Chapter 483

Motor Vehicle Traffic and Equipment

Chapter 483

NOTES OF DECISIONS

The principal concern of the legislature in the enactment of this chapter was the preservation of the highways. State v. Pyle, (1961) 226 Or 485, 360 P2d 626.

FURTHER CITATIONS: Biddle v. Mazzocco, (1955) 204 Or 547, 284 P2d 364; State v. Davis, (1956) 207 Or 525, 296 P2d 240; Maker v. Wellin, (1958) 214 Or 332, 329 P2d 1114, 327 P2d 793; Larson v. Heintz Constr. Co., (1959) 219 Or 25, 52, 345 P2d 835; Marchant v. Clark, (1960) 225 Or 273, 357 P2d 541; Roy L. Houck & Sons v. State Tax Comm., (1961) 229 Or 21, 366 P2d 166; Simmons v.Holmes, (1961) 229 Or 373, 367 P2d 368.

ATTY. GEN. OPINIONS: Authority of county to issue blanket permits for log trucks exceeding certain statutory load limitations, 1948-50, p 232; requirement for obliteration of school bus markings when vehicle is not used for school purposes, 1948-50, p 310; disposition of fines collected as applying to this chapter only, 1948-50, p 357; clearance lights needed by army trucks, 1948-50, p 430; this chapter as not exclusive, 1950-52, p 99; judgments of convictions filed with the Secretary of State under this chapter as public records, 1950-52, p 104; conflicting municipal ordinance as void, 1950-52, p 327; procedure for compelling person released without bond to appear before magistrate, 1954-56, p 10; student driver support fund to be funded by increase in fines for moving violations as constitutional, 1954-56, p 94; as special provision for distribution of fines governing over conflicting general statutes, 1954-56, p 142; truck with gross weight of less than 6,000 pounds as outside the definition of motor truck, 1954-56, p 186; police officer as authorized to issue citation only to violators who have been arrested, 1956-58, p 62; granting of a permit distinguished from registration of vehicle, continuous trip permit for public highway construction vehicles, 1958-60, p 64; road located on railroad right-of-way as a "highway," 1960-62; p 101; motorcycle as vehicle, 1960-62, p 182; three-wheeled vehicles used by meter maids as motorcycles, 1966-68, p 350; defining "police officer," 1966-68, p 452; regulating protective headgear of motorcyclists on private property, 1966-68, p 548.

483.002

NOTES OF DECISIONS

A policeman, who failed to sound the siren or give other audible warning in the operation of his vehicle, could not claim that he was at the time operating an emergency vehicle within the exemption granted by the statutes. Dodson v. Lemon, (1953) 197 Or 444, 253 P2d 900.

FURTHER CITATIONS: Mercer v. Risberg, (1948) 182 Or 526, 188 P2d 632; State v. Smith, (1953) 198 Or 31, 255 P2d 1076; Anderson v. Finzel, (1955) 204 Or 162, 282 P2d 358; Califf v. Norman, (1957) 210 Or 198, 310 P2d 319; Fenton v. Aleshire, (1964) 238 Or 24, 393 P2d 217; Siburg v. Johnson, (1968) 249 Or 556, 439 P2d 865; Comstock v. Stewart, (1971) 257 Or 538, 480 P2d 426.

ATTY. GEN. OPINIONS: Equipping privately-owned vehicle with siren to be used for emergency purposes, 1950-52, p 232; authority of brand inspector to use a siren or red light on his vehicle, 1966-68, p 65; vehicles of the Federal Bureau of Investigation as emergency vehicles, 1966-68, p 499.

483.006

NOTES OF DECISIONS

The purpose of subsection (4) is to clarify the meaning of crosswalk, as applied to an irregular intersection. DeWitt v. Sandy Market, (1941) 167 Or 226, 115 P2d 184.

There is no unmarked crosswalk at an intersection unless there is a pedestrian walk on each of the opposite sides of the street. Leap v. Royce, (1955) 203 Or 566, 279 P2d 887.

A crosswalk where the street going south jogged left at the intersection ran diagonally between the northwest and southwest corners, and if plaintiff walked straight south from the northwest corner, the jury could find that she was out of the crosswalk. DeWitt v. Sandy Market, (1941) 167 Or 226, 115 P2d 184.

FURTHER CITATIONS: Martin v. Harrison, (1947) 182 Or 121, 180 P2d 119, 186 P2d 534; Schoenborn v. Broderick, (1954) 202 Or 634, 277 P2d 287.

483.008

ATTY. GEN. OPINIONS: Truck with gross weight of less than 6,000 pounds as outside the definition of motor truck, 1954-56, p 186.

483.010

CASE CITATIONS: Elliott v. Rogers Constr. Co. (1971) 257 Or 421, 479 P2d 753.

ATTY. GEN. OPINIONS: Effect of railroad right of way within public highway right of way, 1960-62, p 102; application to city-owned cycles used by meter maids, 1966-68, p 350; construing "public road" under county road law, 1966-68, p 412.

LAW REVIEW CITATIONS: 1 WLJ 453-455, 457, 461.

483.012

NOTES OF DECISIONS

The area where a highway joins a private road is not an "intersection" within the meaning of this section. Clark v. Fazio, (1951) 191 Or 522, 230 P2d 553.

A junction where a road merely meets but does not cross

a highway is an "intersection." Perdue v. Pac. Tel. & Tel. Co., (1958) 213 Or 596, 326 P2d 1026.

FURTHER CITATIONS: Schoenborn v. Broderick, (1954) 202 Or 634, 277 P2d 287.

ATTY. GEN. OPINIONS: Authority of city to regulate traffic on county roads, 1950-52, p 311; truck carrying farm license as "implement of husbandry," 1950-52, p 365; requirements for farm wagon or trailer to qualify as "implement of husbandry," 1952-54, p 224; Public Utility Commissioner as without authority to post signs at railroad crossings, 1960-62, p 101; duty of county to place traffic control or warning signs on county or public roads, (1969) Vol 34, p 482.

483.014

ATTY. GEN. OPINIONS: Truck with gross weight of less than 6,000 pounds as outside the definition of motor truck, 1954-56, p 186; application to city-owned cycles used by meter maids, 1966-68, p 350.

483.016

NOTES OF DECISIONS

Highway signs are not lawfully placed unless visible. Savage v. Palmer, (1955) 204 Or 257, 280 P2d 982.

LAW REVIEW CITATIONS: 1 WLJ 579-595.

483.018

ATTY. GEN. OPINIONS: Sheriff's authority to use radar, 1966-68, p 452.

483.020

NOTES OF DECISIONS

There is a common law right-of-way applicable to motor vehicles upon highways of this state. Brindle v. McCormick Lbr. & Mfg. Corp., (1956) 206 Or 333, 293 P2d 221.

Total frontage of residential district is to be considered as 600 feet, or 300 feet on each side of highway. Marshall v. Mullin, (1958) 212 Or 421, 320 P2d 258.

"Mainly" in the statute refers to an occupancy by the buildings of a frontage of more than 50 percent of the total. Id.

"Dwellings" in the statute refers to buildings reasonably capable of present occupancy. Id.

FURTHER CITATIONS: Dungey v. Fairview Farms, Inc., (1955) 205 Or 615, 290 P2d 181; Califf v. Norman, (1957) 210 Or 198, 310 P2d 319; Ernst v. Broughton, (1958) 213 Or 253, 324 P2d 241; Graves v. Shippley, (1959) 215 Or 616, 300 P2d 442, 337 P2d 347; Slotte v. Gustin, (1960) 224 Or 426, 356 P2d 435.

483.022

ATTY. GEN. OPINIONS: Requirement for obliteration of school bus markings when vehicle is not used for school purposes, 1948-50, p 310.

483.028

CASE CITATIONS: Savage v. Palmer, (1955) 204 Or 257, 280 P2d 982; Mead v. Portland Traction Co., (1957) 210 Or 643, 313 P2d 451.

483.030

CASE CITATIONS: Rankin v. White, (1971) 258 Or 252, 482 P2d 530.

ATTY. GEN. OPINIONS: Truck carrying farm license as "implement of husbandry," 1950-52, p 365; vehicles of the Federal Bureau of Investigation as emergency vehicles, 1966-68, p 499.

483.032

NOTES OF DECISIONS

Emergency vehicles must obey traffic regulations unless specifically excepted from their operation. Anderson v. Finzel, (1955) 204 Or 162, 282 P2d 358.

Prior to the 1967 amendment, this section was applicable to a truck driver performing work for the State Highway Commission while turning his truck around after dumping a load of hot asphalt. McNabb v. DeLaunay, (1960) 223 Or 468, 354 P2d 290.

FURTHER CITATIONS: Marchant v. Clark, (1960) 225 Or 273, 357 P2d 541; Lovins v. Jackson, (1963) 233 Or 369, 378 P2d 727; Sorenson v. Tillamook County, (1970) 255 Or 381, 467 P2d 433.

ATTY. GEN. OPINIONS: Clearance lights needed by army trucks, 1948-50, p 430; application to city-owned cycles used by meter maids, 1966-68, p 350.

483.034

NOTES OF DECISIONS

This section does not affect common-law negligence nor require a child of tender years to conform to the same standard of care as a reasonably prudent adult. Maker v. Wellin, (1958) 214 Or 332, 327 P2d 793, 329 P2d 1114.

The age, experience and intelligence of an infant are to be considered in determining whether he was guilty of contributory negligence even where he violated a statute. Simmons v. Holm, (1961) 229 Or 373, 367 P2d 368.

The fact that a pedestrian was leading a horse upon the highway did not bring him under the rules of the road applicable to vehicles. Sertic v. McCullough, (1936) 155 Or 216, 63 P2d 884.

Where there was no evidence that defendant's truck struck decedent's bicycle or that defendant stole up on decedent and frightened him so he lost control or that defendant failed to provide sufficient clearance, charge of negligently causing deceased's death was refuted. Copenhaver v. Tripp, (1950) 187 Or 662, 213 P2d 448.

FURTHER CITATIONS: Spence v. Rasmussen, (1951) 190 Or 662, 226 P2d 819.

483.036

NOTES OF DECISIONS

A city ordinance restricting speed of motor vehicles within the corporate limits of the city to 25 miles per hour was invalid. Winters v. Bisaillon, (1936) 152 Or 578, 54 P2d 1169.

A city ordinance prohibiting the parking of a car more than one foot from the curb was not rendered invalid by this section. Ceccacci v. Garre, (1938) 158 Or 466, 76 P2d 283.

ATTY. GEN. OPINIONS: Determining validity of city ordinance as outside jurisdiction of enforcing officer, 1950-52, p 327; applicability of traffic laws to Indians on Warm Springs Reservation, 1958-60, p 172.

LAW REVIEW CITATIONS: 39 OLR 220.

483.038

LAW REVIEW CITATIONS: 1 WLJ 457, 458.

483.040

NOTES OF DECISIONS

Sign regulations are not intended to fix standards of care. Lovins v. Jackson, (1963) 233 Or 369, 378 P2d 727.

Misfeasance of state employe who installed sign must have been a cause of the accident that results in injury before a recovery may be had. Ashland v. Pac. Power & Light Co., (1964) 239 Or 241, 395 P2d 420, 397 P2d 538.

FURTHER CITATIONS: Cabell v. City of Cottage Grove, (1942) 170 Or 256, 130 P2d 1013; Savage v. Palmer, (1955) 204 Or 257, 280 P2d 982.

483.042

NOTES OF DECISIONS

The state has and retains, either by Act of the legislature or by vote of the electorate, the right to enact general laws prescribing the speed of motor vehicles and the general rules regulating traffic on the highways of the state, which right when exercised cannot be curtailed, infringed upon or annulled by local authorities. Winters v. Bisaillon, (1936) 152 Or 578, 54 P2d 1169.

FURTHER CITATIONS: Ceccacci v. Garre, (1938) 158 Or 466, 76 P2d 283; Cabell v. City of Cottage Grove, (1942) 170 Or 256, 130 P2d 1013; Schoenborn v. Broderick, (1954) 202 Or 634, 277 P2d 287; Senger v. Vancouver-Portland Bus Co., (1956) 209 Or 37, 298 P2d 835, 304 P2d 448.

ATTY. GEN. OPINIONS: Discussion of section as to state and local powers and disposition of fines, 1940-42, p 144; power of county court to require permit or indemnity bond for log trucks, 1950-52, p 292.

483.044

NOTES OF DECISIONS

A signal installed by a company with the approval of the county court at the intersection of a private road and a public highway is not a nuisance and must be observed. Schoenborn v. Broderick, (1954) 202 Or 634, 277 P2d 787.

FURTHER CITATIONS: Lovins v. Jackson, (1963) 233 Or 369, 378 P2d 727.

ATTY. GEN. OPINIONS: Authority of city to regulate traffic on county roads, 1950-52, p 311.

LAW REVIEW CITATIONS: 1 WLJ 514-527.

483.046

ATTY. GEN. OPINIONS: Transportation of persons other than school children in school busses, 1948-50, p 310; only vehicles which may lawfully use highways as subject to registration, 1956-58, p 64.

LAW REVIEW CITATIONS: 1 WLJ 581.

483.048

ATTY. GEN. OPINIONS: Construing "speed law," (1968) Vol 34, p 347.

483.049

CASE CITATIONS: State v. Allen, (1967) 248 Or 376, 434 P2d 740.

483.050

CASE CITATIONS: Wold v. Portland, (1940) 166 Or 455, 112 P2d 469.

LAW REVIEW CITATIONS: 1 WLJ 581, 583.

483.102 to 483.112

CASE CITATIONS: Tuite v. Union Pac. Stages, (1955) 204 Or 565, 284 P2d 333.

√483.102

NOTES OF DECISIONS

1. In general
2. Speed
3. Duty to exercise proper control

1. In general

The standard fixed for drivers of motor vehicles is one to which it is neither harsh nor arbitrary to hold those criminally liable who operate contrary to it. Cline v. Frink Dairy Co., (1926) 274 US 445, 47 S Ct 681, 71 L Ed 1146.

