Survey of 1953 Wisconsin Legislation

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SURVEY OF
1953 WISCONSIN LEGISLATION

DONALD GRIFFIN JR.* DOUGLAS J. McCLELLAND**
AND DARRELL L. PECK***

(Editors Note: This article does not cover changes in the Wisconsin Business Corporations Law, the creation of the Wisconsin Nonstock Corporations Law, the adoption of the Uniform Trust Receipts Act, nor revision of Tax Statutes. These will be treated in separate articles to appear in the near future in the MARQUETTE LAW REVIEW.)

The Wisconsin Legislature passed 687 new laws. This article presents an attempt to give the Wisconsin attorney a concise report of the most important of these new laws, noting and discussing the changes in statute law and the effect, if any, of such changes on Wisconsin case law. The laws discussed herein were chosen on the basis of their importance with respect to the magnitude of the changes wrought, effect on case or prior statute law and practical value to attorneys in the field. As herein used, and unless indicated otherwise, all references to “section” are to the Wisconsin Statutes and to “chapter” are to the 1953 Wisconsin Session Laws. This is the second Legislative Survey to appear in the Marquette Law Review as a biennial feature. Comments, criticisms and suggestions for improving the survey of 1955 legislation are always welcome.

The discussions have been grouped into thirteen sections, as follows, and are cross-referenced wherever possible for the convenience of the reader.

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SURVEY OF LEGISLATION

CORPORATIONS

Exempted Sales of Securities. Section 189.07(15), which provides that the sale of its securities by one corporation to another need not be registered under section 189.13, has been enlarged. The sale by one corporation to another of the securities of a company in which it has a controlling interest has also been expressly exempted from registration. The exemption, as before, applies only when there is no public offering of the securities and the sale is to no more than five corporations.

Co-operatives. Co-operative associations have been authorized by an amendment to section 185.081 to issue both voting and non-voting common stock. Up to this time there had been only one class of common stock in any co-operative association, and every holder of such stock was entitled to vote.

Savings and Loan Associations. Chapter 613 of the 1953 Session Laws has made several minor changes in the law governing Savings and Loan Associations.

CREDITORS RIGHTS

Notice for Issue of Execution. Chapter 365 of the Laws of 1953 amends section 272.04(1) relating to the time within which execution on judgments must be issued. Under the prior statute if no execution was issued within five years, or if application was made by one other than the judgment creditor, notice had to be given to the judgment debtor prior to the issuance of the execution. Such notice was to be served as a summons, is served in a court of record. The amendment allows service of the notice by publication, or as the court may direct, if the judgment debtor is absent or a non-resident. The amendment appears to be calculated to provide a method of obtaining service on a person who cannot be served in Wisconsin, while keeping such service within the bounds of "due process" as interpreted by the United States Supreme Court.

Carriers Lien for Storage or Transportation. Section 171.07(1) to (4) has been amended by Chapter 457 of the Laws of 1953. Prior to the amendment the lien provided for in section 171.07 was for the benefit of a railroad company alone. Now any common carrier has a lien on goods for storage or transportation charges. The lien also extends to goods left in a checkroom or parcel locker which is on the

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1 Chapter 124.
2 Chapter 301.
3 Wis. Stats. (1951), §185.09. Chapter 301 also amended this section to conform to the provisions of the new section 185.081.
premises of a carrier. In order to enforce the lien, the carrier must give at least ten days' notice by mail of the amount of the charges. Previously, notice was required but no definite time was prescribed.

Section 171.07(2)(b) now provides for the handling of property which is not perishable and has been left on the premises of the common carrier but not stored with it. The common carrier shall store the goods, subject to the order of the owner, and after sixty days may sell the goods at public auction, subject to the provisions of 171.07 (2)(a). Before the creation of this subsection, provision had been made for the disposal of goods left on the carrier's premises but not stored. The carrier may now dispose of the goods in accordance with the statute, without being subject to an action for conversion if the owner claimed the goods at some time in the future. Under section 171.06, the common carrier had to wait one year before disposing of the unclaimed goods. In many cases the cost of storage, as well as the expense of the proceedings taken, were in excess of the value of the goods. The carrier had no adequate proceedings to take which would prevent unnecessary expense. Now, the carrier can dispose of the goods at auction after sixty days with little expense.

Contents of Garnishee Summons. Chapter 485 of the Laws of 1953 amends section 304.23 of the statutes, relating to the contents of garnishee summons in justice court. The amendment allows the justice to order the garnishee to retain the property in his possession pending its disposition according to law. This change also applies to a warrant of attachment. The amendment will provide more certainty as to the duties of the garnishee when he receives the summons. The liability of the garnishee under section 304.25 of the statutes is unchanged. The change merely provides the garnishee with clear notice of his duties.

Release of Certain Liens. Chapter 492 creates section 289.085 of the statutes, relating to the release of mechanics liens. The person, against whom the lien is claimed, may file, with the clerk of court in whose office the claim for lien is filed, an undertaking executed by two or more sureties that he will pay the amount of the lien. In lieu of this undertaking, the person, against whom the lien is filed, may deposit with the clerk of court a sum of money, certified check or negotiable United States government bonds equal to 125 per cent of the claim for lien. The depositor is entitled to any income from the deposit. The person, against whom the lien is claimed, shall serve upon the lien claimant a notice of the filing of such undertaking or deposit, which shall state where and when the undertaking or deposit was filed. Any action brought after the furnishing of security

2 Wis. Stats. (1951) §171.06.
is to proceed as if no security had been furnished. After the time has run for taking exception to the sufficiency of the security, ten days after notice of the filing, the clerk shall satisfy the claim for lien of record and discharge any *lis pendens*. When the lien or *lis pendens* is discharged, it shall attach to the security furnished.

The newly created section of the statutes will speed up the conveyancing procedures. A vendor will be able to pass title to realty even though there may be claims which ordinarily would be a cloud on title. The common practice has been to secure a release of any lien from the claimant. In many cases a claim may be contested as to the amount due a contractor or other claimant and no release can be obtained. Under the new section, marketable title may be conveyed by a vendor before the amount due a lien claimant is settled. The amount due is certain to be paid since the undertaking must be sufficient to pay the amount claimed, plus all costs and damages, or the deposit in lieu of the undertaking must equal 125 per cent of the amount claimed.

**CRIMINAL LAW**

**Probation of Juveniles.** Chapter 70 created 48.02(7) which gives the juvenile court of a county the right to place juveniles on probation to the state department of public welfare if that department has certified to that court that it has adequate personnel and facilities in that county.

Chapter 74 amended 176.32(1) and now allows one under twenty-one years of age to enter and be on licensed premises where intoxicating liquor is sold if accompanied by a spouse who is twenty-one years of age. This chapter also provides for a mandatory penalty, in case of offense, on the keeper of the premises, of a fine of not more than $250.00 or imprisonment not exceeding sixty days and on the person remaining of a fine of not more than twenty dollars and imprisonment not exceeding thirty days.

**Sentences.** Chapter 97 created 359.051(5) which allows a court to impose as many sentences as there are convictions and provides that these may be served consecutively to each other and/or to a sentence now being served and if the defendant is sentenced to the state prison and a county jail on separate counts, they shall be served concurrently unless the court orders otherwise.  

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1 35 O.A.G. 339 held that such a minor spouse could not enter such premises since the spouse over twenty-one was not a guardian and did not stand *locus parentis*.

2 Previously these parties were only liable to such fines and imprisonment.

3 Wis. Stats. (1951) §359.051 deals with intermediate sentences, reformatory and home for women. See also, 34 O.A.G. 163 (1945); Application of McDonald, 178 Wis. 167, 189 N.W. 1029 (1922).
Punishment for Escape. Chapter 177 created 346.40(5) which establishes a two year extension on the term of the original commitment of one who was transferred to the Wisconsin school for boys or to the Wisconsin home for women from the Wisconsin school for girls and who escapes from custody or attempts to escape by violence or assaults the superintendent or other employees of the institution.

Sales of Meat. Chapter 200 repealed and recreated 97.55 which relates to meat from dead or diseased animals. The first subsection states the previous law in precise language. The second subsection states that no carcass meat is to be fed to animals used for human consumption unless rendered and cooked, and the third subsection limits the first to animals with diseases which ordinarily render such meat unfit for human consumption and states that as to other animals subsection one shall not apply if animals are slaughtered under supervision of a veterinary meat inspector at an approved slaughtering establishment. Chapter 208 created 97.555 and 97.72(4) which permit the selling of horsemeat only if conspicuously labeled as such and provides a penalty in case of violation.

Interference With Public Assistance. Chapter 376 amended 49.12(2) relating to interference with the administration of public assistance and expressly included acceptance of supplies given to any person as general relief in exchange for or in payment of intoxicating liquors as a violation, though violations under 49.12(2) are not limited to such acts.

Chapter 481 amends 52.25 as amended and renumbered by Chapter 31 and gives to the district attorney power on complaint by a woman, who has borne an illegitimate child or is pregnant with a child which when born may be illegitimate, accusing a named person of being the father to take such complaint in writing under oath of such woman and issue his warrant and it shall be returnable before a magistrate of the county.\footnote{Formerly only the justice of the peace had this power and the warrant was returnable to him. Now both the justice of the peace and the district attorney may issue such warrant.}

Remand for Preliminary Examination. Chapter 538 created 355.18(2) which gives the trial court discretion to remand a cause to the magistrate for a preliminary examination on a motion on good cause shown. Good cause is defined as:

1. Preliminary examination was waived; and
2. Defendant had not had advice of counsel prior to such waiver; and
3. Defendant denies there is probable cause to hold him for trial; and
4. Defendant intends to plead not guilty.\(^5\)

**Sale of Narcotics.** Chapter 566 amended 161.02(2) so that any one selling or dispensing narcotic drugs to one under twenty-one years of age shall be imprisoned from three years up to twenty-five years\(^6\) and a third conviction on such offense carries with it life imprisonment. It amended 161.02(3) and increased the imprisonment and treatment of an habitual addict to two years. It also amended 161.275 and increased the fine for growing, possessing or selling marijuana to from $250.00 to $5000.00 and the imprisonment to from one to ten years.

