

COMMITTEE ON JUDICIARY
Room 14, State Capitol
Salem, Oregon

O R E G O N V E H I C L E C O D E

PART I. RULES OF THE ROAD

ARTICLE 4. RIGHT OF WAY

Preliminary Draft No. 2; March 1974

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Subcommittee on Revision

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OREGON VEHICLE CODE

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PART ____ . RULES OF THE ROAD

ARTICLE ____ . RIGHT OF WAY

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Section 1. (Vehicle approaching or entering intersection.) (1)

When two drivers approach or enter an intersection from different highways at approximately the same time, the driver on the left shall yield to the driver on the right.

(2) The right of way rule in subsection (1) of this section does not apply:

(a) At an intersection where traffic is controlled by an official traffic control device;

(b) At an intersection with a through highway; or

(c) When an emergency vehicle or ambulance, as defined by sections ____ and ____ of this chapter, is approaching or entering an intersection.

(3) Failing to yield the right of way at an intersection is a _____.

COMMENTARY

A. Summary

Subsection (1) provides that a driver, approaching or entering an intersection at approximately the same time as a driver on the right, shall yield the right of way to the driver on the right.

Subsection (2) restricts the applicability of the rule to an uncontrolled intersection, where there is not a through highway, and when there is no emergency vehicle or ambulance approaching or entering the intersection.

Subsection (3) classifies the offense.

B. Derivation

This section is based on UVC s 11-401.

C. Relationship to Existing Law

Under subsection (2) of ORS 483.202, drivers approaching an uncontrolled highway intersection must look out for and give right of way to a vehicle on the right when they are simultaneously approaching a given point, whether the other vehicle first enters and reaches the intersection or not. Under subsection (3) of ORS 483.202 the driver entering an uncontrolled highway intersection at an unlawful speed forfeits any right of way he otherwise has.

This draft section changes existing law by requiring that the right of way be yielded by drivers both when they approach and when they enter an intersection. This change is in conformity with the UVC.

This draft section also changes existing law by removing the provision for forfeiting right of way by unlawful speed. This forfeiture provision was in the 1926 edition of the UVC but deleted in the 1930 edition.

ORS 483.202 has been held to mean that the favored driver at an uncontrolled intersection has a duty to exercise due care and be on the lookout for other drivers who would take the right of way. Johnson v. Rexius, 249 Or 465, 439 P2d 11 (1968); Wilson v. Overbey, 223 Or 256, 354 P2d 369 (1960). The statutory right of way is not absolute. Stahl v. Tobiasson, 257 Or 445, 479 P2d 751 (1971). It must be exercised reasonably with due regard to existing circumstances. Hess v. Larson, 259 Or 282, 486 P2d 533 (1971). The unfavored driver charged with failure to yield the right of way at an uncontrolled intersection which he approached to the left of the favored driver, must introduce evidence of excessive speed of the favored vehicle to refute the charge. Medina v. Mayo, 98 Adv Sh 216, ___ Or ___, ___ P2d ___ (1973).

The right of way forfeited by excessive speed under subsections (2) and (3) of ORS 483.202 is not thereby

transferred to the unfavored driver. Dorey v. Myers, 211 Or 631, 317 P2d 515 (1957).

The driver on the left who makes a reasonably careful observation to his right and sees no car approaching so closely that there is a reasonable likelihood of collision is not required to stop or wait but may proceed. Id.

ORS 483.202 would be repealed. The provisions of subsection (2) of that section would be replaced by this draft section.

Section 2. (Driver turning left.) (1) A driver intending to turn to the left within an intersection or into an alley, private road or driveway from a highway shall yield the right of way to a vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard.

(2) Failing to yield the right of way when turning left is a

COMMENTARY

A. Summary

Subsection (1) provides that a driver who intends to make a left turn, whether at an intersection or into an alley, private road or driveway from a highway, shall yield the right of way to a vehicle coming from the opposite direction which is so close as to be either in the intersection or an immediate hazard.

Subsection (2) classifies the offense.

B. Derivation

This section is based on UVC s 11-402.

