

205.90 BACKING OF VEHICLES.

The motor vehicle law provides that the operator of a vehicle shall not back the vehicle unless that movement can be made with safety and without interfering with other traffic.

An operator backing a vehicle must use that degree of care which a reasonably careful and prudent person would use under all the circumstances then existing. It is the duty of the operator not merely to look, but to keep a reasonably careful lookout in the direction in which *his* vehicle is moving. The operator is held to the duty of seeing what ought to be seen, of seeing whether the movement of [a pedestrian] [another vehicle] is likely to be affected by the backward movement of the vehicle, and of giving timely warning of the intention to back up when the circumstances would indicate to a reasonably careful and prudent person that such a warning should be given.

The mere backing of a vehicle upon a [highway] [street] [public vehicular area] is not negligence within itself,¹ but the evidence with regard to it and the manner in which it was done is to be considered with all the other facts in evidence in determining whether the operator of such vehicle was negligent in backing the vehicle or in the manner of backing the vehicle.²

1. In *Sherwood v. Express Co.*, 206 N.C. 243, 173 S.E. 605 (1934), the Supreme Court held that although backing is not ordinarily negligence *per se*, it can be *per se* if done in violation of a city ordinance passed for the safety and protection of the traveling public. However, to be actionable, it must be a proximate cause.

The language in N.C. Gen. Stat. § 20-154(a) covering the backing of a vehicle was enacted in 1973 to be effective January 1, 1975. There previously had been no statutory provisions relating to the backing of a vehicle. At that time N.C. Gen. Stat. § 20-154(d) provided, as it still provides, that the violation of that section (N.C. Gen. Stat. § 20-154) "shall not constitute negligence *per se*." It would appear this legislative enactment controls

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over the *Sherwood* holding.

2. See, generally, *Harris v. Wright*, 268 N.C. 654, 151 S.E.2d 563 (1966); *Gentile v. Wilson*, 242 N.C. 704, 89 S.E.2d 403 (1955); *Phillips v. United States*, 650 F. Supp. 114 (W.D.N.C. 1986).

As to required signals on starting, stopping, or turning, see N.C.P.I.-Civil 206.10.