Statutory Violations

60.00
Statutory Violations

Introduction

Two different types of legislation can affect civil remedies for personal injuries and property damage.

Statutory Causes of Action

Statutes can themselves create a tort or tort-like cause of action for personal injury (including death) or property damage. Examples include the Federal Employers' Liability Act (injuries to railroad workers), the Jones Act (injuries to seamen), the Illinois Dram Shop Act (injuries caused by intoxicated persons), and the Illinois Public Utilities Act (unsafe conditions created by specified public utilities).

These statutes are beyond the scope of this chapter. Other IPI chapters contain instructions for cases brought under some of those statutes. *See* Chapter 150 (Dram Shop Act); Chapter 160 (Federal Employers' Liability Act); Chapter 170 (Safety Appliance and Boiler Inspection Acts).

Legislation as Evidence of Standard of Care

In a negligence or product liability action, and certain other cases, relevant legislation may be admitted into evidence to assist the trier of fact in determining the applicable standard of conduct. Thus, in Illinois, violation of a statute, ordinance, or an administrative ruling, regulation or order designed for the protection of human life or property is *prima facie* evidence of negligence or other fault. *French v. City of Springfield*, 65 Ill.2d 74, 357 N.E.2d 438, 2 Ill.Dec. 271 (1976); *Davis v. Marathon Oil Co.*, 64 Ill.2d 380, 356 N.E.2d 93, 1 Ill.Dec. 93 (1976); *Dini v. Naiditch*, 20 Ill.2d 406, 417; 170 N.E.2d 881, 886 (1960). Where it is shown that a party has violated a statute, this *prima facie* evidence of his negligence may be rebutted by proof that the party acted reasonably under the circumstances of the case, despite the violation. *Johnson v. Pendergast*, 308 Ill. 255, 139 N.E. 407 (1923); *Davis v. Marathon Oil Co.*, 64 Ill.2d 380, 356 N.E.2d 93, 1 Ill.Dec. 93 (1976).

The *prima facie* evidence of negligence does not, of course, establish a *prima facie* case of liability, since the element of proximate cause must still be proved. *Tenenbaum v. City of Chicago*, 60 Ill.2d 363, 325 N.E.2d 607 (1975); *Ney v. Yellow Cab Co.*, 2 Ill.2d 74, 78-79; 117 N.E.2d 74, 77-78 (1954).

No distinction is made between a statute and an ordinance, if the ordinance is one which the city is authorized to enact. *United States Brewing Co. v. Stoltenberg*, 211 Ill. 531, 537; 71 N.E. 1081, 1084 (1904); *Mangan v. F.C. Pilgrim & Co.*, 32 Ill.App.3d 563, 577; 336 N.E.2d 374, 379 (1st Dist.1975). Administrative rules, regulations and orders must be validly adopted, and have the force of law. Such rules may also be admissible as *indicia* of standards of care. *Davis v. Marathon Oil Co.*, 64 Ill.2d 380, 356 N.E.2d 93, 1 Ill.Dec. 93 (1976); *Darling v. Charleston Community Memorial Hosp.*, 33 Ill.2d 326, 332; 211 N.E.2d 253, 257 (1965), *cert. denied*, 383 U.S. 946, 86 S.Ct. 1204, 16 L.Ed.2d 209 (1966); *American State Bank v. County of Woodford*, 55 Ill.App.3d 123, 371 N.E.2d 232, 13 Ill.Dec. 515 (4th Dist.1977).

The statute, ordinance, or regulation must be one which is designed to protect against the type of injury complained of, *Ney v. Yellow Cab Co.*, 2 Ill.2d 74, 117 N.E.2d 74 (1954), and the plaintiff must also show that he is within the class intended to be protected by the statute, ordinance, or regulation. *Brunnworth v. Kerens-Donnewald Coal Co.*, 260 Ill. 202, 216-217, 103 N.E. 178, 184 (1913).

Instructions concerning violations of a statute, ordinance or regulation should not be given unless the evidence is adequate to support a finding that a violation actually occurred (*Tenenbaum v. City of Chicago*, 60 Ill.2d 363, 325 N.E.2d 607 (1975); *Figarelli v. Ihde*, 39 Ill.App.3d 1023, 351 N.E.2d 624 (1st Dist.1976)) and that the violation was a proximate cause of the injury (*French v. City of Springfield*, 65 Ill.2d 74, 79-80; 357 N.E.2d 438, 440-441; 2 Ill.Dec. 271, 273-274 (1976)).