An officer may make an arrest without a warrant for a violation of this statute committed in his presence. State v. Christensen, (1935) 151 Or 529, 51 P2d 835.

An instruction on the rule of this section does not include any information whatever of the common-law duty as to control. Prauss v. Adamski, (1952) 195 Or 1, 244 P2d 598.

Violation of the basic rule does not in and of itself constitute gross negligence. Burrows v. Nash, (1953) 199 Or 114, 259 P2d 107.

A requested instruction on statutory negligence which eliminated the reasonable prudent man test in regard to the basic rule was properly refused. Zahumensky v. Fandrich, (1954) 200 Or 588, 267 P2d 664.

2. Speed

Whenever the question of speed is involved, the ultimate fact to be determined is whether the basic rule has been violated, not whether the vehicle traveled in excess of the designated speed. Rauw v. Huling & Sparks, (1953) 199 Or 48, 259 P2d 99; Lemons v. Holland, (1955) 205 Or 163, 284 P2d 1041, 286 P2d 656; Hess v. Larson, (1971) 259 Or 536, 486 P2d 533.

An allegation of excessive speed may be withdrawn from consideration of the jury when evidence fails to show that speed had a causal connection with the accident. Wilson v. Overby, (1960) 223 Or 256, 354 P2d 319; Johnson v. Bennett, (1960) 225 Or 213, 357 P2d 527; Krening v. Flanders, (1961) 225 Or 388, 358 P2d 574.

A speed greater than is reasonable and prudent is attained by a motorist who travels so fast that he is unable to stop within twice the distance possible were he traveling at the speed indicated by the statute. Keys v. Griffith, (1936) 153 Or 190, 55 P2d 15.

An instruction in the language of the statute was sufficient, in the absence of a specific request for further instruction in regard to the basic rule. Cook v. Retzlaff, (1940) 163 Or 683, 99 P2d 22.

Instruction that the basic rule does not mean that a driver is an insurer that he will have no collision, did not mislead jury. Morris v. Fitzwater, (1949) 187 Or 191, 210 P2d 104.

The question of speed does not have to be submitted to the jury in every case where speed is alleged and forward

movement in miles per hour shown. Johnson v. Bennett, (1960) 225 Or 213, 357 P2d 527.

Although defendant's car was moving at a very slow speed, the question of speed and degree of control were properly submitted to jury since it could be inferred he maintained no lookout. McReynolds v. Howland, (1959) 218 Or 566, 346 P2d 127.

Evidence that it was customary practice for other drivers to exceed the designated speed limit was not admissible to show defendant's conduct reasonable. Elliott v. Callan, (1970) 255 Or 256, 466 P2d 600.

3. Duty to exercise proper control

A defendant relying upon an emergency to explain his conduct must show that he was faced with a sudden danger, in light of which his conduct measures up to the standard of a reasonable man faced with a similar emergency. Raz v. Mills, (1962) 231 Or 220, 372 P2d 955.

A driver must always maintain such lookout as a reasonably prudent person would maintain in the same or similar circumstances. Id.

Control implies also the ability to swerve reasonably so as to avoid a collision. Phillips v. Ocker, (1968) 250 Or 30, 440 P2d 365.

FURTHER CITATIONS: Younger v. Gallagher, (1933) 145 Or 63, 26 P2d 783; Winters v. Bisaillon, (1936) 152 Or 578, 54 P2d 1169; Ervast v. Sterling, (1937) 156 Or 432, 68 P2d 137; Zeek v. Bicknell, (1938) 159 Or 167, 78 P2d 620; Van Zandt v. Goodman, (1947) 181 Or 80, 179 P2d 724; Snyder v. Portland Traction Co., (1947) 182 Or 344, 185 P2d 563; Persons v. Raven, (1949) 187 Or 1, 207 P2d 1051; Eid v. Larsen, (1953) 200 Or 83, 264 P2d 1051; State v. Wojahn, (1955) 204 Or 84, 282 P2d 675; Dungey v. Fairview Farms, Inc., (1955) 205 Or 615, 290 P2d 181; State v. Davis, (1956) 207 Or 525, 296 P2d 240; Califf v. Norman, (1957) 210 Or 198, 310 P2d 319; McMullen v. Robinson, (1957) 211 Or 531, 316 P2d 503; Wiebe v. Seely, (1959) 215 Or 331, 335 P2d 379; Yates v. Stading, (1959) 219 Or 464, 347 P2d 839; Burghardt v. Olson, (1960) 223 Or 155, 349 P2d 792; Marchant v. Clark, (1960) 225 Or 273, 357 P2d 541; Simpson v. Gray Line Co., (1961) 226 Or 71, 358 P2d 516; Ireland v. Mitchell, (1961) 226 Or 286, 359 P2d 894; Consolidated Freightways, Inc. v. Holzapfel, (1961) 286 F2d 486; Lehr v. Gresham Berry Growers, (1962) 231 Or 202, 372 P2d 488; Meyers v. Munro, (1963) 236 Or 68, 386 P2d 808; Hoyle v. Van Horn, (1963) 236 Or 205, 387 P2d 985; Miller v. Harder, (1965) 240 Or 418, 402 P2d 84; Lundquist v. Irvine, (1966) 243 Or 274, 413 P2d 416; Robinson v. Lewis, (1969) 254 Or 52, 457 P2d 483; State v. Hall, (1970) 4 Or App 30, 476 P2d 930; Ballard v. Rickabaugh Orchards, Inc., (1971) 257 Or 366, 479 P2d 236.

ATTY. GEN. OPINIONS: Requirement that complaint contain allegation of speed in instances involving violation of this section, 1948-50, p 417; speed limit of truck under 6,000 pounds, 1954-56, p 186; construing "speed law" used in ORS 483.048, (1968) Vol 34, p 347.

LAW REVIEW CITATIONS: 37 OLR 277; 1 WLJ 558-661, 654-657.

483.104

NOTES OF DECISIONS

Before the 1941 amendment, neither a maximum nor a minimum speed limit was intended by the indicated speed specified by the statute. Dickson v. King, (1934) 147 Or 638, 34 P2d 664; Cummings v. Pitts, (1935) 149 Or 512, 41 P2d 804; Winters v. Bisaillon, (1936) 152 Or 578, 54 P2d 1169.

Except in certain situations, exceeding the speed limit without violating the basic rule is not a violation of the law. Senkirik v. Royce, (1951) 192 Or 583, 235 P2d 866; Rauw v. Huling & Sparks, (1953) 199 Or 48, 259 P2d 99; Burrows v. Nash, (1953) 199 Or 114, 259 P2d 107; Lemons v. Holland, (1955) 205 Or 163, 284 P2d 1041, 286 P2d 656.

Direct evidence is not necessary to establish excessive speed, as such, and may reasonably be inferred from all the facts and circumstances of the case. Greenslitt v. Three Bros. Bakery Co., (1943) 170 Or 345, 133 P2d 597.

Before the 1941 amendment, the violation of an indicated maximum speed was not of itself any evidence of negligence but after the amendment, the violation constituted prima facie evidence of negligence. Swiderski v. Moodenbaugh, (1944) 143 F2d 212.

The provision that speeds in excess of designated speeds "shall be prima facie evidence of a violation of the basic rule" applies to civil as well as criminal actions. Mercer v. Risberg, (1948) 182 Or 526, 188 P2d 632.

Failure to instruct (that if plaintiff was driving at a greater speed than designated such fact is prima facie evidence of negligence) is error when there is evidence that plaintiff was exceeding the designated speed. Consolidated Freightways, Inc. v. Holzapfel, (1961) 286 F2d 486.

Evidence that it was customary practice for other drivers to exceed the designated speed limit was not admissible to show defendant's conduct reasonable. Elliott v. Callan, (1970) 255 Or 256, 466 P2d 600.

FURTHER CITATIONS: Noble v. Sears, (1927) 122 Or 162, 257 P 809; Nisley v. Sawyer Serv., (1927) 123 Or 293, 261 P 890; Loveland v. Plant, (1930) 132 Or 619, 287 P 219; Younger v. Gallagher, (1933) 145 Or 63, 26 P2d 783; Zeek v. Bicknell, (1938) 159 Or 167, 78 P2d 620; Ross v. Robinson, (1942) 169 Or 293, 124 P2d 918; Rogers v. So. Pac. Co., (1951) 190 Or 643, 227 P2d 979; Cameron v. Goree, (1948) 182 Or 581, 189 P2d 596; Dungey v. Fairview Farms, Inc., (1955) 205 Or 615, 290 P2d 181; Califf v. Norman, (1957) 210 Or 198, 310 P2d 319; Ernst v. Broughton, (1958) 213 Or 253, 324 P2d 241; State v. Hoover, (1959) 219 Or 288, 303, 347 P2d 69, 89 ALR2d 695; Yates v. Stading, (1959) 219 Or 464, 347 P2d 839; Burghardt v. Olson, (1960) 223 Or 155, 349 P2d 792, 354 P2d 871; Slotte v. Gustin, (1960) 224 Or 426, 356 P2d 435; Comstock v. Stewart, (1971) 257 Or 538, 480 P2d 426; Hess v. Larson, (1971) 259 Or 386, 486 P2d 533.

ATTY. GEN. OPINIONS: Power of speed control board to designate speeds differing from those set forth in this section, 1950-52, p 372.

LAW REVIEW CITATIONS: 1 WLJ 658.

483.106

CASE CITATIONS: Califf v. Norman, (1957) 210 Or 198, 310 P2d 319; Burghardt v. Olson, (1960) 223 Or 155, 349 P2d 792, 354 P2d 871.

ATTY. GEN. OPINIONS: Authority of State Speed Control Board to designate speeds differing from designated speeds, 1950-52, p 372.

483.108

CASE CITATIONS: Califf v. Norman, (1957) 210 Or 198, 310 P2d 319.

ATTY. GEN. OPINIONS: Authority of State Speed Control Board to designate speeds differing from designated speeds, 1950-52, p 372.

483.112

ATTY. GEN. OPINIONS: Necessity of complaint filed for violation of law as to speed containing an allegation re-

garding speed, 1948-50, p 417; sheriff's authority to use radar, 1966-68, p 452; application of subsection (1) to violation of ORS 483.122(1), 1966-68, p 592; construing "speed law" used in ORS 483.048, (1968) Vol 34, p 347.

LAW REVIEW CITATIONS: 34 OLR 106.

483.114

NOTES OF DECISIONS

This section applies to traffic traveling along or across an arterial highway. Von Bergen v. Kuykendall, (1965) 240 Or 191, 400 P2d 553; Nelson v. Watters, (1970) 255 Or 64, 463 P2d 863.

FURTHER CITATIONS: Wells v. Washington County, (1966) 243 Or 246, 412 P2d 798.

483.116

CASE CITATIONS: Furrer v. Yew Creek Logging Co., (1956) 206 Or 382, 292 P2d 499; Simpson v. Gray Line Co., (1961) 226 Or 71, 358 P2d 516.

ATTY. GEN. OPINIONS: Speed limit of truck under 6,000 pounds, 1954-56, p 186.

483.120

NOTES OF DECISIONS

This section relates to speed and has nothing whatever to do with the duty of emergency vehicles to stop at intersections. Anderson v. Finzel, (1955) 204 Or 162, 282 P2d 358.

Driver of emergency vehicle must drive with regard to the safety of others. Siburg v. Johnson, (1968) 249 Or 556, 439 P2d 865.

A policeman, who failed to sound the siren or give other audible warning in the operation of his vehicle, could not claim that he was at the time operating an emergency vehicle within the exemption granted by the statutes. Dodson v. Lemon, (1953) 197 Or 444, 253 P2d 900.

FURTHER CITATIONS: Buck v. Ice Delivery Co., (1934) 146 Or 132, 29 P2d 523; West v. Jaloff, (1925) 113 Or 184, 232 P 642, 36 ALR 1391; Califf v. Norman, (1957) 210 Or 198, 310 P2d 319.

483.122

CASE CITATIONS: Lemons v. Kelly, (1964) 239 Or 354, 397 P2d 784.

ATTY. GEN. OPINIONS: Construing "race" and "contest for speed," 1966-68, p 592.

483.126

NOTES OF DECISIONS

This section does not require a motorist in every instance to give a signal of his intention. Ray v. Anderson, (1965) 240 Or 619, 403 P2d 372; Jepsen v. Magill, (1966) 243 Or 34, 411 P2d 267.

No distinction between minors and adults is made by this provision in respect to the duty of the operator of the motor vehicle to sound the horn. Maletis v. Portland Traction Co., (1938) 160 Or 30, 83 P2d 141.

Signals are required for vehicles which are backing up as well as for those which are moving forward. Carter v. Lester, (1957) 210 Or 209, 309 P2d 1001.

Violation of the duty to signal as required by this section is negligence per se. Olson v. Sutherland, (1960) 224 Or 208, 355 P2d 774.

This section applies to the operation of a motor vehicle upon the highway and has no application where the vehicle is operated on private premises. Kroft v. Grimm, (1960) 225 Or 247, 357 P2d 499.

This section does not require a signal unless the movement is intended. Lee v. Caldwell, (1961) 229 Or 174, 366 P2d 913.

By requiring that a person first see that the movement can be made in safety, the statute does not mean the person takes such action at his peril. Ray v. Anderson, (1965) 240 Or 619, 403 P2d 372.

Subsection (1) is in part for the benefit of vehicles approaching from the rear. McPherson v. Cochran, (1966) 243 Or 399, 414 P2d 321.

When the lead car stops abruptly, it is ordinarily a question of fact whether subsection (1) has been violated. Jones v. Burns, (1970) 257 Or 312, 478 P2d 611.

If there is evidence that the car ahead stopped abruptly, the negligence of the rear vehicle which struck the car ahead is for the jury. Id.

Where defendant did not signal his intention to turn, because plaintiff was a considerable distance away, and he believed he could safely pass to the opposite side of the highway, it was a question of fact whether the operation of plaintiff's car was affected by such movement of defendant's car. Moudy v. Boylan, (1959) 219 Or 448, 347 P2d 983; Jepsen v. Magill, (1966) 243 Or 34, 411 P2d 267.

