

1153 RIGHT OF WAY: AT INTERSECTION WITH THROUGH HIGHWAY

A safety statute provides that the driver of a vehicle shall stop before entering a through highway and shall yield the right of way to other vehicles which have entered or are approaching the intersection upon the through highway.

The statutes define "right of way" as the privilege of the immediate use of the roadway.

The highway on which (name) was driving was, at the time of the collision, a "through highway" as defined by the statute.

An automobile on a through highway is approaching an intersection when it is so close to the intersection that, considering the rate of speed at which it is traveling, it would be reasonable to assume that a collision would occur if the automobile which stopped, as required, before entry onto the through highway moves onto the highway and into the path of the oncoming vehicle.

If you find that the oncoming automobile on the through highway had entered the intersection, or was approaching it as here defined, it then became the duty of the driver entering the through highway to yield the right of way to the automobile on the through highway.

COMMENT

This instruction and comment were originally published in 1966. The instruction was revised in 2008. The comment was revised in 1983.

The first and second paragraphs refer, respectively, to Wis. Stat. §§ 346.18(3) and 340.01(51).

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. "

This instruction is based on the assumption that there is no issue on the record about one highway being a through highway, as defined by Wis. Stat. § 340.01(67). If, however, an issue develops as to whether the highway in question is a through highway, then a preliminary question would be required and would be covered by an instruction giving the statutory definition.

Although the law in Wisconsin gives the driver on a through highway a preference, such preference is not absolute. Leckwee v. Gibson, 90 Wis.2d 275, 280 N.W.2d 186 (1979). In Leckwee, the court, citing prior decisions, stated:

It is clear that:

. . . while one may have the right-of-way and may presume others will respect it, he may nevertheless be negligent in respect to management and control if his right-of-way is not respected and he does not do what he can do to prevent the accident. Chille v. Howell (1967), 34 Wis.2d 491, 497, 149 N.W.2d 600. Tombal v. Farmers Ins. Exchange, 62 Wis.2d 64, 69, 214 N.W.2d 291 (1974).

The operator of an automobile having the right of way on an arterial highway must still maintain a proper lookout. Having the right of way does not relieve one of the duty of watching the road for vehicles on the highway or entering thereon. Puhl v. Milwaukee Automobile Ins. Co., 8 Wis.2d 343, 348, 99 N.W.2d 163 (1959).

The former version of the comment to this instruction included an optional paragraph based on Ogle v. Avina, 33 Wis.2d 125, 146 N.W.2d 422 (1966). This optional paragraph expressed a view which held that a "special dignity" was to be afforded to a driver traveling on an arterial. The optional portion stated that the right of way of the driver on the through highway meant "not only the right to the immediate use of the roadway; but the enjoyment of such right without being required to brake one's rate of speed or divert one's course to the right or left."

Because of the contrary holdings in Leckwee and cases cited by the court in Leckwee which refused to extend an absolute preference to a driver on a through highway, the optional paragraph is withdrawn.

Where the issue is presented as to the negligence of the driver on a through highway with respect to management and control or lookout, see Wis JI-Civil 1030, 1090, 1190, and 1191.

Wis. Stat. § 346.18(3) is the stopping statute referred to in the first paragraph. If stopping is at issue, it would be covered by a separate question and by Wis JI-Civil 1325.

In regard to the duty to look and to calculate, see Plog v. Zolper, 1 Wis.2d 517, 85 N.W.2d 492 (1957).