**Public Nuisance.** Section 348.092(4) and (5) were created by Chapter 447 and declare that gambling and gambling houses or buildings which are prohibited in this state are public nuisances and subject to abatement. In case two or more offenses of keeping a gambling house have been committed in any house, place, or building, that house, place, or building is declared a public nuisance and is subject to be enjoined and abated under sections 280.09 to 280.15.

**Pre-sentence Examination.** Under section 340.485(1) created by chapter 542 of the 1951 Session laws a person convicted of particular sex crimes was mandatorily committed to the department of public welfare for a presentence social, physical and medical examination. An offense under section 340.47, carnal knowledge and abuse, was one of those crimes. This examination was demanded in those cases even when the obvious sentence was probation and in practice was accomplished by a sixty day examination at the state prison in Waupun except for cases in Milwaukee County. Section 340.485(1) was amended by chapter 85 to eliminate an offense under section 340.47 from the group of crimes where such examination is mandatory. So section 340.485(2) which makes such an examination a matter in the discretion of the court in case of all other sex crimes applies also to carnal knowledge and abuse cases.

*Cross Reference:*

**DOMESTIC RELATIONS**

**Marriageable Age of Consent.** Section 245.02, which sets the legal age of those who may contract marriage has been extended

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\(^5\) Wis. Stats. (1951) §355.18(1) states no information is to be filed until the party has had a preliminary examination unless he waives it except in the case of fugitives from justice and corporations. Remedy for the defendant if an information is filed without said examination is motion to dismiss.

\(^6\) The law before amendment had imprisonment from three to ten years and no other provision.
to include males under the age of eighteen, as limited by an amendment to section 245.16. This amendment allows a male under eighteen to "lawfully contract to marry and obtain a marriage license if he first obtains the written permission of the county judge of his county, who shall grant permission only if he finds that the marriage will prevent a child fathered by the applicant from being born out of wedlock." Previously, the marriage of a male under eighteen years of age was voidable at his option unless he confirmed it after reaching the legal age of consent.

Support of Dependents. Chapter 52 of the statutes has been created and entitled Support of Dependents. Actually this new chapter is made up entirely of sections previously found elsewhere in the statutes. It includes parts of Chapter 49 (Public Assistance), Chapter 247 (Divorce), Chapter 351 (Offenses against Chastity, Morality and Decency) and all of what was formerly Chapter 166 (Illegitimacy). For the most part, the only changes made in any of the renumbered sections is that the wording has been modernized and clarified. However, the Uniform Reciprocal Enforcement of Support Act, which was formerly section 49.135 and is now section 52.10, was changed considerably.

This uniform act was adopted by the Wisconsin legislature at its 1951 session only a few months after it was approved by the National Conference of Commissioners on Uniform State Laws. The law, designed to procure enforcement of support decrees without requiring extradition if the obligor went to another state, was badly needed and has already been adopted by more than thirty states and applied by many courts. Application of the law pointed out many possible improvements. The National Conference amended the law extensively in 1952, and, for the most part, those are the changes made by the Wisconsin legislature in section 52.10.

A statutory presumption has been created that the person owing support (obligor) was present in a responding state during the period for which support is sought. This presumption is rebuttable by proof to the contrary by the obligor, but at least it relieves the person entitled to support (obligee) from the burden of proving that the

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1 Chapter 8.
2 Swenson v. Swenson, 179 Wis. 536, 192 N.W. 70 (1923).
3 Chapter 31.
4 Chapter 247.
5 Uniform Reciprocal Enforcement of Support Act, 9A U.L.A.
6 Uniform Reciprocal Enforcement of Support Act (Revised), 9A U.L.A.
7 Wis. Stats. (1953), §52.10(7).
obligor was actually present in the responding state, a condition precedent to jurisdiction over the obligor under the prior act.  

Section 8 of the uniform act has been amended to allow political subdivisions that have furnished support to the obligee to invoke the reciprocal law to enforce continued support by the obligor as well as to secure reimbursement for past expenditures.  

Another addition provides that a summons and a petition will be used to commence proceedings to enforce support and further specifies that this is not an action but a special proceeding.  

Statutory permission has been granted a petitioner under the act to attach information to the petition which might help locate or identify the obligor.  

Provision has been made to have the district attorney represent the petitioner and to allow a minor obligee to petition through the person having legal custody of him without requiring appointment of a guardian ad litem.  

The two latter provisions save the obligee considerable difficulty since he is usually in serious financial distress after not having received support money. The court before which the proceeding is brought may also, in its discretion, direct the county to pay costs and fees of both petitioner and defendant or either.  

Arrest of the defendant obligor has been authorized if the court believes he may attempt to flee the jurisdiction.  

The attorney-general has been designated as the state information agency to compile a list of Wisconsin courts with addresses, having jurisdiction under the act. These are to be mailed to similar agencies in other states having the Uniform Reciprocal Support of Dependents Act.  

These state information agencies see that copies of the petition and other papers filed in the courts of another state are forwarded to the proper court in their own state which can obtain jurisdiction over the obligor.  

That court, upon receiving the petition, may proceed to obtain jurisdiction over the obligor or his property. Even though the petition is inaccurate or inadequate, the court may continue the case pending correction and make its own efforts to trace the obligor or his property.  

By these amendments to the Uniform Reciprocal Enforcement of Support Act, the primary purpose of the act, to allow the obligee to obtain jurisdiction over an obligor who has gone to another state

8 Subsection 4.  
9 Subsection 8.  
10 Subsection 9.  
11 Subsection 10.  
12 Subsection 11.  
13 Subsection 12.  
14 Subsection 14.  
15 Subsection 15.  
16 Subsection 16.  
17 Subsection 13.  
18 Subsection 18.
by filing a petition in the obligee's own state, has been greatly facilitated.

**Marriage of Epileptics.** The word "epileptic" has finally been removed from the statute listing those who are not capable of contracting marriage.\(^{19}\) Because the marriage of such persons had been absolutely void up to the time of this amendment,\(^{20}\) a companion amendment was enacted making "all marriages, otherwise valid and legal, contracted prior to April 24, 1953, to which either party was an epileptic person" valid and legal "in all respects as though such marriages had been duly and legally contracted in the first instance."\(^{21}\) These changes also do away with a long standing inconsistency which made the marriage of an epileptic void and yet did not list epilepsy as a ground for annulment of marriage.\(^{22}\)

**Wasserman Tests.** The authority to make Wasserman tests and chemical examinations has been transferred from the Wisconsin psychiatric institute to the state laboratory of hygiene.\(^{23}\) These duties are much more consistent with the purposes and other duties of the state laboratory than they were with those of the psychiatric institute.

**Guardian ad litem in Adoption.** Section 322.04(9), which requires the appointment and consent of a guardian *ad litem* for a minor or incompetent parent when the child of such a parent is to be adopted, has been amended to allow previous adoptions, which are invalid only because no guardian *ad litem* concurred in the consent of the minor parent, to be validated. This is to be done by the filing of a petition stating that the minor parent was represented by a duly licensed attorney at the time of giving her consent and that the child has remained with the adoptive parents for more than five years.\(^{24}\)

In the original amendment, the legislature also provided that the consent of a guardian *ad litem* was no longer necessary for a minor parent when she was represented by a duly licensed attorney at the time of giving her consent, but this provision was removed by chapter 612. Without the provision eliminating the requirement of the guardian's consent, the apparent result is that, under section 322.04(9)(a), the adoption is not effective without such consent.\(^{25}\) However, after

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\(^{19}\) Wis. Stats. (1953), §245.03(1) was amended by chapter 63.

\(^{20}\) In re Cannon's Estate, 221 Wis. 322, 266 N.W. 918 (1936); Note, 12 Wis. L. Rev. 123 (1936).

\(^{21}\) Wis. Stats. (1953), §245.035 was created by chapter 470.

\(^{22}\) Wis. Stats. (1953), §245.02.

\(^{23}\) Wis. Stats. (1953), §36.227(6) was repealed by chapter 54 and replaced by §36.225(4). Other statutes mentioning the psychiatric institute as the agency to make these tests have been corrected to conform to the amendment.

\(^{24}\) Chapter 170.

\(^{25}\) In re Adoption of Morrison, 260 Wis. 50, 49 N.W. 2d 759 (1951).
the child has lived with the adoptive parents for five years, the adoption can be validated by following the procedure set forth in section 322.04(9)(b).

Cross Reference:
PROPERTY, Sale of Real Estate Awarded Under Divorce Decree.

EVIDENCE

Tender in Usury. Chapter 256 repealed section 115.08 which made the tender of the principal sum of money loaned a condition precedent to relief from or plea of usury. But even without that statute the rule of a majority of the courts in the United States is that the debtor may receive relief only on the condition he pay or at least offer to pay the principal sum or the principal sum and a legal amount of interest. So the effect of this repeal is questionable.

Grand Jury Testimony. Chapter 280, section 25, of the 1953 Session Laws amended section 255.24 and renumbered it as section 255.21. It now provides that the transcript of testimony taken before the grand jury and certified by a grand jury reporter to have been carefully compared by him with the minutes of the testimony taken and to be a correct transcript of the same may be received in evidence with the same effect as his oral testimony to those same facts but he may be cross-examined by any party as to such facts. Previously a member of the grand jury could be required by a court to testify only as to whether the testimony of a witness examined before the grand jury was consistent with or different from the evidence given by that witness before such a court or they may be required to disclose the testimony given before the grand jury by any person upon a complaint against such person or at his trial for perjury.

Publication as Evidence of Laws. Section 1 of chapter 445 of the 1953 Session Laws amended section 327.01 and added legislative resolutions, senate and assembly journals or orders, rules, regulations or decisions of any of its boards, departments, commissions or agencies to those documents which are prima facie evidence that they are such publications as they purport to be when they are printed by the state as copies of such documents. Section 2 of chapter 445 of the 1953 Session Laws includes copies of orders, rules, regulations or decisions of any state or federal board, department, commission or agency to those copies which are prima facie evidence of such order, rule, or decision when printed by the United States or any state or territory as copies of such rules. This is under section 327.02.

