

1052 EQUIPMENT AND MAINTENANCE OF VEHICLES: GENERAL DUTY

(An owner) (A driver) of a motor vehicle has the duty to use ordinary care to discover any unsafe or defective condition of the vehicle and to have the vehicle in a reasonably safe condition for operation upon a public highway.

The vehicle should be (equipped) (and) (maintained) to make it reasonably safe and suitable for the particular kind of use for which it is to be employed so that the driver can control it to prevent its becoming a hazard to its occupants or other users of the highway.

The failure to use ordinary care to discover an unsafe condition, to equip the vehicle properly, or to maintain it is negligence.

However, if a defective condition which renders a vehicle unsafe was not known and would not have been discovered by the use of ordinary care, the (owner) (driver) is not negligent in (permitting it to be operated) (operating it) in the defective condition.

COMMENT

This instruction and comment were approved in 1974. The instruction was updated in 2008. Editorial changes were made in 1992 to address gender references in the instruction.

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

Capello v. Janeczko, 47 Wis.2d 76, 85, 176 N.W.2d 395 (1970). As to the last paragraph, see Walk v. Boudheim, 223 Wis. 514, 271 N.W. 27 (1937). 60A C.J.S. Motor Vehicles § 260 (1969).

This instruction, paraphrased to some extent, may be appropriate where an unknown mechanical defect causes a hazard and the question of management and control arises between the time of the mechanical failure and the accident. See Kowalke v. Farmers Mut. Auto Ins. Co., 3 Wis.2d 389, 88 N.W.2d 747 (1958), and Byerly v. Thorpe, 221 Wis. 28, 265 N.W. 76 (1936). The Byerly case has been overruled in part by Foellmi v. Smith, 15 Wis.2d 274, 112 N.W.2d 712 (1961).

Wis. Stat. Ch. 347, Equipment of Vehicles, consists mainly of safety statutes, the violation of which constitutes negligence. Many sections of the chapter require specific equipment for various types of vehicles under defined conditions. Some sections require certain standards of maintenance and manner of use of specified equipment; others contain general exceptions to the rules stated. See the table of sections at the beginning of chapter 347.

Wis JI-Civil 1053 and 1054 do not attempt to set forth the provisions of each statute but are designed to provide forms that can be altered to accommodate the various statutory provisions relating to equipment.

Before an instruction is given, it is suggested that the statute be checked as to the date of its application and any statutory exemptions that may exist. See Wis. Stat. § 347.02.