That plaintiff was holding the door open at the time he extended his arm horizontally as a signal for a left turn was unimportant where the door was not between defendant and plaintiff's arm. Turner v. McMillan, (1932) 140 Or 407, 14 P2d 294.

Where there were no vehicles in the rear to be affected by the movement of plaintiff's car, an instruction from which the jury could find that if plaintiff's signal was not visible to a car in the rear she would be guilty of contributory negligence was abstract. Karberg v. Leahy, (1933) 144 Or 687, 26 P2d 56.

The mere fact that defendant looked back before attempting to turn across the highway and saw no car approaching did not of itself entitle him to proceed as a matter of right where a prudent man would have given the required signal before turning. Burnett v. Weinstein, (1936) 154 Or 308, 59 P2d 258.

An instruction which eliminates a specification of negligence that defendant failed to give the required signal before turning was erroneous. Id.

Whether failure to sound the horn was the proximate cause of an injury to a child playing in close proximity to a bus was under the evidence in the case for the jury. Dixon v. Raven Dairy, (1938) 158 Or 186, 75 P2d 347.

This section was inapplicable to a motorist stopping on private property adjoining the highway and proceeding in a straight line without changing his course. Lee v. Hoff, (1940) 163 Or 374, 97 P2d 715.

An instruction in the language of subdivision (1) was applicable where a collision occurred when a motorist turned his vehicle left across the highway between intersections. Black v. Stith, (1940) 164 Or 117, 100 P2d 485.

An instruction that a motorist turning left across the highway between intersections would not be guilty of negligence simply because a collision occurred, but that the test was whether a reasonable man would have believed that he could make the turn, was a proper construction of the statute. Id.

The question of plaintiff's negligence while guest in the approaching vehicle in not warning her driver, should have been taken from the jury, where defendant failed to see that he could make left turn in safety and failed to yield to approaching vehicle, and danger of collision was not apparent until imminent. Hamilton v. Haworth, (1947) 180 Or 477, 177 P2d 409.

There was no error in giving both an instruction as to the making of movements with safety and one as to emergency situations. Alford v. Cochran, (1950) 189 Or 24, 216 P2d 667.

Where defendant did not signal his intention to turn, because plaintiff was a considerable distance away, and he believed he could safely pass to the opposite side of the highway, it was a question of fact whether the operation of plaintiff's car was affected by such movement of defendant's car. Schutt v. Hull, (1951) 193 Or 18, 236 P2d 937.

Where defendant vehicle operator was proceeding along highway between intersections when plaintiff operator of opposing vehicle desired to turn left across the highway between intersections, defendant had a common-law right of way and was entitled to have such an instruction given. Blaylock v. Westlund, (1953) 197 Or 536, 254 P2d 203.

It was error for judge to give instruction that defendant, who could not see out rear window, was only required to keep to right half of highway when meeting oncoming traffic and was not negligent in driving to left of center when plaintiff was passing. Voight v. Nyberg, (1959) 218 Or 383, 345 P2d 821.

It was not error to give the first sentence of subsection (1) in an instruction, although defendant's negligence was not predicated upon failure to give a signal. Jenses v. Irvine, (1960) 221 Or 386, 349 P2d 670.

It was a question of fact whether under the circumstances of this case the signal given constituted a reasonable warning of the driver's intention to stop. Rough v. Lamb, (1965) 240 Or 240, 401 P2d 10.

In this case, a left turn was a movement of a type for which a signal was mandatory. Lundquist v. West, (1967) 248 Or 494, 430 P2d 1013.

Subsection (1) did not apply where the driver was not in the process of stopping but had been parked for several minutes. Parrot v. Spear, (1971) 259 Or 503, 487 P2d 71.

FURTHER CITATIONS: Sears v. Goldsmith, (1931) 136 Or 151, 298 P 219; Frangos v. Edmunds, (1946) 179 Or 577, 173 P2d 596; Van Zandt v. Goodman, (1947) 181 Or 80, 179 P2d 724; Callander and Stone v. Brown, (1947) 181 Or 279, 178 P2d 922; Canada v. Royce, (1953) 199 Or 196, 257 P2d 625; Fisher v. Reilly, (1956) 207 Or 7, 294 P2d 615; Hopfer v. Straudt, (1956) 207 Or 487, 298 P2d 186; Califf v. Norman, (1957) 210 Or 198, 310 P2d 319; Rose v. Portland Traction Co., (1959) 219 Or 1, 341 P2d 125, 346 P2d 375; Oien v. Bourassa, (1960) 221 Or 359, 351 P2d 703; Lehr v. Gresham Berry Growers, (1962) 231 Or 202, 372 P2d 488; Sturm v. Smelcer, (1963) 235 Or 251, 384 P2d 212; Miller v. Harder, (1965) 240 Or 418, 402 P2d 84; Ginter v. Handy, (1966) 244 Or 449, 419 P2d 21.

ATTY. GEN. OPINIONS: Contributory negligence of motorist making turn in front of bus, 1928-30, p 412; adequacy of mechanical signal device, 1948-50, p 354.

LAW REVIEW CITATIONS: 1 WLJ 460, 505, 517, 525.

483.128

NOTES OF DECISIONS

Highway signs are not lawfully placed unless visible. Savage v. Palmer, (1955) 204 Or 257, 280 P2d 982.

FURTHER CITATIONS: Cameron v. Goree, (1948) 182 Or 581, 189 P2d 596; Anderson v. Finzel, (1955) 204 Or 162, 282 P2d 358; Biddle v. Mazzocco, (1955) 204 Or 547, 561, 284 P2d 364; Senger v. Vancouver-Portland Bus Co., (1956) 209 Or 37, 298 P2d 835, 304 P2d 448; Bernaski v. Liudahl, (1957) 209 Or 553, 307 P2d 510; Chard v. Rios, (1964) 238 Or 74, 393 P2d 156; Wiens v. Stevenson, (1968) 250 Or 1, 439 P2d 15; Miller v. Jordan, (1970) 3 Or App 134, 472 P2d 841.

483.130

CASE CITATIONS: Schultz v. Shirley, (1950) 189 Or 363, 220 P2d 86; Schoenborn v. Broderick, (1954) 202 Or 634, 277 P2d 287; Anderson v. Finzel, (1955) 204 Or 162, 282 P2d 358; Brindle v. McCormick Lbr. & Mfg. Corp., (1956) 206 Or 333, 293 P2d 221; Bernaski v. Liudahl, (1957) 209 Or 553, 307 P2d 510; Maser v. Klein, (1960) 224 Or 300, 356 P2d 151; Owens v. Goss, (1963) 235 Or 102, 383 P2d 1013; Miller v. Harder, (1965) 240 Or 418, 402 P2d 84.

483.132

CASE CITATIONS: Bernaski v. Liudahl, (1957) 209 Or 553, 307 P2d 510; Miller v. Harder, (1965) 240 Or 418, 402 P2d 84.

483.134

CASE CITATIONS: Maser v. Klein, (1960) 224 Or 300, 356 P2d 151.

483.136

CASE CITATIONS: Wiebe v. Seely, (1959) 215 Or 331, 335 P2d 379; Lehr v. Gresham Berry Growers, (1962) 231 Or 202, 372 P2d 488; Troupe v. Ledward, (1964) 238 Or 531, 395 P2d 279; Miller v. Harder (1965) 240 Or 418, 402 P2d 84.

483.138

NOTES OF DECISIONS

A signal installed by a company with the approval of the county court at the intersection of a private road and a public highway is not a nuisance and must be observed. Schoenborn v. Broderick, (1954) 202 Or 634, 277 P2d 787.

"Device" means any contrivance which would tend to mislead a traveler to believe the contrivance had official status in directing the movement of traffic. Ashland v. Pac. Power & Light Co., (1964) 239 Or 241, 395 P2d 420.

FURTHER CITATIONS: Lovins v. Jackson, (1963) 233 Or 369, 378 P2d 727.

ATTY. GEN. OPINIONS: Regulating campaign posters, 1954-56, p 212.

483.202

NOTES OF DECISIONS

1. Approaching intersections, subsection (2)
2. Entering through highway, subsection (4)
3. Turning left at intersection, subsection (5)

1. Approaching intersections, subsection (2)

The degree of care required in approaching a highway intersection is that which an ordinarily prudent person would exercise under the same circumstances. Casto v. Hansen, (1927) 123 Or 20, 261 P 428; Frint v. Amato, (1930) 131 Or 631, 284 P 183; Vroman v. Upp, (1938) 158 Or 597, 77 P2d 432.

It is negligence per se to violate the statutory provision as to the right of way at street intersections. Gilman v. Olson, (1928) 125 Or 1, 265 P 439; Holmes v. Goble, (1930) 132 Or 540, 285 P 822.

Contributory negligence may be charged to one entitled to the right of way if he heedlessly exercises that right in such a manner that an injury is inflicted upon himself. Stryker v. Hastie, (1929) 131 Or 282, 282 P 1087; Stotts v. Wagner, (1931) 135 Or 243, 295 P 497.

The right of way at intersections applies only where the travelers or vehicles approach the crossing so nearly at the

same time and at such rates of speed that a collision is to be reasonably apprehended if they both proceed, each without regard to the other. Ramsdell v. Frederick, (1930) 132 Or 161, 285 P 219; Cox v. Jones, (1932) 138 Or 327, 5 P2d 102.

Right of way is forfeited by excessive speed, but is not thereby transferred to other driver. Dorey v. Myers, (1957) 211 Or 631, 317 P2d 515; Hess v. Larson, (1971) 259 Or 536, 486 P2d 533.

A failure to give right of way constitutes negligence, per se. Gilman v. Olson, (1928) 125 Or 1, 265 P 439.

A simultaneous approach is one which appears to be so after a reasonably careful observation has been made. Knox v. Abrams, (1930) 132 Or 500, 286 P 517.

A driver need not sound the horn where he has the right of way on first entering an intersection, unless a reasonably careful and prudent person would have given such signal. Winters v. Bisaillon, (1936) 152 Or 578, 54 P2d 1169.

An absolute duty to look to the right is imposed by this section. Vroman v. Upp, (1938) 158 Or 597, 77 P2d 432.

Driver on left, who makes a reasonably careful observation to his right and sees no car approaching so closely that there is reasonable likelihood of a collision, is not required to stop or wait but may proceed. Dorey v. Myers, (1957) 211 Or 631, 317 P2d 515.

Where issue of speed at which driver on right enters intersection is material, instruction to jury should give all of right of way statute. Ernst v. Broughton, (1958) 213 Or 253, 324 P2d 241.

The age, experience and intelligence of an infant are to be considered in determining whether he is guilty of contributory negligence even where he violates a statute. Simmons v. Holm, (1961) 229 Or 373, 367 P2d 368.

The right of way conferred by the statute is not absolute. Stahl v. Tobiasson, (1971) 257 Or 445, 479 P2d 751.

The statutory right of way must be exercised reasonably with due regard to existing circumstances. Hess v. Larson, (1971) 259 Or 536, 486 P2d 533.

The elements of speed, lookout and control are interrelated and, in most cases, it is proper if not necessary for the jury to consider them together. Id.

The failure of a driver at a road intersection, to "look out for and give right of way to vehicles on the right," constituted negligence per se. Ramp v. Osborne, (1925) 115 Or 672, 239 P 112.

Whether plaintiff was guilty of contributory negligence where she approached an intersection from the right and the testimony of the driver of her car was that he looked straight ahead watching where he was going but saw the car with which he collided coming 20 feet from the intersection, was a question for the jury. McCulley v. Homestead Bakery, (1933) 141 Or 460, 18 P2d 226.

Approaching an intersection at a speed of 25 miles per hour on the left side of the road, and proceeding on to the highway intersection at a speed of more than 15 miles per hour, without looking for traffic on such highway, the intersection being partially obstructed by brush, was sufficient to constitute gross negligence on the part of the driver. Cockerham v. Potts, (1933) 143 Or 80, 20 P2d 423.

2. Entering through highway, subsection (4)

The question of what "constitutes an immediate hazard" is determined by relevant factors such as distance of approaching vehicle, width of crossing, speed of vehicles, other traffic, and so on, and the trier of fact must determine if the driver was justified in believing he could safely pass in front of the oncoming car. Van Zandt v. Goodman, (1947) 181 Or 80, 179 P2d 724.

The purposes of this section are to afford the driver an opportunity to get the car fully under control, to afford him a better opportunity to make observations and to hear, and to afford the car on the trunk road a better view of him. Cameron v. Goree, (1948) 182 Or 581, 189 P2d 596.

Drivers upon secondary ways must stop where they can see cars in the intersection and cars approaching upon the trunk highway. Id.

Vehicle proceeding along public highway has a superior right to its use than does a vehicle entering highway from private road. Biddle v. Mazzocco, (1955) 204 Or 547, 284 P2d 364.

Vehicle entering an intersection on the right is not given the right of way at an intersection which is controlled by a stop sign. Mead v. Portland Traction Co., (1957) 210 Or 643, 313 P2d 451.

The determination of whether approaching vehicles constitute an immediate hazard must be made at the time when the initially disfavored driver is ready to proceed into the intersection. Hermann v. Wohlers, (1966) 244 Or 441, 419 P2d 45.

Vehicles do not constitute an immediate hazard if they are far enough away to make a smooth and safe stop. Id.

The law requires a driver to stop at a point which, in the exercise of ordinary care, will allow the driver to see traffic on the street he is about to enter. Dunstan v. Dean, (1971) 259 Or 436, 487 P2d 78.

It was plaintiff's duty to observe traffic waiting to enter the through highway. Troupe v. Ledward, (1964) 238 Or 531, 395 P2d 279.

3. Turning left at intersection, subsection (5)

The driver who intends to turn left must yield the right of way to any approaching vehicle within the intersection or so close as to constitute an immediate hazard. Dare v. Garrett Freightlines, Inc., (1963) 234 Or 61, 380 P2d 119; Bostwick v. Logsdon, (1963) 234 Or 226, 380 P2d 982.