C. Relationship to Existing Law

Under subsection (5) of ORS 483.202 a driver who is within an intersection and intends to turn left, yields to oncoming traffic in the intersection or so close as to be an immediate hazard. There is the further provision in the subsection called the "shifting right of way" by which the right of way shifts from the oncoming driver to the left turning driver after the latter has so yielded and has signaled his intention to turn.

The shifting right of way rule was deleted from the UVC in the 1962 revision of that code. The duty to yield of a driver when turning at an intersection was expanded to include when turning into an alley, private road or driveway.

Subsection (1) of ORS 483.206 requires that a driver turning left to enter a private road or driveway yield the right of way to oncoming traffic.

ORS 483.202 and 483.206 would be repealed and the provisions of subsection (5) of the first and subsection (1) of the second of these sections of existing law would be replaced by this draft section.

Subsections (2) and (3) of ORS 483.206 relate to the right of way of the driver entering a public highway from a private road and the right of way when there is a traffic control signal indicating no stop is required by the driver exiting from a private road onto a public highway. These provisions will be covered in other sections of this Article, and relevant case law in the commentary to the appropriate sections.

The rule for the driver turning left at an intersection has been interpreted to mean that the driver intending 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 Freight Lines, Inc., 234 Or 61, 380 P2d 119 (1963); Bostwick v. Logsdon, 234 Or 226, 380 P2d 982 (1963). A driver intending to turn left at an intersection and having yielded, must signal before turning left. Dare v. Garrett Freight Lines, Inc., 234 Or at 64. Having yielded and signaled, he is permitted to turn and when turning and clearing the intersection, approaching vehicles must yield to him. Bostwick v. Logsdon, 234 Or at 229.

The rule of subsection (2) of ORS 483.202 that the right of way must be yielded to a driver approaching an intersection on the right does not apply to the left turning driver where right of way relates to the vehicle within the intersection or so close as to be an immediate hazard.

Section 3. (Stop signs and yield signs.) (1) If the Transportation Commission or local authority with respect to highways under its jurisdiction designates a highway or section thereof as a through highway or an intersection as a stop intersection and erects stop signs or yield signs at specified entrances to the through highway and at one or more entrances to the stop intersection, a driver shall obey the stop signs and the yield signs as follows:

(a) Except when directed to proceed by a police officer, a driver approaching a stop sign shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching so closely as to constitute an immediate hazard during the time when the driver is moving across or within the intersection.

(b) A driver approaching a yield sign shall slow his vehicle to a speed reasonable for the existing conditions and, if necessary for safety, shall stop at a line as stated in paragraph (a), subsection (1) of this section, and shall yield the right of way to any vehicles in the intersection or approaching so closely as to constitute an immediate hazard.

(2) An official traffic control device placed pursuant to subsection (1) of this section shall conform to specifications approved by the Transportation Commission, and shall be illuminated at night or be so placed as to be illuminated by the headlights of approaching vehicles or by street lights.

(3) Failing to yield the right of way at a stop sign or yield sign is a _____.

COMMENTARY

A. Summary

Subsection (1) provides that when the department or local authority designates a highway as a through highway and an intersection as a stop intersection and erects signs giving notice, a driver shall obey the signs as follows: a stop sign by stopping at a marked stop line or before entering the crosswalk or as near the intersecting road as a view of approaching traffic is possible, and thereafter yielding the right of way to traffic approaching so closely as to be an immediate hazard; a yield sign by slowing speed as conditions indicate, stopping if necessary for safety, and thereafter yielding the right of way to vehicles in the intersection or close enough to be a hazard.

Subsection (2) provides that an official traffic control device placed pursuant to subsection (1) shall be of the approved size, shall be lit at night or so placed as to be lit by headlights or street lights.

Subsection (3) classifies the offense.

B. Derivation

This section is based on UVC § 11-403 and also retains the provisions of subsection (4) of ORS 483.204.

C. Relationship to Existing Law

Subsection (1) of ORS 483.204 authorizes the department, formerly the commission, to designate through highways by placing stop or yield right of way signs at the entrances notifying drivers, and to designate intersections by placing stop or yield signs at the entrances.

Subsection (2) of ORS 483.204 directs a driver to stop in obedience to stop signs and subsection (3) directs a driver to reduce speed and yield to traffic on the intersecting highway the right to safely proceed.

