render them will be subject to the penalty in this section.

The penalty stated in s. 85.09 (32) (b) of the present law has been modified so as to conform to the penalty applicable to a similar provision in proposed ch. 343 (343.35). [Bill 99-S]

Upon the occurrence of the contingencies mentioned in 85.09 (31), peace officers have the right to remove registration plates from automobiles parked on public streets or on private parking lots when requested to "secure possession" of such plates by the commissioner of the motor vehicle department for the purpose of returning them to the custody of the department. 41 Atty. Gen. 223.

344.46 History: 1957 c. 260; Stats. 1957 s. 344.46; 1967 c. 300; 1969 c. 500 s. 30 (3) (h).

344.47 History: 1957 c. 260, 292; Stats. 1957 s. 344.47.

344.48 History: 1957 c. 260, 545; Stats. 1957 s. 344.48.

344.51 History: 1957 c. 260; Stats. 1957 s. 344.51; 1969 c. 500 s. 30 (3) (i).

Legislative Council Note, 1957: Subsections (1) and (2) restate s. 85.215.

The penalty in sub. (3) is in lieu of the penalty stated in s. 85.91 (1). The attorney general has ruled that the latter penalty is applicable under present law, notwithstanding the civil liability imposed for failure to comply with the law. 30 Atty. Gen. 27 (1941).

The definition in sub. (4) is necessary for a restatement of present law; otherwise, the special definition of "motor vehicle" in s. 344.01 would apply. [Bill 99-S]

Requiring those renting cars for compensation to file a bond covering 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 287, 239 NW 501.

See note to 344.52, citing Herchelroth v. Mahar, 36 W (2d) 140, 153 NW (2d) 6.

344.52 History: 1957 c. 260; Stats. 1957 s. 344.52; 1959 c. 562; 1969 c. 500 s. 30 (3) (h).

344.52 is intended to assure response in damages to the injured person and not to decide the question of liability between the parties. The end of the section is met when the judgment is paid. Herchelroth v. Mahar, 36 W (2d) 140, 153 NW (2d) 6.

CHAPTER 345.

Rules Relating to Civil and Criminal Liability.

345.01 History: 1957 c. 260; Stats. 1957 s. 345.01.

345.05 History: 1957 c. 260, 605; Stats. 1957 s. 345.05; 1959 c. 641 s. 36; 1961 c. 550; 1967 c. 92 s. 22.

Legislative Council Note, 1957: This is a restatement of s. 85.095. It is not clear in what sense "motor vehicle" is used in the present section. By virtue of the definition of "motor vehicle" in s. 340.01, the new section would apply to municipally-owned trolley busses and streetcars.

The following judicial interpretation of the present law is pertinent because it will also apply to the new section, the old language having been restated. The section has been construed as creating a liability on the part of a governmental body in the discharge of governmental functions. The court rejected the contention that the statute merely was intended to allow a municipality to pay claims if it so wishes. Schumacher v. Milwaukee, 209 W 43, 243 NW 756 (1931). The words "owned and operated" have been construed literally to mean that a municipality is not liable unless the vehicle is both owned and operated by the municipality. Jorgenson v. Sparta, 224 W 260, 271 NW 926 (1937). Hence, it is only in the case of the national guard and air national guard that liability exists if the vehicle is not publicly owned. It has been held that the damage does not proximately result from the negligent operation of a motor vehicle unless the vehicle is in the active exercise of some specific function at the time of the injury. Raube v. Christenson, 270 W 297, 71 NW (2d) 639 (1955). Hence, the county was not liable where an accident resulted from failure of one of the drivers involved in the accident to stop for a stop sign even though his failure to stop allegedly was due to the fact that the sign had been negligently covered by snow as a result of snow plowing by the county highway maintenance workers. [Bill 99-S]

The words "owned and operated", in 66.095, Stats. 1935, were intended by the legislature to have their plain meaning. Jorgenson v. Sparta, 224 W 260, 271 NW 926.

Where a county, in repairing a road, completely blocked it for several minutes with a dump truck, it is liable under 85.095, Stats. 1955, for insufficient warning to users of the highway. The truck, even though stopped, was "in operation" in the performance of the county's business of road maintenance. Schroeder v. Chapman, 4 W (2d) 285, 90 NW (2d) 579.

The state is not liable, under 85.095, Stats. 1947, for damage caused by operation of an automobile unless it is both owned and operated by the state. 37 Atty. Gen. 162.

Governmental tort liability and immunity in Wisconsin. Bernstein, 1961 WLR 486.

