

1143 PASSING: VEHICLES PROCEEDING IN SAME DIRECTION: IN NO PASSING ZONE OR WHERE OVERTAKEN VEHICLE TURNING LEFT

A safety statute provides that the driver of a vehicle shall not drive on the left side of the center of a roadway, or any portion of the roadway which has been designated as a no-passing zone, either by a sign or by a yellow unbroken line on the pavement on the right side of, and adjacent to, the center line of the roadway, if the sign or lines would be clearly visible to an ordinarily observant person.

If you determine that the no-passing sign (lines) was (were) clearly visible to one who was ordinarily observant and you also determine that (_____) violated the provisions of this statute just before the collision, then (_____) would be negligent.

(A safety statute provides that, in any event, a driver of a vehicle shall not overtake and pass on the left any other vehicle which by means of a signal required by law indicates its intention to make a left turn.)

(The signal referred to in this safety statute is a signal given continuously by either a mechanical signal device or by hand and arm for a distance of not less than 100 feet before turning.)

COMMENT

This instruction and comment were approved by the Committee in 1977. The instruction was revised in 2008. The comment was updated in 2001.

Use paragraphs three and four where appropriate.

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

Wis. Stat. §§ 346.09(3) and (4); 346.34(1); 346.35.

The first paragraph may not be applicable if the evidence reveals that the operator may have crossed the no passing line in an effort to avoid collision with an oncoming vehicle. The statute is meant to cover only the situation of overtaking and passing.

With respect to position on highway, see Wis JI-Civil 1135.

Passing on the Right. For an instruction on passing on the right, Wis. Stat. § 346.08, see Kaufman v. Postle, 2001 WI App 86, 243 Wis.2d 45, 626 N.W.2d 10. In Kaufman, the trial court gave the following instruction:

A safety statute provides: The operator of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety and only if the operator can do so without driving off the pavement or the main traveled portion of the roadway. A driver may not pass traffic on the right using any part of the road's shoulder. To do so is a violation of the Rules of the Road section permitting motor vehicle operators to pass on the right only when such can be done without driving off the main traveled portion of the roadway.

In Kaufman, the defendant's vehicle struck the plaintiff's vehicle while the defendant was driving on the right-hand paved shoulder in an attempt to pass the plaintiff. The defendant argued the trial court's instruction was wrong by telling the jury that a driver may not pass traffic on the right using any part of the road's shoulder. The defendant argued that Wis. Stat. § 346.08 allows a driver to use the shoulder of a road to pass another vehicle on the right side if the vehicle that is being passed is turning left and the shoulder is paved. The court of appeals rejected the defendant's analysis of the statute and held that the trial court's instruction was correct in explaining to the jury that a driver may not pass on the right using any part of the shoulder.