

1350 TURN OR MOVEMENT: SIGNAL REQUIRED

A safety statute provides that, if traffic may be affected by (the turning of a vehicle at an intersection) (the turning of a vehicle at a private road or driveway) (the turning of a vehicle from a direct course or by movement of the vehicle right or left upon the roadway), a person so (turning) (moving) shall give an appropriate signal by hand or directional signal of the intention to turn or move.

The statute also provides that the signal shall be given continuously not less than the last 100 feet traveled by the vehicle before turning.

COMMENT

This instruction and comment were approved by the Committee in 1980. The comment was revised in 1986. The instruction was revised in 1992 and 2008. Editorial changes were made in 1992 to address gender references in the instruction.

Wis. Stat. § 346.34(1) is a safety statute, the violation of which is negligence *per se*. Betchkal v. Willis, 127 Wis.2d 177, 183, 378 N.W.2d 684 (1985). Thus, making a turn in violation of Wis. Stat. § 346.34(1) is negligence as a matter of law. Grana v. Summerford, 12 Wis.2d 517, 521, 107 N.W.2d 463 (1961).

See also Wis JI-Civil 1352, Turn: Position and Method, and Wis JI-Civil 1354, Turn or Movement: Ascertainment that Turn or Movement Can Be Made with Reasonable Safety: Lookout.

Note that the sentence of § 346.34(1)(b), which creates the 100 feet signal requirement, does not specifically apply to deviation. Also, the operator of a bicycle must signal "continuously not less than the last 50 feet traveled before turning." Wis. Stat. § 346.34(1)(b).

When a vehicle is stopped for the purpose of turning, negligence from failure to signal turn may be found causal to rear end collision. Delong v. Sagstetter, 16 Wis.2d 390, 114 N.W.2d 788 (1962); Bannach v. State Farm Mut. Auto Ins. Co., 4 Wis.2d 194, 197, 90 N.W.2d 121 (1958); American Fidelity & Casualty Co. v. Travelers Indem. Co., 3 Wis.2d 209, 214, 87 N.W.2d 782 (1958). But see Greenville Coop. Gas Co. v. Lodesky, 259 Wis. 376, 48 N.W.2d 234 (1951).

Drivers not on the highway, but about to enter it, are not "traffic which may be affected" by the change in lanes. Donlea v. Carpenter, 21 Wis.2d 390, 124 N.W.2d 305 (1963).

In Tuschel v. Haasch, 46 Wis.2d 130, 139-40, 174 N.W.2d 497 (1970), and later in Betchkal, *supra*, the court held that where conditions do not allow for a full 100 feet for signaling a turn, a driver is not automatically negligent in giving the signal for a lesser distance.

In Betchkal, the court said it was clear from the statutory language of Wis. Stat. § 346.34 that the legislature intended the statute to apply only to situations where at least 100 feet has been traveled by the turning vehicle. See also Tuschel v. Haasch, *supra*. In Betchkal and Tuschel, the court rejected its earlier holding in Sparling v. Thomas, 264 Wis. 506, 59 N.W.2d 433 (1953), which applied the signaling statute to situations where the turning vehicle had traveled less than 100 feet before turning by requiring a turning vehicle to yield the right of way to a following vehicle.

Forfeiture of Right of Way. The court said in Betchkal that it is error to interpret Wis. Stat. § 346.34(1)(b) as creating a right of way for the following driver when the turning driver has traveled less than 100 feet before turning. The court said that, in Wisconsin, a forfeiture of right of way does not shift or transfer the right of way to the other driver as suggested in Sparling. Thus, the court held that the trial court erred by instructing the jury, according to Sparling, that "if a vehicle cannot signal its intention to turn continuously for a distance of not less than 100 feet before turning, it is required to yield the right of way to a vehicle approaching from the rear." This instruction was error. Instead of right of way being transferred to the competing driver, the driver with the right of way loses it, and neither party has a statutory right of way.