

1144 PASSING: VEHICLES PROCEEDING IN SAME DIRECTION

A safety statute provides that the driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left of the overtaken vehicle, at a safe distance, and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

COMMENT

This instruction and comment were originally approved in 1977. The instruction was revised in 2002 and reviewed without change in 2008. The comment was updated in 1989, 2002, and 2015.

Wis. Stat. § 346.07(2); for definition of "roadway," see Wis. Stat. § 340.01 (54), Wis JI-Civil 1160.

Whether § 346.07(2) or (3), or both, should be used in a particular case will depend upon the evidence. In this regard, see Engsberg v. Hein, 265 Wis. 58, 62, 60 N.W.2d 714 (1953). With respect to the instruction itself, see Bovi v. Mellor, 253 Wis. 458, 464, 34 N.W.2d 780 (1948).

Other possible elements of negligence which may arise at the time of passing, such as lookout or speed, will be submitted separately. This instruction might be used in connection with the question as to management and control, in lieu of the inquiry as to negligence with respect to the manner of passing. See Anderson v. Stricker, 266 Wis. 1, 4, 62 N.W.2d 396 (1953).

A statutory provision (§ 346.07(1)) requiring the overtaking vehicle to give an audible warning when passing in a non-business or non-residential district was repealed in 1977. 1997 Wisconsin Act 32. In 2014, a requirement in Wis. Stat. § 346.59(2) that the operator of a vehicle moving at a slow speed yield to an overtaking driver who gives an audible signal was removed. 2013 Wisconsin Act 365.