

1114 DUTY OF PRECEDING DRIVER TO FOLLOWING DRIVER: LOOKOUT

The driver of a vehicle who intends to deviate from (his) (her) course of travel, (suddenly stop) (or) (decrease speed) in such a manner that would create a hazard to vehicles following in a lawful manner must use ordinary care to make a lookout to the rear before making the movement. Otherwise, a driver owes no duty to the driver(s) of (a) (the) vehicle(s) behind (him) (her), except to use the road in the usual way, in keeping with the laws of the road.

Until a driver has been made aware of the car behind by signal or otherwise, the driver has a right to assume either that there is no other vehicle in close proximity to the rear or that being there, it is under such control as not to interfere with the free use of the road in front of and to the sides, in any lawful manner.

COMMENT

The instruction and comment were originally published in 1960. The instruction was revised in 1980, 2002, and 2008. The comment was updated in 1989.

In Krainz v. Strle, 81 Wis.2d 26, 29, 259 N.W.2d 707 (1977). The court held that a driver of an automobile under some circumstances has the duty of making an observation to the rear to see if he or she can stop or slow down on a highway with safety. Bentzler v. Braun, 34 Wis.2d 362, 149 N.W.2d 626 (1966); Diener v. Heritage Mut. Ins. Co., 37 Wis.2d 411, 155 N.W.2d 37 (1967).

This instruction should not be used when the driver of a front vehicle deviates from his or her lane of travel. Westfall v. Kottke, 110 Wis.2d 86, 328 N.W.2d 481 (1983).

The court in Hillstead v. Smith, 44 Wis.2d 560, 568-69, 171 N.W.2d 315 (1969), clearly explained its retreat from the former principle regarding the duty of lookout to the rear:

It is clear from Bentzler that it can no longer be said that a driver has no duty of lookout to the rear in all cases. In Bentzler, we took the position, following the dicta of Jacobson v. Greyhound Corp. (1965), 29 Wis.2d 55, 138 N.W.2d 133, that a duty to maintain a lookout to the rear clearly exists when a driver's position on the highway would be likely to constitute a hazard to drivers approaching from the rear

or when he was about to execute a maneuver which created a potential hazard to following traffic. In Diener v. Heritage Mut. Ins. Co. (1967), 37 Wis.2d 411, 155 N.W.2d 37, we required an efficient lookout to the rear, for the reason that lookout to the front was not preempted by circumstances that required the driver's attention and lookout ahead of him.

As to the duty of lookout of the preceding driver to the following driver when the preceding driver deviates or turns, see Wis JI-Civil 1354 and 1355.