The doctrine applicable to subsection (1), that where one not having a right of precedence comes to a crossing he may proceed as a matter of right when he finds no one approaching within such distance as reasonably to indicate danger of interference or collision, applies to this subsection also. Van Zandt v. Goodman, (1947) 181 Or 80, 179 P2d 724. **Distinguished in** Kennedy v. Farmers' Co-op. Creamery, (1956) 207 Or 160, 295 P2d 197.

This subsection does not require the turning driver to continue to yield the right of way to oncoming vehicles. Bostwick v. Logsdon, (1963) 234 Or 226, 380 P2d 982.

A strict compliance with the rule requiring a vehicle to be driven on the right is not required except where vehicles meet and pass from opposite directions. Austin v. Portland Traction Co., (1947) 181 Or 470, 182 P2d 412.

The question of plaintiff's negligence while guest in the approaching vehicle in not warning her driver, should have been taken from the jury, where defendant failed to see that he could make left turn in safety and failed to yield to approaching vehicle, and danger of collision was not apparent until imminent. Hamilton v. Haworth, (1947) 180 Or 477, 177 P2d 409.

Where defendant pulled straight across a diagonal intersection and evidence conflicted as to whether or not he signaled a turn, plaintiff had reasonable ground to assume defendant was going to turn right since traffic otherwise ordinarily made an immediate left turn. Cook v. Lomer, (1950) 188 Or 193, 215 P2d 359.

FURTHER CITATIONS: Hunsaker v. Pac. NW Public Serv. Co., (1933) 143 Or 583, 20 P2d 433; Buck v. Ice Delivery Co., (1934) 146 Or 132, 29 P2d 523; Ervast v. Sterling, (1937) 156 Or 432, 68 P2d 137; Callander and Stone v. Brown, (1947) 181 Or 279, 178 P2d 922; Severy v. Myrmo, (1949) 186 Or 611, 207 P2d 151; Blaylock v. Westlund, (1953) 197 Or 536, 254 P2d 203; Rauw v. Huling & Sparks, (1953) 199 Or 48, 259 P2d 99; Hyatt v. Johnson, (1955) 204 Or 469, 284 P2d 358; Clevenger v. Schallhorn, (1955) 205 Or 209, 286 P2d

651; Brindle v. McCormick Lbr. & Mfg. Corp., (1956) 206 Or 333, 293 P2d 221; State v. Davis, (1956) 207 Or 525, 296 P2d 240; Moudy v. Boylan, (1959) 219 Or 448, 347 P2d 983; Owens v. Goss, (1963) 235 Or 102, 383 P2d 1013; Flande v. Brazel, (1963) 236 Or 156, 386 P2d 920; Bush v. Johnson, (1964) 237 Or 173, 390 P2d 932; Beeler v. Collier, (1965) 240 Or 141, 400 P2d 547; Isaacson v. Wirklan, (1967) 245 Or 612, 423 P2d 759.

ATTY. GEN. OPINIONS: Right of way at convergence of entering traffic lane and right hand lane on multi-lane highway, 1966-68, p 95.

LAW REVIEW CITATIONS: 1 WLJ 459, 505, 514-527.

483.204

NOTES OF DECISIONS

This section does not demand that a motorist stop precisely on the line where the cross street meets the prolongation of the nearest property line, but requires only substantial observance. Cameron v. Goree, (1948) 182 Or 581, 189 P2d 596; Biddle v. Mazzocco, (1955) 204 Or 547, 284 P2d 364.

Drivers upon secondary ways must stop where they can see both cars in the intersection and also those approaching upon the trunk highway. Cameron v. Goree, (1948) 182 Or 581, 189 P2d 596.

When entering a public road from a private road a driver is required to stop before any part of the vehicle protrudes over any portion of the public road. Biddle v. Mazzocco, (1955) 204 Or 547, 284 P2d 364.

The administrative regulations of the commission adopted pursuant to this section imposed duties on employes for the benefit of the commission, not for the benefit of the public. Ashland v. Pac. Power & Light Co., (1964) 239 Or 241, 397 P2d 538.

Defendant cab was not required to stop at the intersection of a through traffic street where the necessary stop street sign was not erected. Ramsdell v. Frederick, (1930) 132 Or 161, 285 P 219.

Driver of private ambulance, taking an injured person to a hospital, was not relieved by the emergency from the duty to stop at a stop street. Buck v. Ice Delivery Co., (1934) 146 Or 132, 29 P2d 523.

FURTHER CITATIONS: McMullen v. Robinson, (1957) 211 Or 531, 316 P2d 503.

ATTY. GEN. OPINIONS: Right of way at convergence of entering traffic lane and right hand lane of multilane highway, 1966-68, p 95; duty of county to place traffic control or warning signs on county or public roads, (1969) Vol 34, p 482.

483.206

NOTES OF DECISIONS

If a signal installed at the intersection of a private road and public highway by a company with the approval of the county court indicates that the driver may proceed on the private road without stopping, the driver may proceed without violating this section. Schoenborn v. Broderick, (1954) 202 Or 634, 277 P2d 787.

A school bus entering from a graveled parking space onto the highway should have yielded the right of way to an automobile stage approaching along the highway from the left. Bowerman v. Columbia Gorge Motor Coach System, (1930) 132 Or 106, 284 P 579.

A driver was not required to get out of her car and ascertain if there was any approaching traffic on the highway which she was entering from a crossroad at a place where a steep bluff obstructed her view. McCartney v. Westbrook, (1930) 132 Or 488, 286 P 525.

The phrase "all vehicles approaching on such public highway" did not require explanation when incorporated into an instruction. Lee v. Hoff, (1940) 163 Or 374, 97 P2d 715.

FURTHER CITATIONS: Hawn v. W. J. Jones & Son, (1930) 131 Or 660, 284 P 194; Ervast v. Sterling, (1937) 156 Or 432, 68 P2d 137; Persons v. Raven, (1949) 187 Or 1, 207 P2d 1051; Brindle v. McCormick Lbr. & Mfg. Corp., (1956) 206 Or 333, 293 P2d 221; Graves v. Shippley, (1959) 215 Or 616, 300 P2d 442, 337 P2d 347; Raffaele v. McLaughlin, (1961) 229 Or 301, 366 P2d 722; Simmons v. Holm, (1961) 229 Or 373, 367 P2d 368; Durkoop v. Mishler, (1963) 233 Or 243, 378 P2d 267; Dean v. Poole, (1963) 235 Or 606, 386 P2d 453.

LAW REVIEW CITATIONS: 1 WLJ 459, 462.

483.208

NOTES OF DECISIONS

The right of emergency vehicles is not absolute but subject to the dictates of common prudence and the apparent necessities of the case. West v. Jaloff, (1925) 113 Or 184, 232 P 642, 36 ALR 1391.

Exemption from duty to stop at stop streets in compliance with the mandate of an ordinance or statute is not given by this provision granting the right of way to ambulances. Buck v. Ice Delivery Co., (1934) 146 Or 132, 29 P2d 523.

Driver of emergency vehicle must drive with regard to the safety of others. Siburg v. Johnson, (1968) 249 Or 556, 439 P2d 865.

A policeman, who failed to sound the siren or give other audible warning in the operation of his vehicle, could not claim that he was at the time operating an emergency vehicle within the exemption granted by the statutes. Dodson v. Lemon, (1953) 197 Or 444, 253 P2d 900.

The driver of a vehicle was not liable when he collided with an emergency vehicle in an intersection. Anderson v. Finzel, (1955) 204 Or 162, 282 P2d 358.

483.210

NOTES OF DECISIONS

1. In general
2. Crossing at crosswalks
3. Jaywalking

1. In general

The care to be employed in exercising the rights here given is such as a reasonably prudent person would use under similar circumstances and conditions. Cline v. Bush, (1935) 152 Or 63, 52 P2d 652; Maneff v. Lamer, (1936) 152 Or 619, 54 P2d 287; Keys v. Griffith, (1936) 153 Or 190, 55 P2d 15.

Crossing a street in violation of an ordinance is negligence per se. Senkirik v. Royce, (1951) 192 Or 583, 235 P2d 886; Leap v. Royce, (1955) 203 Or 566, 279 P2d 887.

The question of negligence of the pedestrian or of the motorist is not concluded by the statute. Keys v. Griffith, (1936) 153 Or 190, 55 P2d 15.

This section was intended to promote the safety of pedestrians and should be construed in furtherance of that object. Myhre v. Peterson, (1963) 233 Or 470, 378 P2d 1002.

A person is engaged in "crossing" a street even though he does not traverse it from curb to curb. Id.

Whether plaintiff was negligent in failing to keep a better lookout for approaching vehicles was a question for the jury. Lantis v. Bishop, (1960) 224 Or 586, 356 P2d 158; Myhre v. Peterson, (1963) 233 Or 470, 378 P2d 1002.

2. Crossing at crosswalks

No absolute or arbitrary right of way at nonregulated crossings is given pedestrians, but the right must be exercised with due care and caution. Hecker v. Union Cab Co., (1930) 134 Or 385, 293 P 726; Keys v. Griffith, (1936) 153 Or 190, 55 P2d 15.

A pedestrian may assume that a motorist will obey the law and yield the right of way where he is crossing the street in a pedestrian safety lane. Siskel v. Calhoun, (1934) 147 Or 606, 34 P2d 659.

A motorist approaching a crosswalk must observe whether pedestrians are crossing, and, if so, give them an opportunity to cross in safety. Maneff v. Lamer, (1934) 148 Or 455, 36 P2d 336.

A pedestrian crossing a street in an unmarked crosswalk has the right to believe, until indications to the contrary appear, that approaching vehicles will permit him to pass in safety. Sherrard v. Werline, (1939) 162 Or 135, 91 P2d 344.

A pedestrian must exercise due care even though proceeding in a crosswalk. DeWitt v. Sandy Mkt. (1941) 167 Or 226, 115 P2d 184.

The words "other places of safety" include not only places like curbs and safety islands but other positions of relative safety such as the center line area of the roadway. Plasker v. Fazio, (1971) 259 Or 171, 485 P2d 1075.

In subsection (1), "suddenly" means unexpectedly. Id.

Whether failure to keep a continual lookout after passing the center of the street constituted contributory negligence on the part of a woman crossing in a pedestrian lane, was for the jury. Siskel v. Calhoun, (1934) 147 Or 606, 34 P2d 659.

An instruction giving the motorist the right of way over a pedestrian in a regular pedestrian lane where the motorist, acting as a reasonable prudent person, would apprehend that he could pass with his car in front of the pedestrian without coming in contact with him, was erroneous. Maneff v. Lamer, (1934) 148 Or 455, 36 P2d 336.

If a pedestrian stops or reverses his course at an intersection and places himself in a position of peril in such close proximity to the driver's car that the driver would not have time to stop, or change his course, to avoid a collision, the driver was not liable in the absence of other negligence on his part. Cline v. Bush, (1935) 152 Or 63, 52 P2d 652.

Whether the pedestrian moved into the path of the vehicle when it was too close to yield was a jury question. Cummings v. Schunk, (1968) 249 Or 435, 439 P2d 13.

3. Jaywalking

Subsection (4) does not prohibit a pedestrian from crossing a roadway other than at a crosswalk. Martin v. Harrison, (1947) 182 Or 121, 180 P2d 119, 186 P2d 534.

A woman crossing the street diagonally in middle of block was not entitled to the right of way over a motorist. Bakkum v. Holder, (1931) 135 Or 387, 295 P 1115.

A charge giving the right of way to the motorist was proper where plaintiff pedestrian was crossing the street at a point other than the regular pedestrian crossing. Maneff v. Lamer, (1936) 152 Or 619, 54 P2d 287.

A driver was not relieved of the duty to exercise reasonable care to avoid injuring any pedestrian who saw fit to cross the street at some place other than a pedestrian lane. Simpson v. Hillman, (1940) 163 Or 357, 97 P2d 527.

Where a child of tender years sustained injuries when struck by an automobile while crossing the street at a point other than in a pedestrian lane, no presumption of negligence was created by the mere happening of the accident. Id.

If plaintiff's walking out of the crosswalk caused her to collide with defendant's truck, she violated the provision giving vehicles the right of way as much as though she had walked in front of the truck. DeWitt v. Sandy Mkt. (1941) 167 Or 226, 115 P2d 184.

FURTHER CITATIONS: Manning v. Helbock, (1931) 135 Or 262, 295 P 207; Lott v. DeLuxe Cab Co., (1931) 136 Or 349, 299 P 303; Emmons v. Skaggs, (1931) 138 Or 70, 4 P2d 1115; Dixon v. Raven Dairy, (1938) 158 Or 186, 75 P2d 347; Canada v. Royce, (1953) 199 Or 196, 257 P2d 624; Lemons v. Holland, (1955) 205 Or 163, 284 P2d 1041, 286 P2d 656; Burke v. Olson, (1955) 206 Or 149, 291 P2d 759; Brindle v. McCormick Lbr. & Mfg. Corp., (1956) 206 Or 333, 293 P2d 221; Barnes v. Winkler, (1959) 216 Or 130, 337 P2d 816; Hall v. Tams, (1959) 219 Or 263, 346 P2d 1115; Yates v. Stading, (1959) 219 Or 464, 347 P2d 839; Bradfield v. Kammerrer, (1960) 225 Or 112, 357 P2d 278; Johnson v. Bennett, (1960) 225 Or 213, 357 P2d 527; Harr v. Olson, (1961) 228 Or 504, 364 P2d 1013; Raz v. Mills, (1962) 231 Or 220, 372 P2d 995; Blanchette v. Arrow Towing Co., (1966) 242 Or 590, 410 P2d 1010; Foles v. U.S. Fid. & Guar. Co., (1971) 259 Or 337, 486 P2d 537.

LAW REVIEW CITATIONS: 1 WLJ 514-527.

483.212

CASE CITATIONS: Brindle v. McCormick Lbr. & Mfg. Corp., (1956) 206 Or 333, 293 P2d 221.

