

**1048 DRIVER, NEGLIGENCE: HIGHWAY DEFECT OR INSUFFICIENCY**

An operator of a vehicle has the duty to exercise ordinary care to observe the roadway and its immediate surroundings to discover any dangerous condition or defect that would be discoverable by an ordinarily prudent operator under like or similar circumstances.

The exercise of such care requires the efficient use of one's eyes, faculties, and opportunities for observation that an ordinary prudent person would use under like circumstances in order to become aware of the dangers naturally incident to the situation or to see unsafe conditions that are in plain sight.

While an operator has a right to assume that a highway is reasonably safe, upon being timely made aware of a dangerous condition or defect, an operator then has the duty to exercise ordinary care to reduce speed, stop, change course, or take such other means as would be taken by an ordinarily prudent operator under the same or similar circumstances to avoid the dangerous condition or defect and avoid injury or damage.

**COMMENT**

This instruction and comment were approved in 1974. The comment was reviewed without change in 1989. Editorial changes were made in 1992 to address gender references in the instruction. No substantive changes were made to the instruction.

As to the third paragraph, see Wall v. The Town of Highland, 72 Wis. 435, 438, 30 N.W. 560 (1888).

Also see Mondl v. F.W. Woolworth, 12 Wis.2d 571, 107 N.W.2d 472 (1961); Hamus v. Weber, 199 Wis. 320, 226 N.W. 392 (1929).