

**1155 RIGHT OF WAY: AT INTERSECTIONS OF HIGHWAYS**

A safety statute provides that when two vehicles approach or enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right. The statute does not make the right of way on the part of the vehicle on the right depend on whether it reaches or begins to enter the intersection first.

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

The phrase "approach or enter an intersection at approximately the same time" means the approach or entry of two vehicles toward or into the intersection so nearly at the same time that there is imminent danger of a collision if both vehicles continue their same courses at their same speeds.

If you find that the automobiles in question approached or entered the intersection at approximately the same time, then it became the duty of (the driver of the automobile on the left) to yield the right of way to the automobile on the right. This duty compelled (driver) either to stop the automobile, if necessary, or to control and manage it so that (he) (she) could yield the right of way to the vehicle within the zone of danger on the right and avoid colliding with it.

**COMMENT**

This instruction and comment were approved in 1977. The instruction was revised in 2002 and 2008.

**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."

The first and second paragraphs refer, respectively, to Wis. Stat. § 346.18(1) and § 340.01(51).

The question of right of way is to be answered only in the event the driver of the vehicle on the right is not negligent with respect to speed. The last sentence of Wis. Stat. § 346.18(1) provides that, "The operator of any vehicle driving at an unlawful speed forfeits any right of way which he would otherwise have under this subsection."

This instruction is based on the language adopted in the case of Home Fire & Marine Ins. Co. v. Farmers Mut. Auto Ins. Co., 274 Wis. 210, 214, 79 N.W.2d 834 (1956), and Kraskey v. Johnson, 266 Wis. 201, 206, 63 N.W.2d 112 (1954), citing Vogel v. Vetting, 265 Wis. 19, 25, 60 N.W.2d 399 (1953). See also Nessler v. Nowicki, 12 Wis.2d 421, 425, 107 N.W.2d 616 (1961).

It is recommended that the verdict contain a direction to the jury that they should first consider the question of speed on the part of the driver who has the geographical right of way before the right of way of the competing driver is considered. See Burkhalter v. Hartford Accident & Indem. Ins. Co., 268 Wis. 385, 388, 68 N.W.2d 2 (1955); Leonard v. Employers Mut. Liab. Ins. Co., 265 Wis. 464, 468, 62 N.W.2d 10 (1953); Johnson v. Fireman's Fund Indem. Co., 264 Wis. 358, 361, 59 N.W.2d 660 (1953).