483.214

LAW REVIEW CITATIONS: 1 WLJ 526.

483.218

CASE CITATIONS: Young v. Crown Zellerbach Corp., (1966) 244 Or 251, 417 P2d 394; Foles v. United States Fid. & Guar. Co., (1971) 259 Or 337, 486 P2d 537.

483.220

NOTES OF DECISIONS

This section is mandatory. Zahara v. Brandli, (1939) 162 Or 666, 94 P2d 718.

The purpose of this section is to make certain that pedestrians see approaching traffic so as to be able to step aside or remain in a place of safety. Lemons v. Holland, (1955) 205 Or 163, 284 P2d 1041, 286 P2d 656; Dimick v. Linnell, (1965) 240 Or 509, 402 P2d 734; Foles v. United States Fid. & Guar. Co., (1971) 259 Or 337, 486 P2d 537.

The conditions under which violation of a statute will establish responsibility for injuries as a matter of law are: (1) There must be a causal connection between the conduct which violates the law and the injury; (2) The injured party must be a member of the class intended to be benefited by the legislation; and (3) The harm that occurred must be the kind the statute intended to prevent. Dimick v. Linnell, (1965) 240 Or 509, 402 P2d 734.

When pedestrian was complying with this section, it was not negligence per se for him to fail to anticipate that an overtaking passing vehicle coming from the rear would occupy the same space. Kellye v. Greyhound Lines, Inc., (1968) 249 Or 14, 436 P2d 727; Aspuria v. Mello, (1970) 255 Or 128, 464 P2d 680.

FURTHER CITATIONS: Scott v. Brogan, (1937) 157 Or 549, 73 P2d 688; Hall v. Tams, (1959) 219 Or 263, 346 P2d 1115; Blanchette v. Arrow Towing Co., (1966) 242 Or 590, 410 P2d 1010; Smith v. Moore, (1966) 243 Or 413, 414 P2d 346.

483.222

NOTES OF DECISIONS

This section requires the operator, by lookout, to ascertain whether or not pedestrians are on the sidewalk. Durkoop v. Mishler, (1963) 233 Or 243, 378 P2d 267.

FURTHER CITATIONS: Swiatowski v. Jolenette, (1957) 210 Or 270, 309 P2d 1004.

483.226

NOTES OF DECISIONS

A pleading relying on this section which failed to allege that the crossing had been properly designated as a dangerous crossing was insufficient to sustain a defense. Nichols v. Union Pac. R.R., (1952) 196 Or 488, 250 P2d 379.

ATTY GEN. OPINIONS: Placement of stop signs, 1960-62, p 102; Public Utility Commissioner's authority to order stop signs, 1960-62, p 102.

483.302

NOTES OF DECISIONS

1. In general
2. Subsection (1)
3. Subsection (2)

1. In general

This section does not contemplate strict compliance in every case with the requirement as to driving on right-hand side of road. Weinstein v. Wheeler, (1931) 135 Or 518, 295 P 196, 296 P 1079; Austin v. Portland Traction Co., (1947) 181 Or 470, 182 P2d 412; Biddle v. Mazzocco, (1955) 204 Or 547, 284 P2d 364; Oregon Farm Bureau Ins. Co. v. Harmon, (1964) 239 Or 282, 397 P2d 534; Tokstad v. Lund, (1970) 255 Or 305, 466 P2d 938.

An allegation of violation of this section is not supported when there is no evidence to show that defendant drove in the wrong lane voluntarily. Raz v. Mills, (1962) 231 Or 220, 372 P2d 955; Pozsgai v. Porter, (1967) 249 Or 84, 435 P2d 818.

This section only applies when vehicles are approaching from the front. Spence v. Rasmussen, (1951) 190 Or 662, 226 P2d 819.

Under certain conditions a driver may be making "ordinary" use of the highway even though he is violating this section. Southern Pac. Co. v. Raish, (1953) 205 F2d 389.

This section does not apply to any situation except that in which oncoming vehicles are meeting. Lindner v. Ahlgren, (1970) 257 Or 127, 477 P2d 219. Overruling Falls v. Mortensen, (1956) 207 Or 130, 295 P2d 182.

This section did not apply to a trolley bus which was suddenly faced with an automobile coming toward it on the wrong side of the street, and swerved to its left taking the only open avenue of escape, but was struck by the automobile when it swung back to its right. LaVigne v. Portland Traction Co., (1946) 179 Or 221, 170 P2d 709.

The court did not err in its instruction of the duty of the drivers under this section. Arrow Trans. Co. v. NW Grocery Co., (1971) 258 Or 363, 482 P2d 519.

2. Subsection (1)

"Except when the right half is out of repair" is a true proviso and need not be negatived. Moe v. Alsop, (1950) 189 Or 59, 216 P2d 686.

Driving on the left side of a winding road at a rapid speed while racing a vehicle on the right side was sufficient evidence of gross negligence. Younger v. Gallagher, (1933) 145 Or 63, 26 P2d 783.

That a pedestrian was leading his horse did not bring him under the rule of the road applicable to vehicles so as to require him to proceed on the right side of the highway. Sertic v. McCullough, (1936) 155 Or 216, 63 P2d 884.

3. Subsection (2)

This subsection was not enacted for the protection of pedestrians but for the regulation of traffic. Hamilton v. Finch, (1941) 166 Or 156, 111 P2d 81; Falls v. Mortensen, (1956) 207 Or 130, 295 P2d 182; Johnson v. Bennett, (1960) 225 Or 213, 357 P2d 527.

As "close as practicable" does not mean that the driver shall operate his vehicle so close to the edge of the pavement as to create a danger of his car's right wheels accidentally slipping off the paved portion of the highway at a point where to do so would be hazardous. Prauss v. Adamski, (1952) 195 Or 1, 244 P2d 598.

FURTHER CITATIONS: Gum v. Wooge, (1957) 211 Or 149, 315 P2d 119; Newbern v. Exley Produce Exp. (1958) 212 Or 458, 320 P2d 678; Layne v. Portland Traction Co., (1958) 212 Or 658, 319 P2d 884, 321 P2d 312; Voight v. Nyberg, (1959) 218 Or 383, 345 P2d 821; Scott v. Bothwell, (1966) 243 Or 97, 412 P2d 14; Smith v. Moore, (1966) 243 Or 413, 414 P2d 346; Harrison v. Avedovech, (1968) 249 Or 584, 439 P2d 877.

LAW REVIEW CITATIONS: 1 WLJ 662.

483.304

NOTES OF DECISIONS

This section applies to those whose course in general is along the highway and not to one endeavoring to cross the highway. Lee v. Hoff, (1940) 163 Or 374, 97 P2d 715.

The purpose of this section is to accelerate traffic and to require, under normal conditions, slow moving vehicles to be driven in the lane nearest the right-hand edge or curb of the highway; and where there is no casual connection between violation of this rule and a collision, the rule has no application. Mercer v. Risberg, (1948) 182 Or 526, 188 P2d 632.

Under certain conditions a driver may be making "ordinary" use of the highway even though he is violating this section. Southern Pac. Co. v. Raish, (1953) 205 F2d 389.

This statute is unambiguous and mandatory. Hyatt v. Johnson, (1955) 204 Or 469, 284 P2d 358.

An instruction in the language of subsection (2) was erroneous where a collision resulted from turning a vehicle left across the highway between intersections. Black v. Stith, (1940) 164 Or 117, 100 P2d 485.

An instruction using the words of the statute, when read with other instructions, was proper. Eccles v. Hoy, (1971) 258 Or 524, 482 P2d 720.

FURTHER CITATIONS: Hopfer v. Straudt, (1956) 207 Or 487, 298 P2d 186; Raz v. Mills, (1962) 231 Or 220, 372 P2d 995.

ATTY. GEN. OPINIONS: Right of way at convergence of entering traffic lane and right hand lane of multi-lane highway, 1966-68, p 95.

483.306

NOTES OF DECISIONS

Failure to keep to the right does not constitute negligence if there is nothing to the left which will be affected by the car's presence there. Barnes v. Davidson, (1951) 190 Or 508, 226 P2d 289.

Court's finding that defendant motor truck driver was guilty of negligence in failing to give half of highway to plaintiff motorcyclist, as required by statute, was sustained by evidence. Wilson v. Bittner, (1929) 129 Or 122, 276 P 268, 64 ALR 132.

FURTHER CITATIONS: Gum v. Wooge, (1957) 211 Or 149, 315 P2d 119; Newbern v. Exley Produce Exp., (1958) 212 Or 458, 320 P2d 678; Raz v. Mills, (1962) 231 Or 220, 372 P2d 995; Smith v. Moore, (1966) 243 Or 413, 414 P2d 346; Harrison v. Avedovech, (1968) 249 Or 584, 439 P2d 877.

LAW REVIEW CITATIONS: 1 WLJ 662.

483.308

NOTES OF DECISIONS

A pedestrian leading a horse does not come within the statutory rule of the road as to passing vehicles. Sertic v. McCullough, (1936) 155 Or 216, 63 P2d 884.

Driving on the left side of the highway is not negligent conduct if that side is free of traffic and the driver has a clear view along the highway for at least 500 feet. Fossi v. George, (1951) 191 Or 113, 228 P2d 798.

On a through street or highway it is lawful to pass a slow moving vehicle at an intersection unless such vehicle is making a turn. Valdin v. Holteen, (1953) 199 Or 134, 260 P2d 504. **But see** Perdue v. Pac. Tel. & Tel. Co., (1958) 213 Or 596, 326 P2d 1026.

Subsection (3) is not limited to cases where cross traffic is present in the intersection. Perdue v. Pac. Tel. & Tel. Co., (1958) 213 Or 596, 326 P2d 1026.

Whether a motorist may safely pass another motor vehicle at an intersection is judged in the light of the situation as it appears to a reasonably prudent person. Jepsen v. Magill, (1966) 243 Or 34, 411 P 2d 267.

There was evidence of gross negligence where defendant speeded up his truck to overtake another one, and after racing the latter on the left side of a winding road, turned sharply to the right in front of it to avoid collision with an oncoming car. Younger v. Gallagher, (1933) 145 Or 63, 26 P2d 783.

Evidence that at a sharp blind turn on a mountainside, defendant attempted to pass another car in violation of the statute warranted the jury in finding him negligent: Hornby v. Wiper, (1936) 155 Or 203, 63 P2d 204.

FURTHER CITATIONS: Turner v. McMillan, (1932) 140 Or 407, 14 P2d 294; Biddle v. Mazzocco, (1955) 204 Or 547, 561, 284 P2d 364; Califf v. Norman, (1957) 210 Or 198, 310 P2d 319; Gum v. Wooge, (1957) 211 Or 149, 315 P2d 119; Newbern v. Exley Produce Exp. Co., (1958) 212 Or 458, 320 P2d 678; Voight v. Nyberg, (1959) 218 Or 383, 345 P2d 821; Thom v. Poss, (1960) 278 F2d 811; State v. Powell, (1962) 233 Or 71, 377 P2d 7, cert. denied, 84 S Ct 176, 11 L Ed 2d 126; State v. Betts, (1963) 235 Or 127, 384 P2d 198; Oregon Farm Bureau Ins. Co. v. Harmon, (1964) 239 Or 282, 397 P2d 534; Padel v. Marits, (1967) 247 Or 566, 430 P2d 1002.

ATTY. GEN. OPINIONS: Construction of "obstructed visibility," 1958-60, p 63; construing subsection (1) and paragraph (a) of subsection (2), 1966-68, p 10.

483.310

NOTES OF DECISIONS

Driver of overtaking vehicle giving signal of his intention to pass does not have a duty to make certain at his peril that it is heard. Voight v. Nyberg, (1959) 218 Or 383, 345 P2d 821.

FURTHER CITATIONS: Hornby v. Wiper, (1936) 155 Or 203, 63 P2d 204; Kilkenny v. Beebe, (1948) 184 Or 516, 199 P2d 916; Spence v. Rasmussen, (1951) 190 Or 662, 226 P2d 819; Valdin v. Holteen, (1953) 199 Or 134, 156, 260 P2d 504; Biddle v. Mazzocco, (1955) 204 Or 547, 561, 284 P2d 364; Brindle v. McCormick Lbr. & Mfg. Corp., (1956) 206 Or 333, 293 P2d 221; Falls v. Mortensen, (1956) 207 Or 130, 295 P2d 182; Marshall v. Mullin, (1958) 212 Or 421, 320 P2d 258; Perdue v. Pac. Tel. & Tel. Co., (1958) 213 Or 596, 326 P2d 1026; Ray v. Anderson, (1956) 240 Or 619, 403 P2d 372.

483.312

NOTES OF DECISIONS

The prohibition in this section is for the benefit not only of the car ahead but others as well. Rough v. Lamb, (1965) 240 Or 240, 401 P2d 10.

FURTHER CITATIONS: Garland v. Wilcox, (1960) 220 Or 325, 348 P2d 1091; Lehr v. Gresham Berry Growers, (1962) 231 Or 202, 372 P2d 488; Jaeger v. Estep, (1963) 235 Or 212, 384 P2d 175; Butler v. Wilhelm, (1964) 238 Or 487, 395 P2d 447; Miller v. Harder, (1965) 240 Or 418, 402 P2d 84; Evans v. Gen. Tel. Co., (1971) 257 Or 460, 479 P2d 747.

483.314

NOTES OF DECISIONS

This section was without application where no signal was given by the rider of the horse, and the horse did not appear badly frightened or frightened at all. Lawry v. McKennie, (1945) 177 Or 604, 164 P2d 444.

483.316

NOTES OF DECISIONS

The court has no right to modify the statutory requirement as to turning at intersections because compliance with it may be at some time impractical or cumbersome. Kitchel v. Gallagher, (1928) 126 Or 373, 270 P 488.

Entering intersection to left of center line of street, constitutes contributory negligence of the driver of the car making such entry where a collision with another car occurs, but only where the negligence contributes jointly with the negligence of the defendant in causing the damage sustained. Williams v. Bryson, (1935) 149 Or 413, 40 P2d 61.

