

1155 RIGHT OF WAY: AT INTERSECTIONS OF HIGHWAYS

A safety statute provides that when two vehicles approach or enter an intersection at approximately the same time, the operator of the vehicle on the left shall yield the right of way to the vehicle on the right. The statute does not make the right of way on the part of the vehicle on the right depend on whether it reaches or begins to enter the intersection first.¹

“Right of way” means the privilege of the immediate use of the roadway.²

The phrase “approach or enter an intersection at approximately the same time” means the approach or entry of two vehicles toward or into the intersection so nearly at the same time that there is imminent danger of a collision if both vehicles continue their same courses at their same speeds.

If you find that the vehicles in question approached or entered the intersection at approximately the same time, then it became the duty of (the operator of the vehicle on the left) to yield the right of way to the vehicle on the right. This duty compelled (operator) either to stop the vehicle, if necessary or to control and manage it so that (he) (she) could yield the right of way to the vehicle within the zone of danger on the right and avoid colliding with it.

NOTES

1. Wis. Stat. § 346.18(1).

2. Wis. Stat. § 340.01(51).

COMMENT

This instruction and comment were approved in 1977. The instruction was revised in 2002 and 2008. This revision was approved by the Committee in January 2023; it added to the comment.

Driver or Operator. This instruction applies to either an operator or a driver of a motor vehicle. If “driver” is more appropriate to the evidence, then substitute “driver” for “operator.”

The question of right of way is to be answered only in the event the operator of the vehicle on the right is not negligent with respect to speed. The last sentence of Wis. Stat. § 346.18(1) provides that “The operator of any vehicle driving at an unlawful speed forfeits any right of way which he (or she) would otherwise have under this subsection.”

This instruction is based on the language adopted in the case of Home Fire & Marine Ins. Co. v. Farmers Mut. Auto Ins. Co., 274 Wis. 210, 214, 79 N.W.2d 834 (1956), and Kraskey v. Johnson, 266 Wis. 201, 206, 63 N.W.2d 112 (1954), citing Vogel v. Vetting, 265 Wis. 19, 25, 60 N.W.2d 399 (1953). See also Nessler v. Nowicki, 12 Wis.2d 421, 425, 107 N.W.2d 616 (1961).

It is recommended that the verdict contain a direction to the jury that they should first consider the question of speed on the part of the operator who has the geographical right of way before the right of way of the competing operator is considered. See Burkhalter v. Hartford Accident & Indem. Ins. Co., 268 Wis. 385, 388, 68 N.W.2d 2 (1955); Leonard v. Employers Mut. Liab. Ins. Co., 265 Wis. 464, 468, 62 N.W.2d 10 (1953); Johnson v. Fireman’s Fund Indem. Co., 264 Wis. 358, 361, 59 N.W.2d 660 (1953).

Rights and duties of bicyclists. Different right-of-way standards apply depending on whether a bicyclist was using the roadway as any other vehicle or as a pedestrian upon a sidewalk or within a crosswalk. See Chernetski v. American Family Mutual Insurance Co., 183 Wis.2d 68, 515 N.W.2d 283 (1994) and Estate of Zhu v. Hodgson, 2021 WI App 10, 395 Wis.2d 768, 954 N.W.2d 748.

Casual negligence in a proper lookout. “While negligence in failing to keep a proper lookout is usually causal, it is not always so.” Powers v. Joint School Dist. No. 3 of Price County, 2 Wis.2d 556, 561, 87 N.W.2d 275 (1958). See also, Pfeifer v. Standard Gateway Theater, Inc., 262 Wis. 229, 55 N.W.2d 29 (1952); Oelke v. Earle, 271 Wis. 479, 74 N.W.2d 336 (1956); and Crye v. Mueller, 7 Wis. 2d 182, 96 N.W.2d 520 (1959).