Subsection (4) of the statute directs that signs placed according to this section conform to department specifications and be illuminated at night or be illuminated by approaching headlights.

ORS 483.204 would be repealed and its provisions replaced by this draft section.

ORS 483.204 does not describe at what point in relation to the intersection or stop line a driver should stop when approaching a stop or a yield sign. Oregon is classified by the editor of Traffic Laws Annotated, 1972, as among the 10 jurisdictions that do not describe where to stop for a stop sign. ORS 483.204 was interpreted to mean that a driver entering a public road from a private road is required to stop before any part of his vehicle protrudes over any portion of the public road. Biddle v. Mazzocco, 204 Or 547, 284 P2d 364 (1955). The comparable provision of an earlier code, OCLA 115-351, included the additional provision that the stop should be made at the place where a cross street meets the prolongation of the nearest property line of the through highway. This clause was interpreted to mean that a driver approaching a through highway on a lateral should stop where he can see not only the cars in the intersection but also those approaching upon the trunk highway. Cameron v. Goree, 182 Or 581, 189 P2d 596 (1948).

The rules setting out how the driver is to proceed after stopping or yielding at the entrance to a through highway are located in subsection (4) of ORS 483.202. It provides that a driver who has stopped or yielded the right of way shall stop or yield to vehicles within the intersection or approaching so close as to be a hazard, and thereafter proceed. The so-called "shifting right of way" rule then takes over and the right of way transfers to the driver who has either stopped or yielded. In Bledsoe v. Vaughan, 96 Adv Sh 126, Or, P2d (1973), the court held that subsection (4) of ORS 483.202 does not apply to a driver who has stopped at an intersection and then, while traversing the intersection, is stopped for several minutes by left-turning traffic advancing from the opposite direction. That driver's right of way no longer is based on subsection (2) of ORS 483.202 but arises from common law principles.

Section 4. (Right of way at merging lanes of arterial highway.)

(1) A driver entering a freeway or other arterial highway where an acceleration or merging lane is provided for his use shall look out for and give right of way to vehicles on the freeway or other arterial highway.

(2) A driver entering a freeway or other arterial highway who fails to yield the right of way as provided in subsection (1) of this section commits a _____.

COMMENTARY

A. Summary

Subsection (1) provides that the driver entering a freeway or other arterial highway on an acceleration or merging lane must yield the right of way to vehicles on the highway.

Subsection (2) classifies the offense.

B. Derivation

This section is a restatement of subsection (1) of ORS 483.202.

C. Relationship to Existing Law

ORS 483.202 would be repealed and the provisions of subsection (1) contained in this section.

Section 5. (Vehicle entering roadway from private road, alley or place.) (1) Except where the movement of traffic is otherwise directed by an official traffic control device, a driver who is about to enter or cross a roadway from any private road or driveway, alley or place other than another roadway shall yield the right of way to all vehicles approaching on the roadway to be entered or crossed.

(2) Failing to yield the right of way before entering or crossing from a private road, alley or place is a _____.

COMMENTARY

A. Summary

This section provides that a driver about to leave a private road or place is to yield the right of way to vehicles on the roadway onto which the driver is proceeding, except when there is an official traffic control device directing otherwise.

B. Derivation

This section is based on UVC § 11-404.

C. Relationship to Existing Law

Subsections (1) and (2) of ORS 483.206, which would be repealed and replaced by this draft section, relate to right of way of drivers turning left into a private road and drivers entering a public highway from a private road. Subsection (3) provides that the rules of the first two subsections do not apply where there is a traffic control device.

The rule of subsection (1) is included in section 3 of this draft. The rule of subsection (2) is set out in this draft section, with the term "public highway" of existing law reworded to "roadway", and the application to drivers emerging from a private road or driveway enlarged to include drivers emerging also from a place. Use of the term "place" makes the rule applicable to all-terrain vehicles such as dune buggies, snowmobiles and minibikes.

Subsection (3) of ORS 483.206 was held to mean that when a traffic signal is installed with the approval of the county court at the intersection of a private road and public highway,

and the signal indicates the driver can proceed without stopping, the driver may do so without violating this section. Schoenborn v. Broderick et al, 202 Or 634, 277 P2d 787 (1954). The rule of subsection (3) of ORS 483.206 is incorporated in this draft section.