This section was applicable to vehicles proceeding around a circular island and making turns out from the circular drive to an intersecting street. Williams v. Donohoe, (1960) 222 Or 578, 353 P2d 521.

Paragraph (1) (b) was enacted to apply to protection of automobiles rather than pedestrians. Johnson v. Bennett, (1960) 225 Or 213, 357 P2d 527.

Paragraph (1) (a) requires the driver to travel along the right-hand lane if there are two lanes of travel whether or not the lanes are marked. Williams v. Nelson, (1961) 229 Or 200, 366 P2d 894.

A pedestrian had the right to assume that a vehicle operator in making a left-hand turn would keep to the right of the center of the intersection. Ordeman v. Watkins, (1925) 114 Or 581, 236 P 483.

A taxicab driver in making a right turn would be guilty of violating the statute if he failed to keep as closely as practicable to the right-hand curb or edge of the highway. Lott v. DeLuxe Cab Co., (1931) 136 Or 349, 299 P 303.

An instruction which emphasized the second command of paragraph (1) (a) and ignored the requirement that a right turn be made from lane nearest right-hand side of highway, upon which plaintiff had based his claim, was reversible error. Thom v. Poss, (1960) 278 F2d 811.

FURTHER CITATIONS: Casto v. Hansen, (1927) 123 Or 20, 261 P 428; Cockerham v. Potts, (1933) 143 Or 80, 20 P2d 423; Davis v. Lavenik, (1946) 178 Or 90, 165 P2d 277; Austin v. Portland Traction Co., (1947) 181 Or 470, 182 P2d 412; Clark v. Fazio, (1951) 191 Or 522, 230 P2d 553; Rauw v. Huling & Sparks, (1953) 199 Or 48, 259 P2d 99; Hopfer v. Straudt, (1956) 207 Or 487, 298 P2d 186; Ewing v. Izer, (1966)

243 Or 367, 412 P2d 795; Evans v. Gen. Tel. Co., (1971) 257 Or 460, 479 P2d 747.

483.318

NOTES OF DECISIONS

A truck driver's duty to look out for oncoming traffic before turning around on a street could not be delegated to a boy riding on the truck. Peters v. Johnson, (1928) 124 Or 237, 264 P 459.

483.338

CASE CITATIONS: Hornby v. Wiper, (1936) 155 Or 203, 63 P2d 204.

483.343

LAW REVIEW CITATIONS: 6 WLJ 535-549.

483.362

NOTES OF DECISIONS

1. Parking on highway

Regardless of the application of subsection (1), a driver has a common law duty to refrain from parking in such a manner as to constitute a source of danger to others using the highway. Graves v. Shippey, (1959) 215 Or 616, 625, 300 P2d 442, 337 P2d 347; Parrott v. Spear, (1971) 259 Or 503, 487 P2d 71.

The provisions of subsection (1) do not apply to vehicles which have merely turned to the side of the road for the purpose of avoiding a collision with an approaching vehicle. Cavett v. Pac. Greyhound Lines, (1946) 178 Or 363, 167 P2d 941.

This section does not apply to stops made prior to turns at intersections. Wells v. Washington County, (1966) 243 Or 246, 412 P2d 798.

Park means the voluntary act of leaving a car on the highway when not in use. Dixson v. Jackson (1970) 256 Or 525, 474 P2d 522.

This section does not conflict with ORS 485.020. McLain v. Lafferty, (1971) 257 Or 553, 480 P2d 430.

Leaving an undisabled milk truck on the right side of a paved way in front of a customer's house with two right wheels twelve to eighteen inches off the pavement, was negligence on the part of the deceased, where it was shown that he could have driven his car onto the level ground alongside the pavement. Townsend v. Jaloff, (1928) 124 Or 644, 264 P 349.

A city ordinance prohibiting parking automobiles more than one foot from the curb was not contradictory of this statute nor inconsistent therewith. Ceccacci v. Garre, (1938) 158 Or 466, 76 P2d 283.

Instruction that if plaintiff could not remove her car from the highway and the car might be struck from behind, it was plaintiff's duty to alight, was error as it disregarded the prudent man standard of due care. Morris v. Fitzwater, (1949) 187 Or 191, 210 P2d 104.

Instruction that if plaintiff could have moved her car from the highway she was under duty to do so, and failure to do so constituted negligence barring recovery, was not erroneous. Id.

Refusal to charge that parking at night without lights was not negligence, provided 16 feet of highway was unobstructed, was correct, where charge did not include statutory requirement as to 200 feet visibility and impracticability of parking off the highway. Id.

The facts did not bring plaintiff within the exculpatory clause of this section. Smith v. Moore, (1966) 243 Or 413, 414 P2d 346.

2. Emergency stops on highway

Leaving a disabled car temporarily on the highway is not a violation of the law. Dare v. Boss, (1924) 111 Or 190, 224 P 646; Frame v. Arrow Towing Serv., (1937) 155 Or 522, 64 P2d 1312.

The words "so disabled as to prohibit," as used in a former similar statute did not necessarily indicate that the vehicle could not be moved but that it would be unsafe to move it under the conditions existing at the place and time. Martin v. Ore. Stages, (1929) 129 Or 435, 277 P 291.

Whether or not the driver of a disabled car has violated this statute is a question of fact for the jury. Borgert v. Spurling, (1951) 191 Or 344, 230 P2d 183.

Where a disabled vehicle could have been moved, so as to allow 16 feet clearance for free passage of other vehicles, by means other than under its own power, the disabled vehicle is not permitted, under this section, to obstruct the highway for a protracted length of time when there is a reasonable opportunity to remove it. Shelton v. Lowell, (1952) 196 Or 430, 249 P2d 958.

The exception relating to disabled vehicles may provide a defense; plaintiff is not required to negate it. Dixson v. Jackson, (1970) 256 Or 525, 474 P2d 522.

Whether a vehicle was stopped to refill radiator, as claimed by the driver, and whether there was such an emergency as to justify stopping, was a question for the jury. Watt v. Associated Oil Co., (1927) 123 Or 50, 260 P 1012.

Where for want of gasoline, the car was stopped on the highway at a spot to the right of which there was a six-foot, rain-soaked, muddy shoulder, the parties were not negligent in shoving the car 450 feet ahead to a graveled area instead of moving it onto the shoulder. Holman v. Uglow, (1931) 137 Or 358, 3 P2d 120.

Stopping with left hind wheel on the pavement, it being impossible to proceed for want of gasoline, was not contributory negligence as a matter of law. Hornshuh v. Alldredge, (1935) 149 Or 419, 41 P2d 423.

3. Subsection (4)

Failure to comply with subsection (4) is negligence as a matter of law, and the trial court may properly so instruct the jury. Frame v. Arrow Towing Serv., (1937) 155 Or 522, 64 P2d 1312.

That the State Highway Commission has performed its duty with respect to the approval of warning signals or signs, was presumed. Id.

FURTHER CITATIONS: Hunsaker v. Pac. Northwest Public Serv. Co., (1933) 143 Or 583, 20 P2d 433; Gossett v. Van Egmond, (1945) 176 Or 134, 155 P2d 304; Blair v. Rice, (1952) 195 Or 587, 246 P2d 542; Flande v. Brazel, (1963) 236 Or 156, 386 P2d 920; Dokken v. Rieger, (1970) 255 Or 433, 467 P2d 968; Ballard v. Rickabaugh Orchards, Inc., (1971) 259 Or 200, 485 P2d 1080.

ATTY. GEN. OPINIONS: Storage of abandoned vehicle in county where taken into custody, 1966-68, p 420.

483.380 to 483.396

ATTY. GEN. OPINIONS: Impoundment procedure, 1966-68, p 420.

483.402

NOTES OF DECISIONS

Failure to have the required lights does not bar a recovery unless such failure is a contributing cause of the accident. Ellenberger v. Fremont Land Co. (1940) 165 Or 375, 107 P2d 837; Loibl v. Niemi, (1958) 214 Or 172, 327 P2d 786.

To have lights on a truck when parked on a highway

after dark is more necessary than if the truck were moving. Murphy v. Hawthorne, (1926) 117 Or 319, 244 P 79, 44 ALR 1397.

The purpose of requiring lighting equipment on motor vehicles is to facilitate the safety of the car displaying lights and all others using a thoroughfare, including the persons approaching from an intersection street. Schrunk v. Hawkins, (1930) 133 Or 160, 289 P 1073.

Legislative purpose in requiring headlamps was to advise other travelers of the vehicle's presence and to advise the driver of the conditions existing upon the highway. Hyatt v. Johnson, (1955) 204 Or 469, 284 P2d 358.

Whether failure to have his lights properly adjusted constituted contributory negligence of a motorist colliding with a logging train was a question for the jury. Christensen v. Willamette Valley R. Co. (1932) 139 Or 666, 11 P2d 1060.

Time of accident and degree of visibility were questions for jury on issue of defendant's contributory negligence for violation of this section. Loibl v. Niemi, (1958) 214 Or 172, 327 P2d 786.

FURTHER CITATIONS: Kiddie v. Schnitzer, (1941) 167 Or 316, 114 P2d 109, 117; Marchant v. Clark, (1960) 225 Or 273, 357 P2d 541; Dokken v. Rieger, (1970) 255 Or 433, 467 P2d 968.

ATTY. GEN. OPINIONS: Driving in violation of dim-out regulations as reckless driving, 1942-44, p 75; "road light" as similar to headlamp, 1948-50, p 127; reflecting light as not self-illuminating, 1948-50, p 354; clearance lights needed by army trucks, 1948-50, p 430; application to city-owned cycles used by meter maids, 1966-68, p 350.

LAW REVIEW CITATIONS: 39 OLR 68.

483.404

NOTES OF DECISIONS

One who rides a bicycle which is not equipped with proper lights has not the status of a trespasser as he proceeds along the highway; nor does his omission to display the required reflector convert himself into a nuisance so as to preclude recovery for injuries sustained. Landis v. Wick, (1936) 154 Or 199, 57 P2d 759, 59 P2d 403.

The sole purpose of requiring head lamps and reflectors on bicycles is to make their presence known to drivers of other vehicles, while head lamps are mandatory on motor vehicles in order to afford good visibility to the driver. Spence v. Rasmussen, (1951) 190 Or 662, 226 P2d 819.

If a bicycle has a reflector it is presumed that the reflector is properly mounted so as to comply with this section. Id.

The violation of this section in regard to bicycle head lamps was not the proximate cause of an accident in which the bicycle was struck from the rear. Id.

FURTHER CITATIONS: Brenne v. Hecox, (1929) 129 Or 210, 277 P 99; Schrunk v. Hawkins, (1930) 133 Or 160, 289 P 1073; Leap v. Royce, (1955) 203 Or 566, 279 P2d 887.

ATTY. GEN. OPINIONS: "Road light" as similar to headlamp, 1948-50, p 127.

483.406

NOTES OF DECISIONS

Failure to have a red light on the rear of a truck on the highway after dark constitutes negligence. Ross v. Willamette Valley Transfer Co., (1926) 119 Or 395, 248 P 1088.

It is a continuing duty of an operator of a motor vehicle to provide statutory lights whether the motor vehicle is moving or stationary and failure to do so constitutes negligence per se. Hickerson v. Jossey, (1930) 131 Or 612, 282 P 768, 283 P 1119.

FURTHER CITATIONS: Johnson v. Updegrave, (1949) 186 Or 196, 206 P2d 91; State v. Miller, (1970) 2 Or App 87, 465 P2d 894, Sup Ct **review denied.**

483.407

ATTY. GEN. OPINIONS: Effect of this section on stop light requirements of ORS 483.410, 1964-66, p 358.

483.410

NOTES OF DECISIONS

Lighting equipment provisions will be interpreted in as practical a manner as possible to render effective the purposes sought to be served. Schrunk v. Hawkins, (1930) 133 Or 160, 289 P 1073.

FURTHER CITATIONS: Johnson v. Updegrave, (1949) 186 Or 196, 206 P2d 91; Leap v. Royce, (1955) 203 Or 566, 279 P2d 887.

ATTY. GEN. OPINIONS: Clearance lights needed by army trucks, 1948-50, p 430; effect of ORS 483.407 on stop light requirements of this section, 1964-66, p 358.

483.422

CASE CITATIONS: Wold v. Portland, (1940) 166 Or 455, 112 P2d 469.

483.424

NOTES OF DECISIONS

If a motorist complies with this statute he will see a bicycle on the road before he hits it. Spence v. Rasmussen, (1951) 190 Or 662, 226 P2d 819.

Legislative purpose in requiring headlamps was to advise other travelers of the vehicle's presence and to advise the driver of the conditions existing upon the highway. Hyatt v. Johnson, (1955) 204 Or 469, 284 P2d 358.

FURTHER CITATIONS: Alt v. Krebs, (1939) 161 Or 256, 88 P2d 804; Kiddie v. Schnitzer, (1941) 167 Or 316, 114 P2d 109.

483.430

CASE CITATIONS: Marquess v. Taylor, (1958) 214 Or 619, 331 P2d 879.

483.432

ATTY. GEN. OPINIONS: Volunteer firemen having upon their private cars a red light when such cars are designated or authorized by the police authorities as "authorized emergency vehicles," 1944-46, p 427; validity of a light which rotates with the front wheels, 1948-50, p 127; authority of brand inspector to use a siren or red light on his vehicle, 1966-68, p 65; vehicles of the Federal Bureau of Investigation as emergency vehicles, 1966-68, p 499.

483.434

ATTY. GEN. OPINIONS: Spot light on motor vehicle, 1946-48, p 514; adequacy of mechanical signal device, 1948-50, p 354.

483.436

ATTY. GEN. OPINIONS: Authority to test motor vehicle lighting equipment, 1930-32, p 237; vehicles of the Federal Bureau of Investigation as emergency vehicles, 1966-68, p 499.

483.438

ATTY. GEN. OPINIONS: Authority to test motor vehicle lighting equipment, 1930-32, p 237; approval of reflecting light for daytime use, 1948-50, p 354.

