

1200 RIGHT OF WAY: LIVESTOCK

The Wisconsin statutes define "right of way" as the privilege of the immediate use of the roadway and, further provide, that the driver of a motor vehicle must yield the right of way to livestock being driven over or along any highway. (But any person in charge of such livestock must use reasonable care and diligence to open the roadway for vehicular traffic.)

COMMENT

The instruction and comment were originally published in their present form in 1960. The instruction was revised in 2008. The comment was updated in 2008.

The first paragraph refers to Wis. Stat. §§ 340.01(51) and 346.21.

Note that Wis. Stat. § 346.21 imposes duties on the person in charge of the livestock as well as the operator of the motor vehicle. The committee does not believe that the duty of the driver to yield the right of way is lessened or made dependent on the care exercised by the person in charge of the livestock to use reasonable care and diligence. It may well be that the duty to yield is absolute. The duty imposed on the person in charge of the livestock may require a separate negligence question for a comparison of causal negligences.

For an instruction describing "reasonable care" and "diligence," see Wis JI-Civil 1005, Negligence Defined, and Wis JI-Civil 1010, Negligence of Children.