

CHAPTER 345.

RULES RELATING TO CIVIL AND CRIMINAL LIABILITY.

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GENERAL PROVISIONS.

345.01 Words and phrases defined. Words and phrases defined in s. 340.01 are used in the same sense in this chapter unless a different definition is specifically provided.

CIVIL LIABILITY.

345.05 State and municipal liability for motor vehicle accidents. (1) In this section the following terms have the designated meanings:

(a) "Municipality" means any county, city, village, town, school district (as enumerated in s. 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 with reference to the state, the county board with reference to counties, the town board with reference to towns, the legislative body of a city or village with reference to cities and villages and the board of any district, center or other municipality with reference to other municipalities enumerated in par. (a).

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

(2) Any of the following may file a claim for damages against the state or municipality concerned and the governing body thereof may allow, compromise, settle and pay the same:

(a) A person suffering any damage proximately resulting from the negligent operation of a motor vehicle owned and operated by the state or a municipality, which damage was occasioned by the operation of such motor vehicle in the course of its business. For the purposes of this subsection, a motor vehicle shall be deemed owned and operated by the state or a municipality if such vehicle is either being rented or leased, or is being purchased under a contract whereby the state or municipality will acquire title.

(b) A person suffering any damage proximately resulting from the negligent operation of a motor vehicle owned or operated by the state through the agency of the Wisconsin national guard, the Wisconsin air national guard or the members or employes thereof when on state duty and whether paid from state or federal funds and which damage was occasioned by the operation of such motor vehicle in the performance of its business.

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

(a) If against the state, as provided in s. 16.53 (8), with the department of administration.

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

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

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

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

(f) If against any school district, as provided in s. 40.31.

(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 90 days after presentation constitutes a disallowance. Disallowance by the governing body bars 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 ss. 285.01

and 285.04. For the purposes of this section, judgments against municipalities shall be certified, filed and collected as provided in s. 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, Wisconsin constitution.

History: 1961 c. 550.

345.06 Owner's liability for act of operator. The owners of every vehicle operating upon any highway for the conveyance of passengers for hire are jointly and severally liable 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 was intentional, negligent or otherwise, in the same manner as such operator would be liable.

345.07 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 fees, 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 highways of this state.

345.08 Suit to recover protested tax or fee. No suit shall be maintained in any court to restrain or delay the collection or payment of the taxes levied or the fees imposed or enacted in chs. 341 to 349. The aggrieved taxpayer shall pay the tax or fee as and when due and, if paid under protest, may at any time within 90 days from the date of such payment sue the state in an action at law to recover the tax or fee so paid. If it is finally determined that such tax or fee or any part thereof was wrongfully collected for any reason, the department of administration shall issue a warrant on the state treasurer for the amount of such tax or fee so adjudged to have been wrongfully collected and the state treasurer shall pay the same out of the highway fund. A separate suit need not be filed for each separate payment made by any taxpayer, but a recovery may be had in one suit for as many payments as were made within the 90-day period preceding the commencement of the action. Such suits shall be commenced as provided in s. 285.01.

History: 1961 c. 316.

345.09 Service of process on nonresident. (1) The use and operation of a motor vehicle over the highways of this state by a nonresident is deemed an irrevocable appointment by such nonresident of the motor vehicle commissioner 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 the use or operation of the motor vehicle in this state and resulting in damage or loss to person or property, whether the damage or loss occurs on a highway or on abutting public or private property. Such appointment is binding upon the nonresident's executor, administrator or personal representative. Such use or operation of a motor vehicle by such nonresident is a signification of his agreement that any such process or notice 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 on his executor, administrator or personal representative.

(2) The commissioner as attorney upon whom processes and notices may be served under this section shall, upon being served with such process or notice, forthwith mail by registered mail a copy thereof to such nonresident at the out-of-state nonresident address given in the papers so served. It is the duty of the party or his attorney to certify in the papers so served that the address given therein is the last known out-of-state nonresident address of the party to be served. In all cases of service under this section there shall be served the original, one copy for the commissioner's record of service and such additional number of copies as there are defendants so served in the action. The original shall be returned with proper certificate of service attached for filing in court as proof of service of the copies by having mailed them by registered mail to the defendants named therein. The service fee shall be \$4 for each defendant so served. The commissioner shall keep a record of all such processes and notices, which record shall show the day and hour of service.