1 Hersh v. Smith, 262 Wis. 75, 55 N.W. 2d 769 (1952).
3 Section 16 of Chapter 280 of the 1953 Session Laws establishes the rules for
Qualifications of Medical Witnesses. Chapter 459 attempts to revise the rules on admissibility of medical expert testimony, presumably in response to the problems suggested in *Morrill v. Komasinski*. Nonresident experts to be qualified, are now required either to be licensed to practice medicine or osteopathy in another state or if not, to offer proof "satisfactory to the court" that they are so qualified. In either case, the party intending to call such nonresident expert is required to serve a notice of five days upon the opposing party, specifically indentifying the nonresident expert proposed to be called. The express requirement of the old section that such nonresident expert, called otherwise than as examining or consulting physician, could qualify only where resident experts were unavailable has been deleted.

Reproduction of Records. Chapter 613 created section 215.91 which allows a savings and loan association to record, copy or reproduce any of their records by photostat or photographic process after which the original records may be disposed of with written consent of the commissioner of savings and loan associations. This is also applicable to federal savings and loan associations if it does not contravene federal law. These copies or reproductions are to be an original record in all courts and administrative agencies for the purpose of admissibility into evidence. A certified copy or facsimile of such photographic copy shall be deemed a certified copy or facsimile for all purposes.

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**INSURANCE**

Advance Payments. Chapter 56 amended sections 206.39 and 208.27 so as to allow life insurance companies and mutual benefit societies doing business in this state to collect and receive advance payments on their policies or certificates as agreed in writing between the company and its policy holder or the society and its member and these advancements may be held under trust or under other written agreement between the parties as are all other proceeds collected under the policy or certificate. The Wisconsin statute made no provision for advance collections and payments prior to this amendment.

Right of Investment. Chapter 64 extended the rights of domestic life insurance companies in investing its assets to bonds or other evidences of indebtedness of any governmental or civil division and to those not only in the United States but also those in Canada under 

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5 *Wis. Stats.* (1951) §147.19.
sections 206.34(1)(b), 206.34(1)(bm), and 206.34(1)(bn).\(^1\) This chapter also extended the right of investment in loans secured by mortgages under section 206.34(1)(c) to include mortgages on real property in Canada and on leasehold estates on improved property in the United States and Canada. The limitation in section 206.34(1)(c) as to amount was increased so that now a loan may not exceed two-thirds of the fair market value of the property mortgaged.\(^2\)

That chapter also amended that section's restriction so that when the value of buildings constitutes part of the security, the buildings must be insured to an amount which when added to two-thirds of the value of the land shall equal or exceed the amount of the loan.\(^3\) This chapter also terminated the limitation on section 206.34(1)(ef) which had restricted investments in evidences of indebtedness of solvent companies to not more than fifteen per cent of such companies' admitted assets. Section 206.34(1)(k), allowing investment in the purchase or ownership of real estate, in the United States or Canada, which produces income or will produce income by improvement, was created. This new section is limited to an aggregate investment not exceeding five percent of the admitted assets of the company.

**Supplemental Insurance.** Medical payment insurance has been broadened, in section 201.04(18) by chapter 418 as a type of insurance authorized to be written, to cover expense in connection with liability, burglary, steam boiler and elevator insurance except loss of time and in connection with automobile insurance to cover loss, damage and expense, including loss of time, which arises from injury, disease or death of the insured and others by accident.\(^4\) Under such insurance policies the insurer agrees to pay without regard to the insured's legal liability. Policies issued under this section are not required to fulfill the conditions of sections 204.31 and 204.32 which set up the requirements for accident and sickness policies and group accident and health policies when they are issued as supplemental to other policies of section 201.04 provided that the "loss, damage or expense arises out of a hazard directly related to such other insurance."

**Cross Reference:**

**MOTOR VEHICLES, Miscellaneous.**

**MOTOR VEHICLES, Safety Responsibility Law.**

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\(^1\) For a governmental or civil division to be included there had been a population minimum of five thousand persons and there had also been the requirement that these divisions were in the United States.

\(^2\) The previous limitation was fifty per cent of the fair market value.

\(^3\) The insurance on the buildings was previously added to fifty per cent of the value of the land.

\(^4\) Under the former section "loss of time" expressly was excluded from this subsection regardless of the type of policy it was written with.
Practice and Procedure, Service of Process on Domestic Insurance Companies.

MOTOR VEHICLES

Stopping for a School Bus. The old section 85.16(12), limiting the speed of vehicles overtaking and passing a school bus stopped on the highway to fifteen miles per hour, was deemed insufficient protection to the children involved. Chapter 180 substitutes the requirement that such overtaking or meeting vehicles stop and wait to pass the bus until the bus resumed motion or the driver has signaled for the vehicle to proceed. This new section 85.16(12) is limited in that it does not apply to business or residential districts nor to vehicles proceeding in the opposite direction on the opposite side of a divided highway. But even now the bus driver has the duty to drive in such a manner and with due care so as to permit the flow of traffic without undue interruption.

Speedometer, Directional Lights, and Rear Fenders. Before this 1953 session of the legislature, there was no requirement that an automobile had to be equipped with a speedometer. Chapter 224 created section 85.67(7) requiring a speedometer on every motor vehicle designed primarily for use on the highway when it is operated on the highway. Chapter 472 created section 85.45(6) requiring all motor vehicles except those with dump bodies be equipped with rear fenders capable of restricting the splash of mud and water on vehicles following or in lieu thereof, mud guards must be provided. However, this was later amended by chapter 680 so that only privately owned straight trucks or semi-trailers drawn by a truck tractor in intercity movement need be so equipped. The standards for the fenders or mud guards shall be determined by the motor vehicle department. The old section 85.06(15)(a) permitted any vehicle to be equipped with directional lights and under section 85.175 a driver was required to signal for a turn by hand and arm or by such mechanical or electrical signal. Chapter 297 amended 85.06(15)(a) and provides that all new motor vehicles sold in Wisconsin after January 1, 1955, must be equipped with directional lights. The ultimate goal of the legislature seems to be to have all vehicles equipped with directional signals and ultimately to do away with manual signals entirely.

Duty of Disclosure. Section 85.08(25b) now repealed, had placed a duty upon a judge taking the plea of one charged with a violation requiring revocation or suspension of a driver's license to inform the defendant of such consequence of the plea. No such warning was provided, as a practical matter, where the defendant elected to forfeit bail without personally appearing before the judge. Chapter 254 created 85.08(24b) which requires either the arresting officer or the
district attorney, in such cases, to inform the violator that forfeiture of bail will result in revocation or suspension, and such violator must sign a stipulation to the fact that he was so informed. Now unless such stipulation has been filed with the court, no bail shall be forfeited.

Weight Limitation. The weight limitations in sections 85.47 and 85.48 had been held not to apply to state, county, or municipal vehicles. But chapter 404 created section 85.465 which makes these limitations applicable to state, county, and municipal vehicles unless they are being used for the removal, treatment, and sanding of ice and snow. This section is limited further by section 85.53(6) which allows the officer in charge of maintenance to permit loads in excess of the weight limitations to be hauled for good cause for construction or maintenance operations.

Occupational License. Although chapter 338 amended section 85.08(25c)(a) relating to occupational licenses, it is only a rewording and rephrasing of the old section and in no way changes the substantive or procedural law.

Rules for Passing. Section 85.16(6) had prohibited passing another vehicle at railroad grade crossings and highway intersections unless a traffic officer allows it or the highway is properly marked by traffic lanes. Chapter 535 amended section 85.16(6) and limited its application to intersections on rural highways only when those intersections are designated by proper signs. The reason for this change was the difficulty one had in attempting to pass other vehicles on a highway which numerous other roads crossed. This new section in effect empowers the state highway commission to erect signs which will establish those intersections at which passing is not allowed.

Foreign Licensed Motor Vehicles. Chapter 593 repealed and recreated section 85.05 which exempts nonresidents from the laws of Wisconsin providing for registration and taxation of motor vehicles to the same extent as similar exemptions are granted residents of this state under the laws of the state or foreign country of such nonresident if such nonresident has complied with the laws of his state as to registration and displays a legal registration plate from that state. This section also empowers the commissioner of the motor vehicle department to make reciprocal agreements with other states and foreign countries concerning licenses, permits, fees, mileage taxes and other items. The most noteworthy changes this chapter made were the repeal of sections 85.05(3) and 85.05(2)(a). The first of these was the section which made a nonresident's use and operation

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1 41 O.A.G. 65 (1952).
2 Kaestner v. Preferred Accident Ins. Co. 257 Wis. 6, 42 N.W. 2d 260 (1949); Topham v. Casey, 262 Wis. 580, 55 N.W. 2d 892 (1952).
3 Wis. Stats. (1951) §86.19(2).
of a motor vehicle over the highways of Wisconsin an irrevocable appointment of the commissioner of the motor vehicle department for the service of process. The reason for this repeal was very questionable especially in the light of recent legislation, and the fall session of the legislature reenacted it in chapter 648. The second section which was repealed dealt with the "single trip" privilege.

Powers Granted. Prior to this amendment by section 60.18(12) a town meeting could direct the town board in towns with a population of five hundred persons or more and having one or more unincorporated villages to exercise all the powers given a village board by chapter 61. Without this direction, a town board had no authority to establish speed ordinances and enforce them for section 60.29, which lists the powers of a town board, does not list such power. But village boards by section 61.34 do have power of regulations of village highways for the safety, health, and welfare of the public. Section 81.01(1) enumerates the duties of a town board over state highways but does not list that power. So chapter 313 amended section 60.18(12) to allow a town meeting to direct the town board in all towns to exercise the powers relating to the adoption and enforcement of speed ordinances conferred on village boards. This enables a town meeting to give the town board this particular power without conferring all the powers of a village board on the town boards and it enables the town meeting of any town to do it.

Section 85.831 was created by chapter 348 and permits local ordinances complying with the provisions of chapter 85 to contain a provision for stipulation of guilt. If this stipulation is timely made and the amount of the penalty is paid to the designated official, the person charged need not appear in court and no additional costs shall be taxed to him unless the local ordinance so provides. Some cities already have allowed stipulation of guilt for offenses other than those under chapter 85 of the statutes. This section gives local authorities a positive basis on which they can allow a stipulation of guilt under an ordinance which complies with chapter 85 of the statutes.