483.443

NOTES OF DECISIONS

Subsection (1) was constitutional. State v. Fetterly, (1969) 254 Or 47, 456 P2d 996.

ATTY. GEN. OPINIONS: Application to city-owned cycles used by meter maids, 1966-68, p 350; regulating protective headgear of motorcyclists on private property, 1966-68, p 548.

LAW REVIEW CITATIONS: 49 OLR 128.

483.444

NOTES OF DECISIONS

Violation of a statutory standard of care is negligence as a matter of law except when it can be shown that the violation was wholly beyond the control of the operator and it was impossible to comply, in which case failure to comply is excused. Hills v. McGillvrey, (1965) 240 Or 476, 402 P2d 722; McConnell v. Herron, (1965) 240 Or 486, 402 P2d 726; Ainsworth v. Deutschman, (1968) 251 Or 596, 446 P2d 187; Rankin v. White, (1971) 258 Or 252, 482 P2d 530; McConnell v. Herron, supra, overruling Nettleton v. Jones, (1958) 212 Or 375, 319 P2d 879; Daniels v. Riverview Dairy, (1930) 132 Or 549, 287 P 77, and Foster v. Farra, (1926) 117 Or 286, 293, 243 P 778.

The brake test must be on a "dry, hard, approximately level stretch of highway, free from loose material." Southern Pac. Co. v. Raish, (1953) 205 F2d 389.

The trial judge must rule as a matter of law whether facts asserted as an excuse, if true, constitute a lawful excuse for the violations. McConnell v. Herron, (1965) 240 Or 486, 402 P2d 726.

An instruction based upon the statute was properly refused when it did not embrace all the essential elements of the terms of the brake-testing statute, and when it was not shown that the uneven street railway track where the accident occurred was a proper place to test the brakes of the vehicle. Smith v. Pac. NW Pub. Serv. Co. (1934) 146 Or 422, 29 P2d 819.

FURTHER CITATIONS: McCallister v. Farra, (1926) 117 Or 278, 243 P 785; Foster v. Farra, (1926) 117 Or 286, 243 P 778; Daniels v. Riverview Dairy, (1930) 132 Or 549, 287 P 77; Bogart v. Cohen-Anderson Motor Co., (1940) 164 Or 233, 98 P2d 720; Stout v. Madden, (1956) 208 Or 294, 300 P2d 461; Rose v. Portland Traction Co., (1959) 219 Or 1, 341 P2d 125, 346 P2d 375; Strubhar v. So. Pac. Co., (1963) 234 Or 12, 379 P2d 1014; Watson v. Dodson, (1964) 238 Or 621, 395 P2d 866.

LAW REVIEW CITATIONS: 45 OLR 156-160; 4 WLJ 383.

483.446

NOTES OF DECISIONS

A horn on a motor vehicle is provided as a means of warning and is required to be used only when warning appears reasonably necessary or is commanded by statute. Owens v. Holmes, (1953) 199 Or 332, 261 P2d 383.

FURTHER CITATIONS: NcNab v. O'Flynn, (1928) 127 Or 490, 272 P 670.

ATTY. GEN. OPINIONS: Sirens on vehicles used by livestock theft detection officers, 1938-40, p 231; volunteer firemen having a siren upon their private cars when such cars are designated or authorized by the police authorities as "authorized emergency vehicles," 1944-46, p 427; installation and use of sirens by members of fire protection district, 1950-52, p 232; authority of brand inspector to use a siren or red light on his vehicle, 1966-68, p 65; vehicles of the Federal Bureau of Investigation as emergency vehicles, 1966-68, p 499.

483.448

ATTY. GEN. OPINIONS: Construction of term "muffler" used on motor vehicle, 1936-38, p 680; in determining whether or not a noise could have been avoided in a particular case, observing the common sense rule of "reasonableness," 1944-46, p 291; application to "squealing" tires, 1966-68, p 360.

483.450

NOTES OF DECISIONS

Absence from plaintiff's truck of a rear view mirror did not constitute contributory negligence per se so as to require the granting of a nonsuit, where plaintiff was fully informed of the approach of defendant's car from the rear by other means. Kuehl v. Hamilton, (1931) 136 Or 240, 297 P 1043.

FURTHER CITATIONS: Voight v. Nyberg, (1959) 218 Or 383, 345 P2d 821.

483.452

NOTES OF DECISIONS

Nontransparent sleet naturally forming on the windshield of an automobile is not within the purview of this section. Kirkley v. Portland Elec. Power Co. (1931) 136 Or 421, 298 P 237.

FURTHER CITATIONS: Voight v. Nyberg, (1959) 218 Or 383, 345 P2d 821.

483.456

NOTES OF DECISIONS

When no evidence was offered to show that failure to put out the red flags could not have been a cause of the accident, an instruction on a driver's duty under this section was error. Tokstad v. Lund, (1970) 255 Or 305, 466 P2d 938.

FURTHER CITATIONS: Rusho v. Miller, (1965) 239 Or 475, 398 P2d 191; Dokken v. Rieger, (1970) 255 Or 433, 467 P2d 968.

ATTY. GEN. OPINIONS: Flashing red signal flare as a warning flare, 1946-48, p 498.

483.458

NOTES OF DECISIONS

Plaintiff's vehicles were within the meaning of this section. White Bros. Constr. Co. v. Ore. State Police, (1967) 246 Or 106, 424 P2d 221.

ATTY. GEN. OPINIONS: Truck tractors or dollies when operating without semitrailers attached as required to be equipped with fenders or covers, 1946-48, p 294; truck tractors or dollies when operated with semitrailers as required to have flaps, fenders or covers on the rear wheels of the semitrailers, 1946-48, p 294; application of this section, relating to fenders, flaps and splash aprons required to be placed on motor vehicles, to trailers (now truck trailers) and semitrailers having a combined weight of 4,500 pounds or less, 1946-48, p 331.

483.460

NOTES OF DECISIONS

Plaintiff's vehicles were within the meaning of this section. White Bros. Constr. Co. v. Ore. Police, (1967) 246 Or 106, 424 P2d 221.

483.482 to 483.488

NOTES OF DECISIONS

Mere failure to use seat belts is not negligence per se. Robinson v. Bone, (1968) 285 F Supp 423; Robinson v. Lewis, (1969) 254 Or 52, 457 P2d 483; Ginger v. Campbell, (1970) 256 Or 67, 469 P2d 776.

This law does not require the occupant of a vehicle to use the seat belt. Robinson v. Bone, (1968) 285 F Supp 423.

483.482

CASE CITATIONS: Siburg v. Johnson, (1968) 249 Or 556, 439 P2d 865.

LAW REVIEW CITATIONS: 47 OLR 204-213.

483.502 to 483.545

CASE CITATIONS: Roy L. Houck & Sons v. State Tax Comm., (1961) 229 Or 21, 366 P2d 166.

ATTY. GEN. OPINIONS: As dealing with vehicles liable to do excessive damage to highways, 1958-60, p 64; road located on railroad right-of-way as a "highway," 1960-62, p 101.

483.502

NOTES OF DECISIONS

In subsection (3), "being used by" an incorporated city includes only vehicles owned or leased by the city, but not vehicles operated by private contractors or subcontractors. State v. Foster, (1960) 222 Or 103, 352 P2d 502; Sorenson v. Tillamook County, (1970) 255 Or 381, 467 P2d 433.

Under subsection (3), the trial court properly found plaintiff was not "at the immediate location or site of such construction, maintenance or repair." Sorenson v. Tillamook County, (1970) 255 Or 381, 467 P2d 433.

FURTHER CITATIONS: State v. O. K. Transfer Co., (1958) 215 Or 8, 330 P2d 510; State v. Pyle, (1961) 226 Or 485, 360 P2d 626; Roy L. Houck & Sons v. State Tax Comm., (1961) 229 Or 21, 366 P2d 166.

ATTY. GEN. OPINIONS: Authority of county to issue blanket permits for log trucks exceeding certain statutory load limitations, 1948-50, p 232; effect of failure to prescribe maximum penalties for violation, 1950-52, p 250; authority to suspend or partially suspend imposition or execution of sentence, 1952-54, p 166; taxability of Tournapull E-50 as personal property, 1956-58, p 10; providing no charge for special permit, 1956-58, p 132; use of highways by road graders and road rollers, 1958-60, p 64; jurisdiction of state courts for traffic offenses committed within Indian reservation, 1958-60, p 172.

483.504

CASE CITATIONS: State v. Foster, (1960) 222 Or 103, 352 P2d 502; Roy L. Houck & Sons v. State Tax Comm., (1961) 229 Or 21, 366 P2d 166.

ATTY. GEN. OPINIONS: Authority of county to issue blanket permits for log trucks exceeding certain statutory load limitations, 1948-50, p 232; truck carrying farm license as "implement of husbandry." 1950-52, p 365; taxability of Tournapull E-50 as personal property, 1956-58, p 10; license fees for vehicles with a load extending more than three feet beyond the front thereof, 1956-58, p 132; determining eligibility of vehicles for continuous operation permits; 1958-60, p 148; as not defining logs, poles or piling, 1960-62, p 71.

483.506

NOTES OF DECISIONS

Classifications in this section are not arbitrary or unconstitutional. State v. Pyle, (1961) 226 Or 485, 360 P2d 626.

FURTHER CITATIONS: Powers v. Coos Bay Lbr. Co., (1954) 200 Or 329, 263 P2d 913; State v. Foster, (1960) 222 Or 103, 352 P2d 502.

ATTY. GEN. OPINIONS: Overweight load permit as voided if violated, 1952-54, p 29; tournapull as exceeding these limitations, 1956-58, p 10; determining eligibility of vehicles for continuous operation permits, 1958-60, p 148; as not defining logs, poles or piling, 1960-62, p 71.

LAW REVIEW CITATIONS: 2 WLJ 352-357.

483.508

CASE CITATIONS: State v. Smith, (1953) 198 Or 31, 255 P2d 1076; Rankin v. White, (1971) 258 Or 252, 482 P2d 530.

483.512

CASE CITATIONS: State v. Pyle, (1961) 226 Or 485, 360 P2d 626.

ATTY. GEN. OPINIONS: Overweight load permit as voided if violated, 1952-54, p 29.

483.516

CASE CITATIONS: State v. Pyle, (1961) 226 Or 485, 360 P2d 626; Sorensen v. Tillamook County, (1970) 255 Or 381, 467 P2d 433.

ATTY. GEN. OPINIONS: Overweight load permit as voided if violated, 1952-54, p 29; use of highways by road graders and road rollers, 1958-60, p 64.

483.518

CASE CITATIONS: Sorensen v. Tillamook County, (1970) 255 Or 381, 467 P2d 433.

483.520 to 483.528

ATTY. GEN. OPINIONS: Overweight load permit as voided if violated, 1952-54, p 29.

483.520

CASE CITATIONS: Morris v. Duby, (1927) 274 US 135, 47 S Ct 548, 71 L Ed 966; State v. Pyle, (1961) 226 Or 485, 360 P2d 626; Roy L. Houck & Sons v. State Tax Comm., (1961) 229 Or 21, 366 P2d 166; Sorensen v. Tillamook County, (1970) 255 Or 381, 467 P2d 433.

ATTY. GEN. OPINIONS: Authority of county to issue blanket permits for log trucks exceeding certain statutory load limitations, 1948-50, p 232; authority of county court to exact fee for permit to haul logs, piling or poles over county roads, 1950-52, p 96; authority of county court to regulate disposition of logs left upon county road, 1950-52, p 142; power of county court to require permit or indemnity bond for log trucks, 1950-52, p 292; authority of county court to enter contract for damage reimbursement by permittee in lieu of requiring him to furnish indemnity bond, 1950-52, p 336; granting of permits as within exclusive discretion of county court, 1952-54, p 50; use of highways by road graders and road rollers, 1958-60, p 64; continuous operation of vehicles, 1958-60, p 148; as not defining logs, poles or piling, 1960-62, p 71; canceling privilege to haul logs because of hauling on weekends, 1964-66, p 112.

LAW REVIEW CITATIONS: 2 WLJ 352-357.

483.522

CASE CITATIONS: State v. Pyle, (1961) 226 Or 485, 360 P2d 626.

ATTY. GEN. OPINIONS: Authority of county court to enter contract for damage reimbursement by permittee in lieu of requiring him to furnish indemnity bond, 1950-52, p 336; canceling privilege to haul logs for hauling on weekends, 1964-66, p 112.

483.524

CASE CITATIONS: State v. Pyle, (1961) 226 Or 485, 360 P2d 626; Mitchell Bros. Truck Lines v. Hill, (1961) 227 Or 474, 363 P2d 49; Sorensen v. Tillamook County, (1970) 255 Or 381, 467 P2d 433.

ATTY. GEN. OPINIONS: Determining gross weight limitations, 1948-50 p 303; authority of county court to regulate disposition of logs left upon county road, 1950-52, p 142; authority of county court to grant written permits for the operation over county roads of vehicles exceeding the standard width and weight limits and to contract with operator for the maintenance of road, 1952-54, p 50; Tournapull as exceeding these limitations, 1956-58, p 10; authorized insurers, 1956-58, p 41; determining eligibility of vehicles for continuous operation permits, 1958-60, p 148; as not defining logs, poles or piling, 1960-62, p 71.

LAW REVIEW CITATIONS: 2 WLJ 352-357.

483.525

CASE CITATIONS: State v. Pyle, (1961) 226 Or 485, 360 P2d 626; Mitchell Bros. Truck Lines v. Hill, (1961) 227 Or 474, 363 P2d 49.

ATTY. GEN. OPINIONS: Illegal use of highway as becoming legal if pursuant to this section, 1956-58, p 64.

483.526

CASE CITATIONS: State v. Pyle, (1961) 226 Or 485, 360 P2d 626.

483.528

CASE CITATIONS: State v. O.K. Transfer Co., (1958) 215 Or 8, 330 P2d 510; State v. Pyle, (1961) 226 Or 485, 360 P2d 626; Roy L. Houck & Sons v. State Tax Comm., (1961) 229 Or 21, 366 P2d 166.