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

Section 6. (Operation of vehicles on approach of emergency vehicle or ambulance.) (1) Upon the approach of an emergency vehicle or ambulance using a visual signal or an audible signal or both according to requirements of sections _____ and _____ of this chapter, the driver of every other vehicle shall yield the right of way, and except as provided in subsection (2) of this section, shall immediately drive to a position as near as possible and parallel to the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the emergency vehicle or ambulance has passed, except when otherwise directed by a police officer.

(2) This section does not relieve the driver of an emergency vehicle or ambulance from the duty to drive with due regard for the safety of all persons using the highway, nor does it protect the driver of any such vehicle from the consequence of an arbitrary exercise of such right of way.

(3) Failure to yield the right of way to an emergency vehicle or ambulance is a _____.

COMMENTARY

A. Summary

Subsection (1) provides the rule of yielding right of way and moving to the right lane when an emergency vehicle approaches.

Subsection (2) provides that the driver of an emergency vehicle or ambulance is not relieved of the duty of due care. Subsection (3) classifies the offense.

B. Derivation

This section is based on UVC § 11-405.

C. Relationship to Existing Law

Subsection (1) of ORS 483.208 provides for yielding right of way and moving to the right of the highway when an authorized emergency vehicle approaches and gives audible signal. This draft section incorporates the rules of sections _____ and _____ defining emergency vehicles and ambulances and stating the requirements for use of either or both audible and visual signals. Police vehicles not using audible or visual signals would not have the right of way under this draft section.

Subsection (2) of ORS 483.208 covers the right of way rules for a motorman of a streetcar when an authorized emergency vehicle approaches.

ORS 483.208 would be repealed. The provisions of this draft section replace those of subsections (1) and (3) of ORS 483.208.

The cases interpreting this statute do not relate to it in its latest form with the exception of Johnson v. Siburg, 249 Or 556, 439 P2d 865 (1968), which states the duty of the driver of an emergency vehicle to drive with regard to the safety of others.

TEXT OF UNIFORM VEHICLE CODE

§ 11-101—Vehicle approaching or entering intersection

(a) When two vehicles approach or enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

(b) The right of way rule declared in paragraph (a) is modified at through highways and otherwise as stated in this chapter. (SECTION REVISED, 1968.)

§ 11-402—Vehicle turning left

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road or driveway shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard. (REVISED, 1962.)

§ 11-403—Stop signs and yield signs

(a) Preferential right of way may be indicated by stop signs or yield signs as authorized in § 15-109 of this act.

(b) Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.

(c) The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After slowing or stopping, the driver shall yield the right of way to any vehicle in **the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways. Provided, however, that if such a driver is involved in a collision with a vehicle in the intersection or junction of roadways, after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of his failure to yield right of way. (SECTION REVISED, 1971.)**

TEXT OF UNIFORM VEHICLE CODE (CONT'D)

§ 11-404—Vehicle entering roadway

The driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right of way to all vehicles approaching on the roadway to be entered or crossed. (REVISED, 1971.)

§ 11-405—Operation of vehicles (and streetcars) on approach of authorized emergency vehicles

(a) Upon the immediate approach of an authorized emergency vehicle making use of an audible signal meeting the requirements of § 12-401(d) and visual signals meeting the requirements of § 12-218 of this act, or of a police vehicle properly and lawfully making use of an audible signal only: (REVISED, 1968.)

1. The driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

2. Upon the approach of an authorized emergency vehicle, as above stated, the motorman of every streetcar shall immediately stop such car clear of any intersection and keep it in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.⁴

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

§ 11-406—Highway construction and maintenance

(a) The driver of a vehicle shall yield the right of way to any authorized vehicle or pedestrian actually engaged in work upon a highway within any highway construction or maintenance area indicated by official traffic control devices.

(b) The driver of a vehicle shall yield the right of way to any authorized vehicle obviously and actually engaged in work upon a highway whenever such vehicle displays flashing lights meeting the requirements of § 12-229. (NEW SECTION, 1971.)