Chapter 529 created section 66.95 empowering the governing body

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4 Tarezynski v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co., 261 Wis. 149, 52 N.W. 2d 396 (1952); Ullman v. Frege, 263 Wis. 199, 56 N.W. 2d 821 (1952); Feinsenger v. Bard, 195 F.2d 45 (7th Cir., 1952).
5 41 O.A.G. 86 (1952).
6 This power is limited by section 85.40 which sets up state speed regulations and the local authority's power in regard to those regulations and by section 85.84 which allows any local authority to pass any rule or ordinance in strict conformity with Chapter 85 of the STATUTES except as to revocation and suspension of license.
7 Milwaukee Code of Ordinances §§101-105 provide for stipulation of guilt in cases of violations of certain parking restrictions, of the duty to signal a turn, and of city ordinances by pedestrians including midstreet crossing, and crossing intersections against the signal light.
of any city to enact ordinances requiring that motor vehicles be equipped with a lock for the throttle, gear shift, or ignition and prohibiting one from leaving a vehicle on a street without locking the lock and removing the key. Section 85.915 was created by chapter 534 and empowers a trial court to order in addition to other penalties of section 85.91 that the one convicted attend a traffic safety school approved by the commissioner of the motor vehicle department. Prior to these sections there was no statutory authority for either of these acts.

**Safety Responsibility Law.** Sections 85.09(7)(b) and 85.09(10) (c) formerly made the duration of suspension of a license and car registration and the duration of withholding of security deposited last until one year elapsed after the date of the accident and no notice had been filed with the commissioner by any claimant in thirteen months that an action had been instituted by a party in interest by actual service of the summons in the one year period. But a question arose concerning the interpretation of the commissioner including counterclaim or cross complaint filed subsequent to the expiration of the one year limitation.\(^8\) Chapter 255 amended those sections so that an action instituted by actual service of counterclaim or cross-complaint as well as of summons will defeat the right to a return of the security deposited and the suspended license and registration if such service is made within a year of the accident.\(^9\) Chapter 339 amended sections 85.09(1)(j), 85.09(5)(c) and 85.09(21)(b)(2) to require that when proof of ability to respond in damages for liability in a motor vehicle accident is based on an insurance policy, the amounts covered by such policy must be ten thousand dollars for injury or death to one person, twenty thousand dollars for injury or death to two or more persons and five thousand dollars for injury to or destruction of property of others in one accident to satisfy the requirements of section 85.09. The amounts previously required were five thousand dollars, ten thousand dollars, and one thousand dollars respectively. This chapter raised the amount of deposit necessary for a certificate of responsibility from the state treasurer to twenty-five thousand dollars instead of eleven thousand dollars under section 85.09(25)(b). Under the former section 85.09 (6)(d) which established the exceptions to the times when security is required under section 85.09, any evidence filed with the commissioner of motor vehicles which would satisfy him that the person who would otherwise have to file security had been released from liability was sufficient. Chapter 546 amended that section to expressly include a release from liability executed by a parent as a natural

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\(^8\) [39 O.A.G. 462 (1950).]

\(^9\) [Ibid.].
guardian for a minor child in respect to property damage or personal injury by the child if the total damage does not exceed two hundred dollars; provided, if there is personal injury, a doctor's certificate of injury must be filed with the motor vehicle department certifying that the minor received no permanent injury. Although there were no cases on whether a parent could previously sign such a release, the practice was to require execution of such release by a duly appointed guardian ad litem, requiring commencement of an action in even small cases.

Chapter 482 created section 85.09(8) which makes the Wisconsin safety responsibility law a reciprocal law.

Miscellaneous. Chapter 302 amended section 218.01 which formerly stated that a “finance charge” meant “that part of the total price of a retail installment contract in excess of the cash price, and includes, unless otherwise specified, the insurance premium if any.” This is now called the “time price differential” and the section specifically states all the charges which may be included but excludes insurance premiums. This chapter also amended section 218.01(6)(b) to set up a maximum time price differential for particular classes of motor vehicles and recreated section 218.01(6)(c) which now provides that at the time the buyer signs the installment sales contract he is to receive an exact copy of that contract and all notes given in the transaction. That copy of the contract must contain the seller’s signature identical with that on the original contract. Previously that statute demanded that an exact copy of the contract and notes be sent to the buyer within five days of the sale. This chapter also created section 85.09(5)(e) under which in the case of a retail sale of a motor vehicle under a retail installment contract in which provision is made for insurance or a charge is made to cover it, the policy so issued must include public liability coverage for the driver in the case of negligence or the seller shall in writing notify the buyer when the contract is made that the vehicle is not covered by public liability insurance. That is a new requirement under Wisconsin statutes, but there is some authority for the fact that the notice required by section 85.09(5)(e) may be combined with a conditional sales contract form and need not be a separate instrument.10 Section 85.45 (2)(c) was amended by chapter 582 to raise the maximum overall length of a combination of vehicles from forty-five to fifty feet and now to except specifically a mobile home from that limit and set its limit at forty-five feet alone or sixty feet in combination.11 Chapter 650 created sections 85.08(12)(f) which establishes a fine or imprisonment or both for one required to be examined for an operator's

10 42 O.A.G. 208 (1953).
11 For other changes concerning mobile homes see Chapter 563.
license who by any means secures the services of another to take his place and 85.08(12)(g) which establishes punishment for the person so appearing. Chapter 578 created sections 370.01(50), (51), and (52) which define the terms "controlled access highway," "express highway" and "freeway."

**PRACTICE AND PROCEDURE**

**Officials and Appointees of the Court.** Section 252.14(1), dealing with court commissioners, and section 324.29(2), dealing with guardians ad litem, have been amended to require that such persons hereafter appointed by the court to serve in those capacities must be attorneys licensed to practice in this state.

The judges of the municipal courts for both the eastern and the western districts of Waukesha county have been given the powers and duties of court commissioners. Appointment of retired circuit judges as conciliators has been authorized in counties having a population of 500,000 or more. These conciliators may also be appointed court commissioners.

The number of assistant divorce counselors authorized in counties having a population of 500,000 or more has been increased from only one to as many "as the county board shall determine and authorize." The office of "calendar deputy clerk" has been created in all counties having a population of 250,000 or more. The duties of this new clerk are to be prescribed by the circuit court judges in the county.

Discovery examinations in counties having a population in excess of 500,000 must be taken before either a court commissioner or a judge in chambers. In other counties, discovery examinations may still be taken before any authorized officer.

**Service of Process on Domestic Insurance Companies.** A summons may now be validly served on a domestic insurance company by delivering a copy "to any agent of such corporation as defined by the insurance laws of this state," but this "shall not be deemed valid service unless a true copy of such service shall be sent by registered mail to the principal place of business of such corporation within 5 days after service upon such agent. . . ." Service on other domestic corporations must still be by service on one of the officers enumerated in the statute.

1 Chapter 100.
2 Chapter 107.
3 Chapter 20 and Chapter 19, respectively.
4 Wis. Stats. (1953), §269.70 was created by chapter 610.
5 Wis. Stats. (1953), §247.13(2) was amended by chapter 34.
6 Wis. Stats. (1953), §59.38 was amended by chapter 155.
7 Wis. Stats. (1953), §326.12(3) was amended by chapter 371.
8 Wis. Stats. (1953), §262.09(3) was amended by chapter 48.
9 Wis. Stats. (1953), §262.09(3).
Maintenance and Champerty. The defenses of maintenance and champerty have been abrogated in all cases except where the champertous contract itself is the basis of the suit.10

Term of Office. A justice of the supreme court or a judge of the circuit court who was elected to fill a vacancy occurring before the expiration of a regular term has, up to this time, served only the remainder of that term. This frequently has necessitated a costly election to fill the office for only a short time. The legislature has remedied this by providing that such judge or justice shall serve a full term after his election.11

Changes in State Judicial Structure. Chapter 327 of the 1953 Session Laws has added another branch to the Second Judicial Circuit in Milwaukee county. This new court, the Tenth Branch, is to be financed by an increased suit tax. The civil court of Milwaukee county has been changed from a municipal to an inferior court.12 The municipal court of Manitowoc county has been divided into two branches by creation of a circuit court branch.13

Jurisdictional changes have been made in the following courts: county court of Marquette county,14 county court of Shawano county,15 county court of Chippewa county,16 county court of Walworth county,17 county court of La Crosse county,18 county court of Monroe county,19 county court of Green county,20 and county court of Washington county.21

Criminal jurisdiction of justices of the peace has been increased in certain cases when the defendant enters a plea of guilty.22 Counties on the shore of any inland lake have been given jurisdiction in common of all offenses committed on any part of the lake.23

Costs and Fees. The suit tax has been increased from $1 to $5 to help pay the state’s share of the costs of the new Tenth Branch of the Second Judicial Circuit.24 The fees to be collected by the clerks of the circuit courts,25 clerk of the civil court of Milwaukee county,26

10 Wis. Stats. (1953), §331.375 was created by chapter 293.
11 Wis. Stats. (1953), §17.19(2) was amended by chapter 606.
12 Chapter 493
13 Chapter 125.
14 Chapter 22.
15 Chapter 86.
16 Chapter 195.
17 Chapter 211.
18 Chapter 379.
19 Chapter 455.
20 Chapter 469.
21 Chapter 609.
22 Wis. Stats. (1953), §360.01(5) (b) was created by chapter 573.
23 Wis. Stats. (1953), §2.04 was amended by chapter 506.
24 Wis. Stats. (1953), §59.39(11) was amended by chapter 327.
25 Wis. Stats. (1953), §59.42 was repealed and recreated by chapter 511. In addition, extensive amendments were made in the fall session by chapter 662.
and justices of the peace have also been increased. The amount of expert witness fees and attorney fees includible in the cost awarded the prevailing party in the civil court of Milwaukee county has also been increased.

Cross Reference:
CREDITORS RIGHTS, Contents of Garnishee Summons.
CREDITORS RIGHTS, Notice for Issue of Execution.
CRIMINAL LAW, Remand for Preliminary Examination.
DOMESTIC RELATIONS, Guardian ad litem in Adoption.
MOTOR VEHICLES, Foreign Licensed Motor Vehicles.
TORTS, Notice of Injury.
TORTS, Service on Owner of Water-Craft.
WILLS AND PROBATE, Time for Filing Claims.