60.01 Violation of Statute, Ordinance, or Administrative Regulation

There was in force in the [State of Illinois] [City of _____] at the time of the
e.g., Peoria
occurrence in question a certain [statute] [ordinance] [administrative (regulation) (rule) (order)] which provided that:

> [*Quote or paraphrase applicable part of statute, ordinance or regulation as construed by the courts.*]

If you decide that [a party] [the parties] [_____] violated the [statute]
description of non-party
[ordinance] [regulation] [rule] [order] on the occasion in question, then you may consider that fact together with all the other facts and circumstances in evidence in determining whether and to what extent, if any, [a party] [the parties] [_____] [was] [were] negligent before and at
description of non-party
the time of the occurrence.

Instruction revised December 2011.

Notes on Use

Permission to publish amended Notes on Use granted in 2002.

This instruction should be given only where the evidence would support a finding that the injury complained of was proximately caused by a violation of a statute, ordinance, or administrative regulation, rule, or order intended to protect against such an injury, and that the injured party is within the class intended to be protected by the statute, ordinance, or administrative regulation. This instruction should be given provided that the statute, ordinance, or administrative regulation has the force of law. *Davis v. Marathon Oil Co.*, 64 Ill.2d 380, 356 N.E.2d 93, 1 Ill.Dec. 93 (1976). If the subject standard does not have the force of law, this instruction should not be given. *Poelker v. Warrensburg-Latham School District*, 251 Ill.App.3d 270, 621 N.E.2d 940, 190 Ill.Dec. 487 (4th Dist.1993) (rules and recommendations of the National Federation of High School Associations at issue). When IPI 60.01 has been given for standards that do not have the force of law, the appellate court has noted the holding in *Davis* and affirmed this practice only when waiver or other factors are present. *See, e.g.*, *American State Bank v. County of Woodford*, 55 Ill.App.3d 123, 371 N.E.2d 232, 13 Ill.Dec. 515 (4th Dist.1978) (precise objection not made at jury instruction conference); *Carlson v. City Construction Co.*, 239 Ill.App.3d 211, 606 N.E.2d 400, 179 Ill.Dec. 568 (1st Dist.1992) (compliance with standards required in contract between the parties). In at least one instance, however, the appellate court has affirmed, without reservation and without citation to *Davis*, a trial court's usage of IPI 60.01 where the standard did not have the force of law. *King v. American Food Equipment Co.*, 160 Ill.App.3d 898, 513 N.E.2d 958, 112 Ill.Dec. 349 (1st Dist.1987) (ANSI standard at issue).

This instruction may be used in a case where there is evidence tending to show that a violation of a statute by a non-party third person may have been a proximate cause of the occurrence. *See, e.g., Roberts v. City of Chicago*, 105 Ill.App.3d 383, 385; 434 N.E.2d 420, 422-423; 61 Ill.Dec. 267, 269-270 (1st Dist.1982); *Mizowek v. DeFranco*, 64 Ill.2d 303, 311; 356 N.E.2d 32, 36; 1 Ill.Dec. 32, 36 (1976); *Nowak v. Witt*, 14 Ill.App.2d 482, 144 N.E.2d 813 (2d Dist.1957). If it is so claimed, then a phrase

describing the non-party should be included where indicated, and IPI 12.04 should be given addition to this instruction.

A party is not entitled to multiple instructions containing the same legal principle. Thus, a party may properly be required to choose between several tendered instructions that embody the same or similar statutory violations. *Bernardoni v. Hebel*, 101 Ill.App.3d 172, 176-177; 427 N.E.2d 1288, 1291-1292; 56 Ill.Dec. 742, 745-746 (3d Dist.1981).

Evidence that a party *complied* with a relevant statute, ordinance, or administrative regulation, rule, or order, intended to protect against the injury complained of, may be admissible as evidence that the party was *not* negligent, or that a product was not defective or unreasonably dangerous. *Rucker v. Norfolk & W. Ry. Co.*, 77 Ill.2d 434, 396 N.E.2d 534, 33 Ill.Dec. 145 (1979). Just as in the case of other such legislation, compliance with applicable statutes and safety regulations is not conclusive evidence on the question of negligence, but it is relevant to that issue. *Moehle v. Chrysler Motors Corp*., 93 Ill.2d 299, 305; 443 N.E.2d 575, 577-578; 66 Ill.Dec. 649, 651-652 (1982); *Christou v. Arlington Park-Washington Park Race Tracks Corp.*, 104 Ill.App.3d 257, 261; 432 N.E.2d 920, 923-924; 60 Ill.Dec. 21, 24-25 (1st Dist.1982). If the court rules that such a statute or other enactment is admissible for this purpose, and that an instruction is appropriate, this instruction may be modified and used.

