incorporated therein or not, was properly joined as defendant in an action against the insured, where the "no action" clause in the policy applied only to the insured. *Morgan v. Hunt*, 196 W 298, 220 NW 224, and later cases distinguished. *Heinzen v. Underwriters C. Co.*, 208 W 512, 243 NW 448.

Liability policy held not to cover death of employe of named assured from an automobile accident for which dependents were entitled to benefits of compensation law. *Bernard v. Wisconsin A. Ins. Co.*, 210 W 133, 245 NW 200.

Infant's legal relation to employer of infant's brother, a truck driver, who, contrary to instructions, permitted infant to ride in truck, held that of "trespasser." *Hartman v. Badger T. Co.*, 210 W 519, 246 NW 577.

The insurer in an automobile liability policy issued in this state with 85.93 embodied therein by operation of law, is liable to the

injured person for the damages which he may recover against the insured. *Oertel v. Fidelity & C. Co.*, 214 W 68, 251 NW 465.

"Co-operation," within automobile liability policy providing that it should be condition precedent to insurer's liability that insured at all times render all "co-operation and assistance," requires that there shall be fair, frank and truthful disclosure of information reasonably demanded by insurer for purpose of enabling it to determine whether or not there is genuine defense. *Hunt v. Dollar*, 224 W 48, 271 NW 405.

The object of the contract of automobile liability insurance is to provide insurance against liability in tort. *Narloch v. Church*, 234 W 155, 290 NW 595.

The terms and conditions of this section, relating to the liability of the insurer in a policy covering liability to others by reason of the operation of a motor vehicle, are a part of the policy with like force and effect as though printed in the policy and whether the policy be considered an indemnity policy or a liability policy. *Kujawa v. American Indemnity Co.*, 245 W 361, 14 NW (2d) 31.

This section, making an automobile liability insurer directly liable to the injured person, does not make the insurer liable where there is no liability under the policy. *Fehr v. General Acc. F. & L. Assur. Corp.* 246 W 228, 16 NW (2d) 737.

**85.94 Civil actions by commissioner.** In addition to all existing remedies afforded by civil and criminal law, the commissioner is authorized to bring civil actions for the recovery of all license fees, ton mile taxes, interest and penalties to which the state may be entitled by reason of the operation by any person of a motor vehicle upon the public highways of the state. [1945 c. 127]