PROPERTY

Requirements of a Valid Conveyance. Chapter 428 has amended section 235.01(1) to state that conveyances may be acknowledged and executed in the presence of two witnesses but that the absence of this acknowledgement or witnessing does not affect the validity of the conveyance but only its recordability. This has been case law in Wisconsin for many years. The amendment makes no provision for the validation of unsealed conveyances.

Discharging Noxious Matter into Surface Waters. Section 146.13(2) was created by chapter 443 and prohibits any person from discharging untreated domestic sewage into surface waters or drainage ditches, from discharging pumpage from any septic tank, dry well or cesspool into surface waters or drainage ditches and provides a penalty.

Removal of Restrictive Covenants. Chapter 545 has created section 281.30 which gives a statutory method of removing certain restrictive covenants affecting the use of certain city real estate if all or part of a city block is affected by restrictive deed provisions and when the first restriction on the property existed for thirty years

Section 59.42 now appears to establish the fees for all courts of record and does not seem to be limited to the circuit courts. Strictly interpreted, this would make fees in the civil court of Milwaukee county identical with those of the circuit court, an enormous increase. An opinion of the attorney-general has been requested on this provision and a test case has been started to compel the clerk of the civil court to accept the old fee.

Chapter 550.
Chapter 580.
Wis. Stats. (1953), §307.01 was amended by chapter 574.
Chapter 580.
This merely restates what has been case law in Wisconsin since two early Wisconsin cases; Myreth v. McMillan, 13 Wis. 188 (1860) and Leinenkugel v. Kehl, 73 Wis. 238, 40 N.W. 683 (1888).
The effect of an unsealed deed is discussed in Dreutzer v. Boker, 60 Wis. 179, 18 N.W. 776 (1884). The curative statute on unsealed deeds is section 235.18.
and when seventy-five per cent or more of the area in that city block has not been developed with buildings allowed by the restriction. While this gives an owner of such city land under such circumstances an affirmative right, it has been held for some time in Wisconsin that:

"Courts of Equity will not enforce such restrictive covenants when the character of the neighborhood has so changed as to make it impossible to accomplish the purposes intended by such covenants."³

Consideration in a Deed. Section 235.15 formerly stated that it was the duty of all parties to a real estate conveyance to state as near as practicable the actual consideration for that conveyance. But even with that duty imposed, the practice of attorneys in Wisconsin was to use the stock phrase, "one dollar and other good and valuable consideration," in deeds and other conveyances. The reason was perhaps that no penalty was provided in case of a breach. Now chapter 553 has repealed that duty entirely. This is in line with the rules stated in an early Wisconsin case concerning consideration.⁴

Conveyance by a Minor Married Woman. As to the right of a minor married woman to convey property, the Wisconsin statutes in point prior to 1953 were sections 235.01(1), 235.26, and 235.27. Section 235.01(1) stated that the conveyance must be signed by one of lawful age. Section 235.26 stated that every married woman of the age of eighteen years and upwards may bar her rights of dower by joining with her husband or his guardian in a deed or by executing her quit claim deed to the person taking from her husband. From these statutes the only interest which a minor married woman could convey or bar was her right of dower. But chapter 567 has created section 235.015 which allows a minor married woman to alienate any right, title or interest she may have in any real estate, including her right of dower, by joining with her adult husband in an instrument of conveyance. The effect of this is to bind her as though she were an adult. This section is to supersede any previous provisions of the law to the contrary.

Dower and Homestead Rights. Section 235.27 allows every married woman of eighteen years or more to bar her dower rights by joining with her husband in a conveyance or, if he had lawfully conveyed to another, by executing a quit claim deed of that land to the other person. Chapter 494 has amended section 235.27 to allow a married woman to release her homestead rights in the same manner.

³ Ward v. Prospect Manor Corporation, 188 Wis. 534, 206 N.W. 856 (1926); Burden v. Doucette, 240 Wis. 230, 2 N.W. 2d 204 (1942); Comment, 36 MARQ. L. REV. 372, 375-376 (1953).
⁴ Rust v. Fitzhugh, 132 Wis. 549, 112 N.W. 548 (1907).
That provision appears to be in accord with section 235.01(2) which states that an alienation by a married man of his homestead is not valid without his wife's consent. That consent may be shown by her joining in the conveyance or executing a separate deed to the same property.

**Metes and Bounds Description.** The spring session of the Wisconsin legislature enacted chapter 351 which repealed and re-created section 236.16. The second subsection required that in order to convey or contract to convey a parcel of land whose boundaries were to be specified by metes and bounds, the owner must have the parcel surveyed, monumented and mapped according to the section. By the third subsection no such conveyance was valid unless access to the parcel was provided by a road or street. The fourth subsection forbade the recording of such a deed unless it was accompanied by a map approved by the governing body of the city or village having plat jurisdiction over the land. Chapter 351 also created section 236.165 setting up penalties in case of a violation of section 236.16. The amendments met with strong disapproval both of individual members of the state bar and individual registers of deeds, many of whom thought the new sections so impractical and unworkable that they made known their intent not to comply with the provisions. As a result of this dissatisfaction, the fall session of the legislature, by chapter 624, repealed the new sections and recreated the old section *in toto.*

**Property Held by Aliens.** Section 234.23, which makes it unlawful for any person or corporation not a resident of the United States or one of its territories to own any interest in more than 640 acres of land in Wisconsin, has been liberalized somewhat by chapter 55. The amendment provides that right of way easements of railroad or pipe line corporations are exempted from the restriction while being used in the business of such corporation and for ten years thereafter. The legislature is presumably looking forward to the possibility that a market for the newly developed Canadian natural gas resources may be sought in Wisconsin.

**Recording Fees.** Chapter 174 has increased the recording fees to be charged by the register of deeds for certain instruments. This chapter has amended section 59.57(1)(b) to provide higher fees for the recordation of standard instruments not drawn on an approved form as well as for instruments for which there is no standard form. Section 235.16(3) has also been amended to provide for an increased recording fee on standard instruments even on the approved form when a rider has been attached.

**Property Assessment.** Section 70.74(7)(aa) has been created to
prevent any person from appearing before the board of review or from otherwise contesting any assessment of real or personal property when that person has refused an assessor's reasonable written request, sent by registered mail, to view the property assessed.  

**Acquisition of Lands for Highways.** Section 83.07(4) has been amended by chapter 308 to provide for notice of the court hearing on the application for eminent domain to any lienor of record and to any occupant of the lands sought to be acquired. Formerly, only the owner of such lands was entitled to this notice. Other provisions have also been made for the benefit of the lienor by amendment of section 84.09(2). The money to be paid for property acquired for public highways by eminent domain is to be paid over to a court of record in the county where the land is located instead of being paid directly to the owner. This gives the lienor an opportunity to procure payment of his lien directly from the court. There is no danger that the owner will have dissipated the proceeds before the lienor learns of the sale of the land securing his claim. Section 84.09(2) further provides that the owner and lienor may join in a written direction to the highway committee or town board stating to whom the proceeds are to be paid. In this event, the money need not be paid over to a court of record but may be paid directly as specified in the direction. Of course, if there is more than one lienor of record, they must all join in such written direction. 

**Sale of Real Estate by an Executor.** Chapter 140 has amended sections 316.03 and 316.10 which relate to the sale of realty belonging to a decedent's estate by the executor or administrator. Previously these statutes mentioned a sale of such real estate only when the sale was necessary; that is, when the sale of the personal property in the estate was not sufficient to pay the debts and expenses of the estate. The statutes as amended include a sale that is "for the best interests of the estate or the heirs" as determined by the county court. However, the amendment actually makes no change in the law. Section 316.01, which is the general authorization for the sale of real estate by executors and administrators, has long provided for the sale of real estate when the sale of personalty would be "inimical to the interests of the estate" and, in the very words of the amendment, when the sale of real estate would be "for the best interests of the estate" or the heirs. Section 316.02, which sets forth the require-

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5 Chapter 207.  
6 This section was also amended by chapter 308.  
7 Section 316.03 relates to the hearing on a petition to sell realty belonging to the estate. Section 316.10 deals with the court order authorizing sale of realty belonging to the estate.  
8 Chapter 122 of the Session Laws of 1933 added this language to section 316.01.
ments of the administrator's petition for license to sell real estate, provides that such petition may state how the sale is for the best interests of the estate or the heirs. The amendments merely include in sections 316.03 and 316.10 the provisions which previously had to be read into them by implication from the preceding sections.

Sale of Real Estate Awarded Under Divorce Decree. Section 247.375 has been added to the statutes dealing with divorce by chapter 495. Under the new section, a person who was awarded real property in a divorce proceeding may, after judgment of divorce has been decreed but before it has become final, be granted permission to dispose of such realty free of any claim or interest of the opposite party. However, the court may require that part of the proceeds of the disposition be used to secure payment of a sum for the benefit of either party or their children. The purpose of the amendment apparently is to facilitate the sale of real property by one whose title derives from an interlocutory decree of divorce, free of the possibility of the title being affected by a subsequent vacation or amendment of the decree.

Cross Reference:
CREDITORS RIGHTS, Carriers Lien for Storage or Transportation.
CREDITORS RIGHTS, Release of Certain Liens.
CRIMINAL LAW, Public Nuisances.
TORTS, Unfair Competition.
WILLS AND PROBATE, Specific Performance of Decedents Contracts.

TORTS

Service on Owner of Water-Craft. Chapter 175 created 30.10 which allows service of process on a nonresident owner or operator of water-craft, which causes injury to person or property in this state, by mailing a copy of the original summons to the secretary of state with a $2.00 fee, provided a copy of the service is sent by registered mail to the defendant and the defendant's return receipt and an affidavit by plaintiff or his attorney as to compliance with this section are filed. 30.10(3) places upon the person in charge of such water-craft the duty to report to the sheriff of the county where it occurred within twenty-four hours of such accident the names and addresses of the owners and all those on board at the time of the accident with brief statement of the facts of the accident. If he fails to do this, a fine is imposed. As to venue in such case, 30.10(1) states that it is the county in which the accident occurred and the presence of the water-craft there with the damage done and the sub-

* Section 247.26 provides for such awards.
sequent removal of the water-craft from the state shall act as a waiver of an objection to venue by the owner and operator if the case is brought in a proper court in Wisconsin.