Comment

Ordinarily the language of the statute, ordinance, or regulation may be used in the instruction. *Davis v. Marathon Oil Co.*, 64 Ill.2d 380, 356 N.E.2d 93, 1 Ill.Dec. 93 (1976) (regulation pertaining to tank trucks); *Tenenbaum v. City of Chicago*, 60 Ill.2d 363, 325 N.E.2d 607 (1975); *Darling v. Charleston Community Memorial Hosp.*, 33 Ill.2d 326, 211 N.E.2d 253, 257 (1965) (hospital regulations of State Department of Public Health); *Bertrand v. Adams*, 344 Ill.App. 559, 562; 101 N.E.2d 841, 842 (4th Dist.1951) (statute prohibiting overtaking and passing near intersections); *Hann v. Brooks*, 331 Ill.App. 535, 551; 73 N.E.2d 624, 631 (2d Dist.1947) (statute providing for driving on the right side of the road). But if a judicial interpretation has modified the language, the change must be reflected in the instruction. *McElligott v. Illinois Cent. R. Co.*, 37 Ill.2d 459, 227 N.E.2d 764 (1967) (maintenance of railroad crossing); *De Legge v. Karlsen*, 17 Ill.App.2d 69, 79, 81; 149 N.E.2d 491, 495-497 (1st Dist.1958) (peremptory instruction in language of right-of-way statute held error); *Anderson v. Steinle*, 289 Ill.App. 167, 171; 6 N.E.2d 879, 881 (4th Dist.1937) (same ruling as to "flare statute").

If the statute, ordinance, or regulation is not intended to protect against the type of injury in question, *Ney v. Yellow Cab Co.*, 2 Ill.2d 74, 117 N.E.2d 74 (1954), or if the injured party is not within the protected class, *Brunnworth v. Kerens-Donnewald Coal Co.*, 260 Ill. 202, 216-217; 103 N.E. 178, 184 (1913), *Bitner v. Lester B. Knight & Associates, Inc.*, 16 Ill.App.3d 857, 307 N.E.2d 136 (3d Dist.1974), the statute, ordinance, or regulation should not be called to the jury's attention. In addition, there must be evidence from which the jury can find that the violation was a proximate cause of the injury. *French v. City of Springfield*, 65 Ill.2d 74, 79-80; 357 N.E.2d 438, 440-441; 2 Ill.Dec. 271, 273-274 (1976).

Violation of a statute, ordinance or regulation is not negligence *per se*, but only *prima facie* evidence of negligence. Such *prima facie* evidence may be rebutted by a showing that, under all the facts and circumstances of the case, the party who violated the statute acted reasonably. *See* IPI 60.00. Accordingly, violation of a statute, ordinance or regulation is but one fact to be taken into consideration by the jury along with all of the other facts and circumstances in determining the issue of negligence. *Davis v. Marathon Oil Co.*, 64 Ill.2d 380, 356 N.E.2d 93, 1 Ill.Dec. 93 (1976).

It can be reversible error to use the phrase "*prima facie* evidence" in an instruction (*Hicks v. Hendricks*, 33 Ill.App.3d 486, 342 N.E.2d 144 (5th Dist.1975) ("yield right-of-way" statute; not error on

facts of this case); *Klinkenberg v. Horton*, 81 Ill.App.2d 152, 224 N.E.2d 597 (3d Dist.1967) ("yield right-of-way" statute; reversible error)), and, in any event, it would not be understood by a jury. *See Johnson v. Pendergast*, 308 Ill. 255, 264; 139 N.E. 407, 410 (1923); *Harris v. Piggly Wiggly Stores, Inc*., 236 Ill.App. 392 (1st Dist.1925).

This instruction may not be modified so that it names one party only. An instruction on statutory violation which singles out one party is slanted, partial and argumentative and constitutes reversible error. *Macak v. Continental Baking Co.*, 92 Ill.App.2d 63, 235 N.E.2d 855 (1st Dist.1968). Nor may it be used without the second paragraph. *Ryan v. Fleischman*, 64 Ill.App.3d 75, 79; 380 N.E.2d 1099, 1102; 20 Ill.Dec. 890, 893 (2d Dist.1978); *Fornoff v. Parke Davis & Co.*, 105 Ill.App.3d 681, 688; 434 N.E.2d 793, 799; 61 Ill.Dec. 438, 444 (4th Dist.1982).

60.02 Violation of Statute, Ordinance, or Administrative Regulation Both By Defendant and Third Person or Third Person Alone

[Withdrawn]

Comment

This instruction formerly provided for situations where it was claimed that a third person violated a statute or ordinance, and that the third person was the sole proximate cause of the occurrence. The adoption of comparative fault has eliminated the need for a separate instruction to cover this situation. Under comparative fault, a non-party's violation of a statute is no longer relevant only on the sole proximate cause issue; it is now a factor in determining all parties' relative fault. IPI 60.01 has been modified to include non-parties, and former IPI 60.02 has therefore been deleted.