345.06 History: 1957 c. 260; Stats. 1957 s. 345.06.

345.07 History: 1957 c. 260; Stats. 1957 s. 345.07; 1969 c. 500 s. 30 (3) (h).

345.08 History: 1957 c. 260; Stats. 1957 s. 345.08; 1961 c. 316.

345.09 History: 1957 c. 260; Stats. 1957 s. 345.09; 1959 c. 562; 1963 c. 6, 515; 1965 c. 163; 1969 c. 500 s. 30 (3) (e), (f), (h).

Legislative Council Note, 1957: This is a restatement of s. 85.05 (6), (7) and (8) with the following changes:

1. It has been made clear that the notice of injury required by s. 330.19 (5) to be served in personal injury actions may be served on a nonresident by service upon the commissioner. The court has held that this cannot be done under present law because the notice is not legal process within the meaning

of the present law relating to service of process on nonresident motorists. Oldenburg v. Hartford Accident & Indemnity Co. 266 W 68, 62 NW (2d) 574 (1954).

2. It has been made clear that one copy of the process papers served is for the commissioner's record and hence one copy must be included in addition to the original and the copies to be mailed to the defendants in the action. This conforms to present departmental policy and hence is a clarification of rather than a change in the law. [Bill 99-S]

Editor's Note: Sec. 85.15 (3), Stats. 1925, relating to the subject of service of process in motor-vehicle accident cases involving nonresident defendants, was held invalid, to the extent that it was discriminatory, in State ex rel. Cronkhite v. Belden, 193 W 145, 211 NW 916, and this decision was followed by adoption of relevant amendatory legislation, sec. 31a, ch. 473, Laws 1927. Sec. 85.15, Stats. 1927, was designated as 85.05 by sec. 2, ch. 454, Laws 1929, and various amendments were made thereto by legislation of the next two decades. Sec. 85.05, Stats. 1951, was repealed and recreated by ch. 593, Laws 1953, but the new section contained nothing repeating or replacing subsec. (3) of the 1951 statute. By ch. 648, Laws 1953, the legislature created 85.05 (6), which in substance was a re-enactment of the old 85.05 (3), and this subsection was considered in Steffen v. Little, 2 W (2d) 350, 86 NW (2d) 622.

See note to sec. 1, art. I, on exercises of police power, citing State ex rel. Cronkhite v. Belden, 193 W 145, 211 NW 916.

85.05 (3), Stats. 1933, did not authorize service of process 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.

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

Service of a summons and complaint on a non-resident defendant in an automobile collision case by filing copies thereof with the secretary of state and sending copies by registered mail to the alleged address of such defendant, where receipt was signed by a person purporting 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 to him at such address, constituted sufficient compliance. State ex rel. Nelson v. Grimm, 219 W 630, 263 NW 583.

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 an 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, supportable only by 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.

Sending notice and copy of process to a nonresident defendant in an automobile damage action either by regular mail or by registered mail complies with the requirement of 85.05 (3), Stats. 1939, that such papers be sent "by mail." Sorenson v. Stowers, 251 W 398, 29 NW (2d) 512.

In actions against a nonresident motorist, his widow should be permitted to intervene to offer proof that he had died prior to the service of the summons and had left no property for probate and that no administrator or personal representatives had been appointed; and on the making of such proof the actions should be dismissed, since a deceased person cannot be a party to an action. Brickley v. Neuling, 256 W 334, 41 NW (2d) 284.

The words "process" or "processes" were intended to mean the means of subjecting a party to the jurisdiction of a court and includes not only a summons, but also whatever steps may be required by statute to institute a special proceeding, such as the petition and notice required by 269.23, in a proceeding to revive an action. In respect to reviving and continuing an action against a nonresident administrator of a deceased nonresident motorist, 85.05 (3), Stats. 1949, is not a violation of due process and does not require that Wisconsin court do more than adjudicate the plaintiff's right growing out of her claim for wrongful death in auto collision in Wisconsin; and when such adjudication has been made, plaintiff will file her claim in the court having jurisdiction over probate of defendant decedent's estate in the state of decedent's residence, that court to determine the priority of claims of his various creditors, including plaintiff, and to administer his assets according to law of that state. Tarczynski v. Chicago, M., St. P. & P. R. Co. 261 W 149, 52 NW (2d) 396.

Where the owner and driver of a motor vehicle was an adult married son of a named defendant, and the father was not responsible for operation of the vehicle, and the son did not reside or receive mail at the father's address, there was complete failure of service of process by mail and the attempted service of process on the father was entirely void and warranted vacation of a default judgment against him. Plovey v. Vogele, 264 W 416, 59 NW (2d) 495.

The sending of process by mail to a business address of a nonresident motorist did not render the service invalid as not complying with the statutory requirement for sending process to his last-known address, the last-known address being the one most likely to give notice to the party to be served, and there being no showing in the instant case that

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

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

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

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

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

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

Nonresident motorists statute. Peck, 37 MLR 321.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 346.

Rules of the Road.

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

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

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

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

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

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

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

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

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