**Misbranding and Adulteration of Foods.** Section 97.60 has been repealed and recreated by chapter 198. This section deals with the misbranding of foods and in its new form defines package as a closed container or wrapper thereby solving the difficulty raised in an early Wisconsin case. It also sets up with considerable particularity the duties of one labeling food and its consequent requirements.

Chapter 421 amended 97.25(3) dealing with the adulteration of food and drugs and renumbered it 97.25(2). This section substantially changes the provision regarding a food containing any added substance which is poisonous or injurious to health and limiting it by excepting added substances when the quantity of that substance does not ordinarily render it injurious to health or if the addition of the substance is required and cannot be avoided in the manufacturing of the product. The chapter also created 97.25(3) which limits the application of this theory of adulteration in the cases of compound foods.

**State Aircraft Liability.** Chapter 244 created section 114.065 which establishes liability on the state for damage occasioned by the negligent operation of aircraft owned and operated by the state, which damage is caused in the performance of state business, if a claim or notice of intent to file claim is filed in ninety days after the accident according to section 15.18(8). This must contain a statement of the facts on which the claim is based. The attorney general then reports on this to the legislature who passes on the claim or, if no action is taken by the legislature in sixty days after presentment, it shall constitute disallowance which bars any action based on the claim unless brought within six months after disallowance. This covers all business of the state whether governmental or proprietary and is an extension of the usual limit of state liability for the torts of employees which is limited to proprietary functions.

**Unfair Competition.** Chapter 415 created 207.04(3) which makes it an unfair method of competition for one who is in the business of financing the purchase of real estate to require as a condition pre-

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2. Under the less explicit statute, see, Dairy Queen of Wisconsin v. McDowell, 260 Wis. 471, 51 N.W. 2d 236 (1951) and 41 O.A.G. 135 (1952).

3. 99 A.L.R. 187 (1927) mentions a New York Court of Claims case which under a similar statute allowed recovery. No other cases are available.

cedent to the financing the purchase that the person for whom the purchase is to be made negotiate a policy of insurance or renewal thereof covering that property through a particular insurance agent or broker. Chapter 415 also created 207.04(4) which makes it unfair for a person selling real or personal property, or a person or firm engaged in that business, to require such a condition precedent to a sale.\(^5\)

Notice of Injury. Chapter 444 amended 330.19(5) providing for a notice of injury to the person within two years after its happening, by stating that the purpose of that statute was to prevent prosecution of claims after investigation of the facts upon which they are based has become difficult. It further provides that any notice is sufficient if it advises the party addressed of the principal facts on which the claim is based and it substantially meets the other requirements of 330.19(5). This purpose had been generally agreed upon prior to this new enactment.\(^6\)

Cross Reference:
CRIMINAL LAW, Public Nuisances.
MOTOR VEHICLES, Safety Responsibility Law.

TRUSTS AND ESTATES

Burial Contracts as Trusts. Chapter 291 creates section 156.125 which relates to prearranged funeral plan agreements. Prior to the creation of this section, no funeral company could sell any certificate providing for burial benefits;\(^1\) section 156.125 allows a trust arrangement pursuant to an agreement with a funeral company for services to be rendered after the death of the decedent. Either the person, for whose benefit the funds are paid, or the funeral company can deposit the funds in the name of the person for whose benefit the funds are paid in trust for the funeral company. Such trust account is revocable during the life of the depositor only after notice to the designated beneficiary. After the death of the depositor, the funeral company can collect the funds after written notice to the bank that it has complied with the underlying agreement.

The depositor is assured of getting funeral arrangements according to his wishes. The funds to be used cannot be reached by creditors of the depositor since they are in trust for the benefit of the funeral company. The depositor is protected because neither the funeral company nor its creditors can reach the funds unless the agreement has been carried out. The funeral company, moreover, can prevent any

\(^5\) The constitutionality of these sections is discussed in 42 O.A.G. 137 (1953).
\(^6\) Nelson v. American Employer's Insurance Co., 262 Wis. 271, 55 N.W. 2d 213 (1952); Ullman v. Freye, 263 Wis. 199, 56 N.W. 2d 821 (1952); 1952 Wis. L. Rev. 105.
\(^1\) Wis. Stats. (1951) §156.12(7).
breach of the underlying agreement by the depositor since it must have notice before the depositor can withdraw the funds during his lifetime.

**Trust Fund Investments.** Section 320.01(4) of the statutes has been amended by chapter 164. The section is no longer limited to original investments in and retention of single premium endowment insurance policies and single premium annuities. The person authorized to invest the funds of the trust may, with the approval of the court, retain and make original investments in annuities, endowment policies, life insurance policies and accident and health policies benefiting the beneficiary of the trust or the ward or their dependents. Generally, under section 320.01, a trustee could invest in these classes of securities if he was given such power in the instrument under which he was acting. By reason of the amendment, a trustee, not otherwise authorized, may now take steps to protect beneficiaries, the ward or their dependents without being limited to single premium policies. Under the old law the trust assets in many cases were not sufficient to permit single premium policies to be taken out and still allow the trustee to adequately fulfill his obligations as trustee. Under the new section, a beneficiary or his dependents can be protected without forcing the trustee to exhaust the funds at his disposal.

**Valuation of Trust Assets.** A new section, 320.09, has been created by chapter 228. Section 320.09(2) lays down the test to be used in evaluating assets of a fund. Market values are to be used as revealed by published market quotations and, when these are unavailable, such other sources of information may be used as are fair and reasonable. It appears that the general custom of investment brokers and banking institutions would be acceptable tests. The test is to be used whenever it is necessary to determine the value of investments for the purposes of chapter 320 of the statutes. The meaning given to the term "value" has been subject to change in Wisconsin in the last twenty years. Section 320.09(2) now prescribes a test which is more definite.

**Retention of Fluctuating Investments.** Under section 320.09(1), a sale or liquidation of an investment is not required *solely* by reason of a change in the relative values of investments eligible under chapter

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2 See, Will of Yates, 259 Wis. 263, 48 N.W. 2d 601 (1951), holding that trust investments are governed by the statutes in force when the investment is made rather than statutes in force when the trust was created.

3 See, *In re Karkowski's Estate*, 220 Wis. 45, 264 N.W. 487 (1936) for the meaning given to the term "actual value" as it was used in an earlier statute; *Estate of George*, 225 Wis. 251, 257, 270 N.W. 538, 274 N.W. 294 (1937) (no specified meaning given to the term "value"); *Welch v. Welch*, *infra*, note 8 at 316 (Market value used as the test).
320 of the statutes. Section 320.02 contains the limitations as to investments and is still applicable when an original investment of trust funds is made. However, this section does not now apply to retention of investments and require a sale of securities merely because of a change in the value of investments. Section 320.05 has allowed a trustee to retain securities, regardless of changed market conditions, which would bring into operation the provisions of section 320.02, but the trustee had to obtain the approval of the county court. The court was required to limit the allowed period of retention in its order. Such recourse to the county court no longer appears to be necessary to avoid absolute liability for loss, but still may be desirable to avoid liability for negligently retaining such securities since the creation of section 320.09(1) only affects the duty of care of a trustee in one important aspect.

A trustee is negligent in the handling of trust funds if he originally invests them contrary to the provisions of chapter 320 and thereafter the value of the trust fund is lessened. When the validity of the original investment cannot be questioned, the trustee has not been held surchargeable for any loss if he could not exchange the investments except to the detriment of the trust. However, the trustee, in the exercise of his discretion, is still bound by the law relating to the duties of trustees.

A trustee must exercise more than ordinary diligence and vigilance in the management of a trust estate. Good faith alone will not protect a trustee; he must also exercise diligence, prudence and absolute fidelity. In Wisconsin trustees are bound by a strict rule in reference to their liability. In the exercise of their discretion, they are required to act as prudent and provident persons would act under the same or similar circumstances. Where a trustee is given broad powers of discretion in the instrument creating the trust, he is not bound by the provisions of chapter 320 of the Statutes as to the retention of investments or the making of new ones. When a trustee is not given broad powers of discretion, he is bound by chapter 320. The creation of section 320.09(1) merely allows the trustee to use good business judgment when investments are subject to a decline in values without a time consuming petition to the county court. The duty of care

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4 In re Matter of Filardo, 221 Wis. 589, 601, 607 N.W. 312 (1936); Estate of George, 225 Wis. 251, 257, 270 N.W. 538, 274 N.W. 294 (1937).
5 Estate of West, 231 Wis. 377, 389, 284 N.W. 565 (1939).
6 Estate of Allis, 191 Wis. 23, 29, 209 N.W. 945, 210 N.W. 418 (1926); see also Matter of Filardo, 221 Wis. 589, 596, 267 N.W. 312 (1936) on the duty of a fiduciary acting for himself.
7 1945 Wis. L. Rev. 499. This article presents the practical problems facing a trustee under the Wis. investment statutes.
8 Welch v. Welch, 235 Wis. 282, 314, 290 N.W. 758, 293 N.W. 150 (1940).
9 Ibid. at 313.
of a trustee has not been changed; the area of discretion under the statutes has been broadened. In determining the liability of a trustee, the administration of the estate must be viewed in the light of the powers conferred by the instrument creating the trust, as well as in the light of the duties and liabilities imposed by law.\textsuperscript{10}

**Appearances by Guardians.** The legislature has amended sections 260.22 and 324.29(1) of the statutes by chapter 298 of the Laws of 1953. Prior to the amendment\textsuperscript{11} a minor, who was a party to a circuit court action as defined in 260.01, had to appear by a guardian \textit{ad litem}. Under the new law a minor, or incompetent, may appear either by his general guardian or by a guardian \textit{ad litem}. The amendment of section 324.29(1) makes the same change so that any person under disability may conduct or defend a proceeding in a county court by a guardian \textit{ad litem} or by the general guardian of his property, who may appear by attorney.

By amendment to both sections, a guardian \textit{ad litem} shall be appointed in all cases where there is no general guardian, or where the general guardian fails to appear or where the interest of the ward is adverse to that of the general guardian. A ward still must have some interest in the action before he is entitled to have a guardian \textit{ad litem} appointed to appear for him\textsuperscript{12} under either of the two sections.