(3) This section applies to a nonresident defendant who was a resident of this state at the time of the accident or occurrence which gave rise to the cause of action sued on.

History: 1963 c. 6, 515; 1965 c. 163.

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

ARRESTS, BAIL, PENALTIES.

345.12 Traffic officers not to profit from arrests. (1) No traffic officer shall demand, solicit, receive or be paid any remuneration upon the basis of number of arrests made, convictions obtained or amount of fines collected.

(2) Any person violating this section may be fined not less than \$25 nor more than \$200 for the first offense and, for the second and each subsequent conviction within one year thereafter, may be fined not less than \$50 nor more than \$500 or imprisoned not more than one year in county jail or both.

345.13 Posting of bail. (1) Whenever a person is arrested for a violation of chs. 129, 194 and 341 to 348, administrative orders issued pursuant to law, or is arrested for violating any ordinance enacted pursuant to s. 349.06, the sheriff, chief of police or clerk of the court having jurisdiction of the violation is authorized to receive at his office, from the accused, a deposit in money not to exceed the amount of the maximum penalty which may be imposed if the accused is found guilty. Thereupon, the accused may be released from arrest until the court having jurisdiction of the violation opens on the next succeeding day in which such court is in session or until such time as is fixed for the hearing of the case.

(2) If the person so arrested and released fails to appear, personally or by an authorized attorney or agent, before the court at the time fixed for the hearing of the case, the money deposited by the accused pursuant to sub. (1) shall be retained and used for the payment of the penalty, which may be imposed, together with costs, after an ex parte hearing upon the accused. The excess, if any, shall be returned to the person who made the deposit, upon his application therefor. If the accused is acquitted, the entire amount of the deposit shall be refunded to the depositor upon application therefor.

(3) This section shall not be construed so as to make the county or municipality in any case liable for the whole or any part of any money deposited pursuant to this section.

History: 1961 c. 143.

345.14 Stipulation of guilt or nolo contendere in case of ordinance violations. Local ordinances adopted pursuant to s. 349.06 may contain a provision for stipulation of guilt or nolo contendere of any or all offenses under such ordinances and may designate the manner in which such stipulation is to be made and fix the penalty to be paid. When a person charged with an offense for which stipulation of guilt or nolo contendere is authorized makes a timely stipulation and pays the required penalty to the designated official, such person need not appear in court and no witness fees or other additional costs shall be taxed unless the local ordinance so provides. The official receiving the penalty shall comply with ss. 343.27 (3) and 343.29.

History: Sup. Ct. Order, 14 W (2d) viii.

345.15 Bail forfeited only on order of court. If any person gives bail for his appearance to answer a charge of violation of a traffic regulation enacted pursuant to s. 349.06, except for a parking violation, it shall not be forfeited for his failure to appear except by order of the court. Any officer paying bail money into the county or municipal treasury without such court order is guilty of violating s. 946.12.

345.16 Penalty of compulsory safety school attendance. (1) In addition to or in lieu of other penalties provided by law for violation of chs. 346 to 348, the trial court may in its judgment of conviction order the convicted person to attend, for a certain number of school days, a traffic safety school whose course and mode of instruction is approved by the motor vehicle commissioner and which is conducted by the police department of the municipality, the sheriff's office of the county or by any regularly established safety organization.

(2) This section also applies in the case of an adjudication of violation of a local traffic regulation which is in conformity with chs. 346 to 348.

345.17 Penalty for false statements. Any person making a false statement to the motor vehicle department or commissioner of said motor vehicle department on which such department or the commissioner relies in performing an act, issuing a duplicate title, license or operating privilege, or administering any law which the department or commissioner is required by law to administer or perform, shall, on the first offense be fined not less than \$25 nor more than \$100; and, on the second and each subsequent offense be fined not less than \$100 nor more than \$500.

History: 1963 c. 515.