

**5.30D VIOLATION OF TRAFFIC ACT (Approved 8/99)**

***NOTE TO JUDGE***

In *Ewing v. Burke*, 316 N.J. Super. 287 (App. Div. 1998), the Appellate Division held that the trial court committed plain error in failing to modify the model charges to include reference to a relevant motor vehicle statute that was applicable to the facts and circumstances of the particular case. The Appellate Division stated: “Ordinarily, therefore, if there is evidence tending to establish that a vehicle was operated in violation of a motor vehicle statute, the statutory duty should be charged to the jury in order to assist the jury in arriving at the appropriate verdict.” *Id.* at 294.

In this case, in support of the charge of negligence made, it is asserted that the defendant violated a provision of the motor vehicle laws. The provision referred to is known as N.J.S.A. \_\_\_\_\_ and reads as follows: \_\_\_\_\_. The statute in question has set up a standard of conduct for the users of our streets and highways. If you find that the defendant has violated that standard of conduct, such violation is evidence to be considered by you in determining whether negligence, as I have defined that term to you, has been established. You may find that such violation constituted negligence on the part of the defendant, or you may find that it did not constitute such negligence. Your finding on this issue may be based on such violation alone, but in the event that there is other or additional

evidence bearing upon that issue, you will consider such violation together with all such additional evidence in arriving at your ultimate decision as to defendant's negligence.

**Cases:**

*Philips v. Scrimente*, 66 N.J. Super. 157 (App. Div. 1961). The above may be modified to cover violations of certain other statutes or ordinances which set up a standard of conduct to be observed in given circumstances for the benefit of the class to which plaintiff belongs. *Evers v. Davis*, 86 N.J.L. 196 (E. & A. 1914); *Moore's Trucking Co. v. Gulf Tire & Supply Co.*, 18 N.J. Super. 467 (App. Div. 1952).

**1. Evidence of Negligence (Approved 6/71)**

In this case, in support of the charge of negligence made, it is asserted that the defendant violated a provision of the motor vehicle laws. The provision referred to is known as N.J.S.A. \_\_\_\_\_ and reads as follows: \_\_\_\_\_.

Now the statute in question has set up a standard of conduct for the users of our streets and highways. If you find that the defendant has violated that standard of conduct, such violation is evidence to be considered by you in determining whether negligence, as I have defined that term to you, has been established. You may find that such violation constituted negligence on the part of the defendant, or you may find that it did not constitute such negligence. Your finding on this issue

may be based on such violation alone, but in the event that there is other or additional evidence bearing upon that issue, you will consider such violation together with all such additional evidence in arriving at your ultimate decision as to defendant's negligence.

**Cases:**

*Philips v. Scrimente*, 66 N.J. Super. 157 (App. Div. 1961). The above may be modified to cover violations of certain other statutes or ordinances which set up a standard of conduct to be observed in given circumstances for the benefit of the class to which plaintiff belongs. *Evers v. Davis*, 86 N.J.L. 196 (E. & A. 1914); *Moore's Trucking Co. v. Gulf Tire & Supply Co.*, 18 N.J. Super. 467 (App. Div. 1952). See numbered paragraph 2, which follows, pertaining to those cases in which the violation of a statute is negligence and not merely evidence of negligence.

**2. Violation of Motor Vehicle Act is Negligence (Approved 6/71)**

Defendant denies that he/she violated this section of the motor vehicle laws and makes the following contention concerning the operation of his/her motor vehicle: \_\_\_\_\_.

The statute in question establishes a standard of conduct for motorists using our streets and highways. If you find that defendant has violated this statute by following another vehicle more closely than is reasonable and prudent, having due regard to the speed of the preceding vehicle and the traffic upon and condition of the highway, such conduct is negligence on defendant's part.

***NOTE TO JUDGE***

There are some cases where the violation of a section of the motor vehicle laws is negligence as a matter of law and not merely evidence of negligence. In *Dolson v. Anastasia*, 55 N.J. 2, 9-11 (1969), the Court held that the failure to maintain a reasonably safe distance behind the car ahead “is negligence and a jury should be so instructed. . . .This does not mean however, that such conduct is only evidence of negligence because it violates a statute.” In *Dolson*, defendant struck plaintiff's vehicle in the rear. The Court noted that defendant did not contend that plaintiff came to a sudden stop nor that he/she thought plaintiff intended to proceed slowly through the intersection rather than stop or turn. In the absence of any reasonable justification or explanation for striking plaintiff in the rear, the Court held the violation of the statute on following too closely is negligence. The Court noted further that it did not consider a binding instruction as to liability because no motion to that effect had been made at trial nor contended on appeal.

In an appropriate case it would appear that no issue would be presented for the jury as to defendant's negligence, once proof of the violation of a particular motor vehicle statute has been established without evidence to explain such violation. In some cases, however, an issue may be presented for the jury as to whether a violation occurred or whether an adequate explanation is to be found in the evidence. In such a case where the particular statute violated requires a conclusion of negligence the jury should be instructed as follows:

In this case, plaintiff argues that defendant was negligent because defendant violated a provision of the motor vehicle laws. The provision referred to, *N.J.S.A. 39:4-89*, is as follows:

The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to the speed of the preceding vehicle and the traffic upon, and condition of, the highway.