**Formal Accounting by Guardians and Trustees.** Section 324.356 has been created by chapter 299. It allows the judge, at any time, to require an accounting by any guardian or trustee at a hearing. This does not apply to an intervivos trust.\textsuperscript{13} The hearing may be had upon the motion of the court or by the petition of any interested party.\textsuperscript{14} Notice must be given to all interested parties, including sureties on the bond of a guardian or trustee. Such sureties, to protect themselves, may now petition the court once every three years for such a hearing. Prior to this change, a general guardian was required to file an account at least once a year,\textsuperscript{15} a testamentary trustee had to file annually\textsuperscript{16} and an accounting by a trustee of an intervivos trust was and still is possible under the general equity jurisdiction of a circuit court.\textsuperscript{17} Presumably there has been a question in the past as to whether a surety on the bond of a guardian or trustee was an interested party and thus would be able to petition the county court under section 324.351 for an accounting by the guardian or trustee. The present

\textsuperscript{10}Estate of Allis, \textit{supra}, note 3 at 32.
\textsuperscript{11}Wis. \textit{Stats.} (1951) §260.22; Will of Jaeger, 218 Wis. 1, 10, 259 N.W. 842 (1935).
\textsuperscript{12}Estate of Austin, 258 Wis. 578, 582, 46 N.W. 2d 861 (1951).
\textsuperscript{13}Estate of George, \textit{supra}, note 4 at 262.
\textsuperscript{14}Wis. \textit{Stats.} (1951) §324.351.
\textsuperscript{15}Wis. \textit{Stats.} (1951) §§319.11, 319.12.
\textsuperscript{16}Wis. \textit{Stats.} (1951) §§323.01, 323.07, 317.06.
\textsuperscript{17}Whitford \textit{v.} Moehlenpah, 196 Wis. 10, 219 N.W. 361 (1928).
change no longer leaves room for doubt on this point. The surety is classed as an interested party and may petition once every three years for a hearing. The change appears to allow a court to exercise more strict supervision of trustees and guardians.

**Share Accounts in Savings and Loan Associations.** Chapter 465 creates section 215.18. Section 215.18 relates to share accounts of minor females in trust purchased from any association doing business in the state. Prior to the creation of this section, a share account in a savings and loan association could be held in trust only for a minor under fourteen years of age. Any minor above fourteen years of age could own a share account, but was subject to the same duties and liabilities as an adult member. Under the new law when a minor female is or thereafter becomes a married woman, the share shall be held for her exclusive right and benefit, free from the control or lien of all persons except creditors. Any dividends are to be paid to the person in whose name the shares are issued. The receipt of such minor or female is a sufficient release or discharge of the share account. When a share account is purchased in trust for another, and no other notice of a valid trust is given in writing to an association, in the event of the death of the trustee the association may pay the person for whom the share account was purchased any dividends or any part of the principal; under prior law the trust presumably would not terminate, but the successor of the deceased trustee would have title. The amendment provides a method by which a share may be paid to a beneficiary without forcing the savings and loan association to participate in the accounting for a deceased trustee.

**Notice of Hearing in Common Trust Fund Accounting.** Chapter 487 amends section 223.055(2) of the Uniform Common Trust Fund Act relating to notice of a hearing of an accounting in common trust funds. When the bank or trust company operating a common trust fund presents an account for approval, the court shall assign a time and place for hearing. Notice of such hearing must be given according to section 223.055(2), i.e., by publication once a week for three weeks, first publication to be not less than twenty days prior to the date of hearing and in a paper published in the county where the bank or trust company has its principal office. Notice must also be given by mail, at least fourteen days prior to the hearing, to all the beneficiaries participating in the common trust fund whose names are known to the bank or trust company.

It appears certain that the statutory change is a result of the decision in the *Mullane* case, where it was held that notice by pub-

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18 Wis. Stats. (1951) §215.16.
19 339 U.S. 306 (1950), see 34 Marq. L. Rev. 120 for the effect of the *Mullane* case on Wisconsin practice.
lication to known beneficiaries was insufficient. Notice must be given by mail to beneficiaries whose residence is known to the bank or trust company. The amendment makes the Wisconsin statute accord with the practice made necessary by the Mullane case.

Conveyance by Trustee. Chapter 530 creates section 231.201 relating to trustee's powers which are not of record. The trustee is now conclusively presumed to be a trustee of a valid express trust and has the full power of conveyance. In order to have the benefit of the above presumption, the title of record must be in such person as trustee. The new section seems to be a method by which record title to property may be conveyed without needless objection. If any settlor does not wish to allow a trustee to have the power to convey, the trust agreement will have to be recorded showing such prohibition.

Chapter 531 repeals section 235.501. This repeal was necessary since the new section 231.201, noted above, provides that a deed to A as trustee is a conveyance to a trustee. Under the repealed section, 235.501, a conveyance to A as trustee vested the absolute title in A and the term "trustee" could be ignored in dealing with A. This raised a question as to the validity of a restriction on the power of a trustee to convey, even though the trust instrument containing the restriction was recorded.

Cross Reference:
WILLS AND PROBATE, Personal Representative.
WILLS AND PROBATE, Summary Settlement of Small Estates.

WILLS AND PROBATE

Inmate of a Prison. A new section of the Statutes has been created, namely 53.14. Under this section, the estate of an inmate of a prison, if such estate is $150 or less, can be distributed by the warden to the nearest kin, provided the estate is in the trust of the warden and he, or other designated officials, determines that no probate proceedings are necessary.

Time for Filing Claims. Chapter 258 of the Laws of 1953 amends section 313.03(1) of the Statutes so as to allow an extension of time for the filing of claims in the probate of an estate. The claimant may now file not later than 60 days after the time originally limited for filing claims. The statute is now comparable to the law as it existed before 1951. When the statute was changed in 1951, it was hoped that the settlement of estates would be facilitated.

1 L. 1953, c. 71; see also Wis. Stats. (1951) §§49.26(11), 103.39(2) for other methods of settling certain estates without court proceedings.
2 Wis. Stats. (1949) §313.03(1).
3 L. 1951, c. 639, Wis. Stats. (1951) §313.03(1); 35 MARQ. L. REV. 164.
legal profession was dissatisfied with the effect of the change since, in practice, the settlement of many estates was delayed. Under the law, as it now stands, an executor is enabled to file his final account after the 60-day period and be assured that it will not have to be changed because a previously unknown creditor happens to present his claim shortly before the final account is filed.

**Allowances to Widows in Preference to Creditors.** Chapter 259, Laws of 1953, liberalizes section 313.15(4)(a) of the Statutes so as to allow, in the discretion of the county court, a sum or value not exceeding $2000 for the support of a widow with no minor children before payment of expenses or claims against decedent. Prior to this amendment, allowance for support was to be made only for the use and support of the widow and minor children of the deceased; and if there was no widow, for the support of the minor children.

**Personal Representatives.** Extensive changes have been made by Chapter 300, Laws of 1953. The general purpose of the chapter appears to be to streamline and consolidate previous law. Sections 311.08, 311.09(7), 311.10(3) and 312.01 of the Statutes have been amended; 310.14, 310.15, 310.20 and 311.04 have been repealed and recreated and section 324.001 has been created.

Section 324.001 provides that the term "personal representative," as used in all proceedings in county courts, shall include an executor, administrator, special administrator, administrator de bonis non, administrator with the will annexed, ancillary administrator and public administrator, when the latter is administering an estate, but does not include a guardian or trustee.

The evident purpose of this section is to group, under one designation, all persons whose functions in county court proceedings fall in the same general class. It does not appear that the legislature intended section 324.001 to have any specific relation to section 324.01. Therefore the question left unanswered in *Estate of White,* as to whether an administrator de bonis non can appeal, remains unsolved. Section 324.001 applies only to those sections which use the term "personal representative."

Section 310.14 has been repealed and recreated. It provides for the duties of the personal representative. He is to collect and possess decedent's personal estate and administer the same, except for the widow's allowance as provided under section 313.15(1). Thus, any

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4 Repeal of the 1951 amendment was urged by the Real Property and Probate Practice and Procedure Committee of the Milwaukee Bar Association. The Gavel, June 1952, p. 26; Id., September 1953, p. 29.
5 Wis. Stats. (1951) §313.15(4) (a).
6 L. 1953, c. 300 §1.
7 256 Wis. 467, 41 N.W. 2d 776 (1950).
personal representative as defined in section 324.001 now has express authority for the collection of the decedent's personal estate.\textsuperscript{8}

Section 310.15, providing for the bond of a personal representative, now sets a minimum level for the bond as equal to the estimated value of the personal property plus one year's income from real estate. Under section 310.15(4), if a will requests that an executor serve without bond, the judge may grant the request. The judge may still require a bond and, under the newly created section, a creditor or interested person may request that a bond be given. The judge still has discretion to grant or deny such request.

By amendment to section 312.01 the personal representative must include in his inventory, for tax purposes, life insurance, joint and life tenancies and gifts made in contemplation of death or taking effect upon death, or made within two years prior to death.\textsuperscript{9}

The appointment of appraisers for the estate may now be made by the judge in chambers rather than in open court. To eliminate duplication, section 312.01 now provides that where a special administrator has filed an inventory and appraisal, no other personal representative need do so unless additional property is found or the judge orders otherwise. The transfer of the estate of decedent can be accomplished quickly, yet will be controlled so as to protect the rights of all persons concerned.

Inheritance by Adopted Persons. Section 322.07(4) of the Statutes has been amended and section 322.07(5) has been created by Chapter 398 of the Laws of 1953. Section 322.07(4) now provides that the adopted person does not lose the right to inherit from his natural relatives. The new section alters the rights of adopted persons drastically. Under the ruling in Estate of Ries,\textsuperscript{10} an adopted person could not inherit from his natural relatives except in the one case provided for, namely from his parents.\textsuperscript{11} This ruling carried out the purpose of the statute to completely change the legal status of the adopted person from that of a child of the natural parents to that of a child of the adoptive parents. By reason of the change now enacted, the adopted person can inherit from other relatives of his natural family.

The creation of section 322.07(5)\textsuperscript{12} supplements the amendment above noted. The new section reads:

"The adopted person shall inherit from his adoptive relatives in the same manner as from his natural relatives."