ATTY. GEN. OPINIONS: Power of county court to require permit or indemnity bond for log trucks, 1950-52, p 292; requiring indemnity insurance or bond of applicant as discretionary, 1950-52, p 337; computation of penalty for violation of special permit issued under this section, 1952-54, p 29; authorized insurers, 1956-58, p 41; continuous operation of vehicles, 1958-60, p 148.

LAW REVIEW CITATIONS: 2 WLJ 352-357.

483.530

ATTY. GEN. OPINIONS: Authority of county court to enter contract for damage reimbursement by permittee in lieu of requiring him to furnish indemnity bond, 1950-52, p 336.

483.532

CASE CITATIONS: Schoenborn v. Broderick, (1954) 202 Or 634, 277 P2d 287.

ATTY. GEN. OPINIONS: Authority of county court to regulate disposition of logs left upon county road, 1950-52, p 142; issuing permits and requiring bonds by county court for logging trucks using county roads, 1950-52, p 292.

483.538

NOTES OF DECISIONS

This section is violated when there is so much of the person, package or encumbrance on part of the lap of the driver as to prevent the free and unhampered operation of the motor vehicle. Clement v. Cummings, (1957) 212 Or 161, 317 P2d 579.

483.540

CASE CITATIONS: Marchant v. Clark, (1960) 225 Or 273, 357 P2d 541.

483.542

NOTES OF DECISIONS

Violation of an ordinance prohibiting truck traffic on a street could not be regarded as negligence unless the ordinance was designed as a protection against injuries by trucks. Parker v. Holmes, (1965) 241 Or 270, 405 P2d 619.

FURTHER CITATIONS: Marchant v. Clark, (1960) 225 Or 273, 357 P2d 541.

483.602

NOTES OF DECISIONS

Violation of each subsection constitutes a separate offense. State v. Reynolds, (1961) 229 Or 167, 366 P2d 524.

An allegation that defendant "wilfully and unlawfully" failed to stop was adequate to charge defendant with knowledge of the accident. State v. Hulsey, (1970) 3 Or App 64, 471 P2d 812.

FURTHER CITATIONS: Marshall v. Mullin, (1958) 212 Or 421, 320 P2d 258; Marchant v. Clark, (1960) 225 Or 273, 357 P2d 541; State v. Allen, (1967) 248 Or 376, 434 P2d 740.

ATTY. GEN. OPINIONS: Proceedings not required to use the uniform traffic citation and complaint, 1960-62, p 267.

483.604

CASE CITATIONS: State v. Allen, (1967) 248 Or 376, 434 P2d 740.

483.606

ATTY. GEN. OPINIONS: Driver "involved" in accident, though his vehicle was not in physical contact, as subject to the safety responsibility law, 1952-54, p 57.

483.610

CASE CITATIONS: Henry v. Condit, (1936) 152 Or 348, 53 P2d 722, 103 ALR 131.

ATTY. GEN. OPINIONS: Information voluntarily submitted regarding qualifications of motor vehicle operators as not open to public inspection, 1950-52, p 104.

LAW REVIEW CITATIONS: 36 OLR 159; 41 OLR 335.

483.620

ATTY. GEN. OPINIONS: Procedure for automobile association to obtain release of security for bail deposit in State Treasury, 1940-42, p 500; insolvency of insurance companies with security deposits to back up automobile membership cards as bail, 1958-60, p 27.

483.634 to 483.646

NOTES OF DECISIONS

Admission of evidence of result of chemical tests did not violate Fourth or Fifth Amendment rights when consent was given while intoxicated. State v. Fogle, (1969) 254 Or 268, 459 P2d 873.

FURTHER CITATIONS: Heer v. Dept. of Motor Vehicles, (1969) 252 Or 455, 450 P2d 533; Burbage v. Dept. of Motor Vehicles, (1969) 252 Or 486, 450 P2d 775; Stratikos v. Dept. of Motor Vehicles, (1970) 4 Or App 313, 477 P2d 237, 478 P2d 654, Sup Ct **review denied.**

483.634

NOTES OF DECISIONS

1. Constitutionality
2. Assent or refusal of test
3. Reasonable grounds for arrest

1. Constitutionality

The procedure followed under this section was constitutional. Heer v. Dept. of Motor Vehicles, (1969) 252 Or 455, 450 P2d 533.

This section does not violate federal Fourth and Fifth Amendment rights or due process. State v. Fogle, (1969) 254 Or 268, 459 P2d 873.

This section was not unconstitutional as a coercive denial of defendant's right to counsel. Warner v. Motor Vehicles Div., (1971) 5 Or App 612, 485 P2d 1248.

2. Assent or refusal of test

Anything substantially short of an unqualified, unequivocal assent to an officer's request that the arrested motorist take the test constitutes a refusal to do so. Stratikos v. Dept. of Motor Vehicles, (1970) 4 Or App 313, 477 P2d 237, 478 P2d 654, Sup Ct **review denied;** Johnson v. Dept. of Motor Vehicles, (1971) 5 Or App 617, 485 P2d 1258.

Submission to the test need not be a completely knowing and understanding submission. State v. Fogle, (1969) 254 Or 268, 459 P2d 873.

The division need not prove a specific intent on the part of the driver to refuse the test. Warner v. Motor Vehicles Div., (1971) 5 Or App 612, 485 P2d 1248.

3. Reasonable grounds for arrest

Reasonable grounds are the same as probable cause for arrest, which does not require the same quantum of evidence as is required to support a conviction. Thorp v. Dept. of Motor Vehicles, (1971) 4 Or App 552, 480 P2d 716.

The officer had reasonable grounds to believe that petitioner had been driving while under the influence of intoxicating liquor. Andros v. Dept. of Motor Vehicles, (1971) 5 Or App 418, 485 P2d 635.

FURTHER CITATIONS: Garcia v. Dept. of Motor Vehicles, (1969) 253 Or 505, 456 P2d 85; Burbage v. Dept. of Motor Vehicles, (1969) 252 Or 486, 450 P2d 775; Dorr v. Dept. of Motor Vehicles, (1971) 5 Or App 170, 483 P2d 105.

ATTY. GEN. OPINIONS: Duty of officer to request a test, 1964-66, p 258.

483.636

CASE CITATIONS: Burbage v. Dept. of Motor Vehicles, (1969) 252 Or 486, 450 P2d 775.

483.638

NOTES OF DECISIONS

Demand by defendant that his attorney be present before administering of breathalyzer test constitutes refusal. Stratikos v. Dept. of Motor Vehicles, (1971) 4 Or App 313, 477 P2d 237, 478 P2d 654.

FURTHER CITATIONS: State v. Brady, (1960) 223 Or 433, 354 P2d 811; Burbage v. Dept. of Motor Vehicles, (1969) 252 Or 486, 450 P2d 775; Dorr v. Dept. of Motor Vehicles, (1971) 5 Or App 170, 483 P2d 105.

LAW REVIEW CITATIONS: 40 OLR 222.

483.640

CASE CITATIONS: Burbage v. Dept. of Motor Vehicles, (1969) 252 Or 486, 450 P2d 775.

483.642

CASE CITATIONS: Thorp v. Dept. of Motor Vehicles, (1971) 4 Or App 552, 480 P2d 716.

483.644

NOTES OF DECISIONS

Strict compliance with this statute must be shown as a prerequisite to the introduction of the results of the test. State v. Fogle, (1969) 254 Or 268, 459 P2d 873.

State has burden of proving that the equipment used in the test was tested and certified in compliance with this section. Id.

The exhibit offered to prove the machine had been tested and found accurate was properly received. State v. Woodward, (1969) 1 Or App 338, 462 P2d 685.

ATTY. GEN. OPINIONS: Power of Emergency Board to authorize expenditure of Highway Fund by State Board of Health and State Police, 1964-66, p 277.

483.990

CASE CITATIONS: State v. Wojahn, (1955) 204 Or 84, 282 P2d 675; Anderson v. Finzel, (1955) 204 Or 162, 282 P2d 358; State v. Davis, (1956) 207 Or 525, 296 P2d 240; State v. Wilcox, (1959) 216 Or 110, 337 P2d 797; Marchant v. Clark, (1960) 225 Or 273, 357 P2d 541; State v. Allen, (1967) 248 Or 376, 434 P2d 740.

ATTY. GEN. OPINIONS: Requirement that complaint contain allegation of speed in instances involving violation of this section, 1948-50, p 417; distribution of collected fines, 1958-60, p 129.

LAW REVIEW CITATIONS: 1 WLJ 503-513, 654-657, 658-661.

483.991

ATTY. GEN. OPINIONS: Distribution of collected fines, 1958-60, p 129.

LAW REVIEW CITATIONS: 47 OLR 204-213.

483.992

NOTES OF DECISIONS

1. Subsection (1)

A traffic complaint is effective even though defendant might have to make some reasonable inquiry in order to know what offense is charged. State v. Waggoner, (1961) 228 Or 334, 365 P2d 291.

Driving on the left side of a winding road at 35 to 40 miles an hour with a range of vision of approaching cars of about 50 or 60 feet while racing the driver of an automobile upon the right side of the highway was sufficient evidence from which the jury might find or reasonably infer wilful or wanton disregard of the rights or safety of others. Younger v. Gallagher, (1933) 145 Or 63, 26 P2d 783.

2. Subsection (2)

This subsection abrogates and annuls the distinction between the meaning of the word "intoxicated" and the phrase, "under the influence of intoxicating liquor," and in view of the law of involuntary manslaughter renders the two expressions synonymous. State v. Boag, (1936) 154 Or 354, 59 P2d 396.

Driving a motor car while intoxicated is malum in se, and homicide resulting thereby is not excusable on ground of misadventure. Id.

Proof of the failure to use due care and circumspection in the operation of a motor vehicle was unnecessary, when the charge is that of killing a human being in the operation of a vehicle upon the highway while the driver thereof is under the influence of intoxicating liquor. Id.

No intricate definition of the word "intoxication" is necessary to acquaint a jury with its import. State v. Carver, (1960) 222 Or 270, 352 P2d 349.

The test in subsection (2) is whether the motorist has imbibed to the extent that his mental and physical condition is deleteriously affected. State v. Robinson, (1963) 235 Or 524, 385 P2d 754.

Award of punitive damages is proper as a deterrent to the conduct proscribed by this subsection. Dorn v. Wilmarth, (1969) 254 Or 236, 458 P2d 942.

Evidence observed by the police officer corroborated defendant's admission that he had been driving on the highway, which was one element of the charge. State v. Brown, (1971) 5 Or App 412, 485 P2d 444.

FURTHER CITATIONS: Meyer v. Nedry, (1938) 159 Or 62, 78 P2d 339; Babcock v. Gray, (1940) 165 Or 398, 107 P2d 846; Cowgill v. Boock, (1950) 189 Or 282, 218 P2d 445, 19 ALR2d 405; Howe v. Holger, (1956) 206 Or 293, 291 P2d 731; Falls v. Mortensen, (1956) 207 Or 130, 295 P2d 182; State v. Davis, (1956) 207 Or 525, 296 P2d 240; Perdue v. Pac. Tel. & Tel. Co., (1958) 213 Or 596, 326 P2d 1026; State v. Wilcox, (1959) 216 Or 110, 337 P2d 797; State v. Brady, (1960) 223 Or 433, 354 P2d 811; Marchant v. Clark, (1960) 225 Or 273, 357 P2d 541; State v. Dodson, (1961) 226 Or 458, 360 P2d 782; Stites v. Morgan, (1961) 229 Or 116, 366 P2d 324; State v. Betts, (1963) 235 Or 127, 384 P2d 198; State v. Commedore, (1964) 239 Or 82, 396 P2d 216; State v. Williams, (1965) 241 Or 207, 405 P2d 371; State v. Mayes, (1966) 245 Or 179, 421 P2d 385; State v. Montieth, (1966) 247 Or 43, 417 P2d 1012; State v. Allen, (1967) 248 Or 376, 434 P2d 740; Grayson v. State, (1968) 249 Or 92, 436 P2d 261; State v. Taylor, (1968) 249 Or 268, 437 P2d 853; Heer v. Dept. of Motor Vehicles, (1969) 252 Or 455, 450 P2d 533; Burbage v. Dept. of Motor Vehicles, (1969) 252 Or 486, 450 P2d 775; State v. Evans, (1969) 1 Or App 282, 460 P2d 1021, Sup Ct **review denied**; State v. Woodward, (1969) 1 Or App 338, 462 P2d 685; City of Eugene v. Reed, (1970) 2 Or App 190, 464 P2d 842, Sup Ct **review denied**; State v. Smith, (1970) 4 Or App 261, 476 P2d 802; Stratikos v. Dept. of Motor Vehicles, (1971) 4 Or App 313, 477 P2d 237, 478 P2d 654.

ATTY. GEN. OPINIONS: Speed limits as governed only by reasonableness and prudence, 1930-32, p 299; driving in violation of dim-out regulations as reckless driving, 1942-44, p 75; authority of Secretary of State to suspend license for violation of Washington's reckless driving statute, 1950-52, p 81; power of court to suspend a fine, 1952-54, p 166; reinstatement upon court recommendation of mandatorily suspended license, 1952-54, p 234; disposition of money when undertaking for bail is given and forfeited for violation of this section, 1954-56, p 142; division of fines collected in Portland municipal court for violation of Motor Vehicle Code, 1964-66, p 404; construing "speed law" used in ORS 483.048, (1968) Vol 34, p 347.

LAW REVIEW CITATIONS: 39 OLR 162-164; 1 WLJ 663; 6 WLJ 537-540.

483.994 to 483.998

ATTY. GEN. OPINIONS: Road located on railroad right-of-way as a "highway," 1960-62, p 101.

483.994

ATTY. GEN. OPINIONS: Constitutionality of this section, 1950-52, p 250; power of court to suspend a fine, 1952-54, p 166.

483.996

CASE CITATIONS: State v. Pyle, (1961) 226 Or 485, 360 P2d 626.

LAW REVIEW CITATIONS: 2 WLJ 352-357.