\textsuperscript{8} Supra, note 6, §2.
\textsuperscript{9} Supra, note 6, §9.
\textsuperscript{10} 259 Wis. 453, 49 N.W. 2d 483, 50 N.W. 2d 397 (1951).
\textsuperscript{11} Wis. Stats. (1951) §322.07(4).
\textsuperscript{12} L. 1951, c. 398, §2.
The effect of the two sections is to enable an adopted person to inherit from two families, his natural and adoptive relatives.

The changes enacted by chapter 398, in effect, overrule the holding in *Estate of Bradley*. In that case the court held that an adopted person could not inherit from his adoptive relatives under the statute as it then existed. The court, however, refused to decide whether a statute worded differently would be valid if it gave the adopted person the right to inherit from adoptive relatives. The court stated:

"... authorities do not go to the extent of denying to the legislature the power of prescribing a course of descent which will take property of deceased persons out of the current of their blood. That is a question which is not here, and upon which we very carefully refrain from expressing any opinion... We are now emphasizing the fact that to accomplish such purpose the legislature should use explicit and unmistakable language."

Whether the change, allowing an adopted person to inherit from his adoptive relatives, is constitutional is an open question. Clearly the legislature can regulate the right to take property by inheritance or will. The outer limits of this regulatory power are not clear.

**Escheats of Unclaimed Legacies.** Chapter 479 amends section 318.03(1) and (2). The new section, 318.03(1), includes legacies as well as intestate property, so that if either the legacy or the intestate property is not claimed within 120 days after entry of final judgment, they shall escheat to the state. Presumably the ruling in *Estate of Rade*, that an heir does have sufficient interest in an unclaimed share of intestate property to be reached by his creditors, also applies to unclaimed legacies. The amendment to section 318.03(2), moreover, clears up the meaning to be given to the term "foreign legatee." The new section relates to a legatee or heir resident of a foreign country. If the required notice is given to such heir or legatee and the property to be distributed to him is not claimed, then the property descends as intestate property and does not escheat. Thus it appears that the only property which shall escheat to the state under section 318.03 is property not claimed by an heir or legatee who is a resident either of Wisconsin or of some other state of the United States. The test to be applied is the residence of the heir or legatee.

**Specific Performance of Decedent's Contracts.** Section 316.235 (2) of the statutes has been repealed by section 6, Chapter 440 of the Laws of 1953. Prior to the repeal of this section, the assets of

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13 185 Wis. 393, 201 N.W. 937 (1925); see also *Estate of Matzke*, 250 Wis. 204, 26 N.W. 2d 659 (1947).
15 259 Wis. 169, 47 N.W. 2d 891 (1951); see also 35 Marq. L. Rev. 164.
the estate were liable for any claim based on a breach of warranty if such claim was made before distribution. If the claim was made after distribution, the persons taking a distributive share of such estate were liable in proportion to the share of the estate received by each. Every conveyance by an executor or administrator was construed to include a warranty of good title except as to those matters mentioned in the conveyance. Thus, a question arose as to whether an executor or administrator could ever convey by quitclaim deed.

It would appear that, under the new statute, a vendee has only a limited right of action for a breach of warranty when there has been performance of a contract to convey made by a decedent. The executor, administrator or testamentary trustee is not personally liable for any breach of warranty. The right of a vendee to follow the proceeds into the hands of a distributee was not retained in the new statute. Evidently, the vendee can only bring an action for breach of warranty against the estate prior to distribution. Section 316.54 provides, in substance, that a warranty deed given pursuant to a contract of a decedent to convey shall have the same effect as if the deceased were still living and had then executed the warranty deed. In that case, if there were a breach of warranty, the vendee would have a claim he could enforce against the estate. It appears that this is the only right a vendee now has for any breach of a warranty in a deed given by an executor, administrator or testamentary trustee pursuant to a contract to convey made by a decedent.

Under the newly created section 316.54, the court alone, by its judgment, may pass title to land subject to a contract to convey. Section 316.54 also provides that when a decedent contracted to convey by warranty deed, an executor, administrator or testamentary trustee shall convey by warranty deed subject to any exceptions in the contract to convey made by the decedent. When decedent had contracted to convey by quitclaim deed, it appears that the safest procedure would be to allow the court to pass title by its judgment alone, although the court may require any proper person to convey apparently in accordance with the terms of the decedent's contract.

Summary Settlement of Small Estates: Determination of Heirship. Chapter 661 of the Laws of 1953 amends section 311.05 relating to summary settlement of small estates. In certain cases provided for in section 311.05, the executor or administrator may pay the named allowances and preferred claims and distribute the estate accordingly. The executor may then file his final account and the estate may be settled. In the interest of swift settlement, the amend-

16 Wis. Stats. (1951) §216.235(2).
17 Wis. Stats. (1953) §316.54.
ment provides that where there is no real estate it is not necessary to determine heirship. (Presumably this has no effect on jointly held property.) The question remains whether an estate can be settled without a determination of heirship in certain types of personal property. No question of title is likely to be raised in connection with tangible personal property.

A more serious problem confronts an executor or administrator when the decedent owns securities which have to be transferred. Normally, the corporation will not transfer securities on its books unless proof of heirship is presented. Such proof can easily be obtained when proper proceedings are taken. If this latter action is necessary, the amendment of section 311.05 does not aid the swift settlement of these estates in many cases. A remedy for this problem is available if a county court is willing to apply sections 311.055(2) and (3) so as to direct the transfer of securities registered in the name of deceased and release persons making the transfer from liability. These latter sections on their face do not seem to apply to a section 311.05 proceeding. If they do not, the amendment has little value when a decedent owned securities at his death, but will facilitate administration when no objection is made to a transfer of personal property without determination of heirship.

Cross Reference:
PROPERTY, Sale of Real Estate by an Executor.

WORKMEN'S COMPENSATION

Persons Covered. Several significant changes in the statutes dealing with workmen's compensation have been made by chapter 328. Members of the state and national guards have been excluded from coverage under workmen's compensation when they are covered by federal regulations which are substantially equivalent.

Liability of an employer under the workmen's compensation laws has been extended to include injuries sustained by an employee while in the immediate vicinity of the employer's premises on his way to or from work if the injury results from an occurrence on the premises. Such injuries are deemed to have been incurred while the employee was performing services incidental to his employment. The employer's liability in cases where the employee was going to or from work was previously limited to injuries sustained while the employee was actually on the employer's premises (unless the employer is under an obligation to transport the employee home). The amendment may

18 Wis. Stats. (1951) §230.48(1).
1 Wis. Stats. (1953), §102.07(9).
2 Wis. Stats. (1953), §102.03(1)(c).
3 Githens v. Industrial Commission, 220 Wis. 658, 265 N.W. 662 (1936).
be commendable inasmuch as it gives the employee greater protection, but unfortunately it introduces a great deal of ambiguity into the statute. It will be difficult to exact a definite standard from such terms as "in the immediate vicinity of the employer's premises" and "an occurrence on the premises."

**Maximum Weekly Wage Basis Increase.** The maximum weekly wage basis for computing compensation has been increased from $52.86 to $60.00 in the case of permanent total disability. The basis for permanent partial disability is still $52.86.\(^4\) Previously there was no distinction made between total and partial disability in respect to the basis.

**Death Benefits.** The additional death benefit for dependent children of the deceased has been reduced. The benefit is now limited to children up to sixteen years of age. A child one year old will receive an amount equal to one and one-fifteenth times the average annual income of the deceased parent and this amount is reduced by one-sixteenth for each additional year of age of the child.\(^5\) The additional death benefit had just been increased by the legislature at its 1951 session.\(^6\) Apparently that increase was too great because the fund used to pay the additional death benefits has been supplemented by increasing the maximum amount payable to the state treasury, in case the decedent left no one wholly dependent on him for support, from $3000 to $4000. This fund is used to pay the additional death benefits for dependent children.\(^7\)

**Burial Expenses.** Burial expenses for the deceased employee payable by the employer have been increased from $300 to $350.\(^8\)

**Deafness.** Although the statutes have provided for benefits for loss of hearing due to industrial causes since 1919, no claim had been filed for any such impairment before 1950 except when there was a resulting loss of time or wages. In 1950 the industrial commission made an award for loss of hearing although the applicant's employment and wages were not diminished by the injury. Hundreds of other claims have been filed since that time. A test case taken to the Wisconsin Supreme Court has confirmed the legality of such awards.\(^9\)

Meanwhile, the legislature has passed chapter 328 amending the workmen's compensation provisions covering the loss of hearing. The

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4. Wis. Stats. (1953), §102.11(1).
5. Wis. Stats. (1953), §102.49(1).
7. Wis. Stats. (1953), §102.49(5).
8. Wis. Stats. (1953), §102.50.
9. Green Bay Drop Forge Company v. Industrial Commission, 265 Wis. 38, 60 N.W. 2d 409 (1953). This case was petitioned for rehearing by the Green Bay Drop Forge Company. Several other firms filed briefs as *amici curii*, but the rehearing was denied.
disability schedule has been amended to provide benefits for deafness only when caused by "accident or sudden trauma." Loss of hearing caused by "prolonged exposure to noise in his employment" has been included in section 102.565 dealing with nondisabling silicosis. This section provides for compensation not exceeding $3500 but only if the employee is discharged by the employer because of the condition.

The amendment does not solve the problem entirely, however. There still remains the question of whether the amendment will be given retroactive effect. The Supreme Court refused to pass on this question when it denied a motion for rehearing in the Green Bay case.11 Cases pending when the new statute took effect would probably not be affected.12 The main problem is whether claims may still be filed for loss of hearing incurred before the amendment became effective. If such claims are allowed, many more cases may be expected.

**Penalty for Violation of Statute.** When an injury to an employee is caused by failure of the employer to comply with a statute, the benefits to the employee are increased by fifteen per cent. The legislature has provided that when the employer fails to reasonably enforce compliance with the statute by his employees this shall constitute failure by the employer himself to comply, and is therefore a ground for invoking the fifteen per cent penalty.13

**Compromise of Claims.** When the spouse of a deceased employee compromises her claim for death benefits, section 102.64(1) now provides that the claim of the employee's children (under section 102.49) will automatically be compromised on the same pro rata basis.

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10 Wis. Stats. (1953), §102.52(17) and (18).
11 Supra, note 10.
12 The amendment took effect on July 1, 1953. At that time there were already five hundred claims for compensation for loss of hearing pending before the industrial commission.
13 Wis. Stats. (1953), §102.57.