

A Legal Handbook For Michigan Cyclists

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A Practical Guide
For People Who
Rely on Bicycles
as a Form of
Recreation and
Transportation





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INTRODUCTION

The laws that apply to almost anything related to a bicycle are governed by state law.

This includes the rules for riding a bicycle and the rules for driving a motor vehicle when a bicycle is on the road. State law also typically dictates what insurance claims are available when there is an injury or property damage as the result of an incident involving the use of a bicycle. This handbook is intended to be a legal resource for residents and visitors of Michigan who ride bikes.

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THE RULES OF THE ROAD FOR MICHIGAN CYCLISTS

Most of the laws that apply to the operation of bicycles on Michigan roads, sidewalks, and pathways are contained in the Michigan Vehicle Code. The Michigan Vehicle Code defines a bicycle as “a device propelled by human power upon which a person may ride, having either 2 or 3 wheels in a tandem or tricycle arrangement, all of which are over 14 inches in diameter.” (MCL 257.4) A vehicle is defined as “every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices exclusively moved by human power or used exclusively upon stationary rails or tracks . . .” (MCL 257.79) Accordingly, under Michigan law, a bicycle is not considered a “vehicle.”

Even though Michigan law excludes bicycles from the definition of vehicles, the law makes it clear that cyclists have an absolute right to use public roads. The Michigan Vehicle Code explicitly states that each person riding a bicycle upon a roadway has all the rights and is subject to all the duties applicable to the driver of a motor vehicle. (MCL 257.657) However, when using the roads, a cyclist is also required to follow certain laws intended to ensure that cyclists use reasonable caution and safe cycling practices. These laws include the following provisions:

RIDE REASONABLY CLOSE TO THE RIGHT CURB

If riding below the posted speed limit, a cyclist is required to ride as close as practicable to the right-hand curb or edge of the road. (MCL 257.660a) However, this statute recognizes five exceptions or situations where a cyclist need not ride as close to the right hand curb or edge of the road as practicable:

- When passing another bicycle or a vehicle proceeding in the same direction.
- When preparing to turn left.
- When conditions make the right-hand edge of the roadway unsafe or reasonably unusable for bicycle users, including, but not limited to:
 - Surface hazards (i.e., ruts in the pavement or potholes);
 - An uneven roadway surface;
 - Drain openings;
 - Debris;



- Parked or moving vehicles or bicycles;
 - Pedestrians;
 - Animals;
 - Other obstacles; or
 - The lane is too narrow to permit a vehicle to safely overtake and pass a bicycle.
- When riding a bicycle in a lane in which traffic is turning right, but the cyclist intends to proceed straight through the intersection; and
 - When riding on a one-way highway or street that has two or more lanes. In this situation, the cyclist may also ride as close to the left curb or edge of the roadway as practicable.

RIDING TWO ABREAST

Cyclists must not ride more than two bicycles abreast. (MCL 257.660b)

LIGHTS

If riding between one-half hour after sunset and one-half hour before sunrise, a cyclist must use lights. The law requires that a light system for bicycles must, at a minimum, include a white light which is visible from 500 feet to the front and a red reflector on the rear which is visible from all distances from 100 feet to 600 feet when directly in front of lawful low beam headlights. A lamp emitting a red light visible from a distance of 500 feet may be used in addition to the red reflector. [MCL 257.662(1)]

HAND SIGNALS

Before stopping or turning, a cyclist must first determine that the stop or turn can be safely made and give one of the following hand signals:

- A left turn by extending their left hand and arm horizontally.
- A right turn by extending their left hand and arm upward, or by extending their right hand and arm horizontally.
- A stop or decrease in speed by extending their hand and arm downward. (MCL 257.648)

BRAKES

A bicycle must be equipped with a brake that enables the operator to make the braked wheels skid on dry, level, clean pavement. [MCL 257.662(2)]

CARRYING PACKAGES

A cyclist may not carry any package that prevents them from keeping both hands on the handlebars. (MCL 257.661)

PARKING

A bicycle may be parked on a sidewalk, except in places where it is prohibited by an official traffic control device. However, a bicycle may not be parked on a sidewalk in a manner that impedes the lawful movement of pedestrians or other traffic. Likewise, a bicycle may be parked on a highway or street in any location where parking is allowed for motor vehicles, may park at any angle to the curb or edge of the highway, and may park abreast of another bicycle. However, a bicycle may not be parked on a highway or street in a manner that obstructs the movement of a legally parked motor vehicle. Further, local ordinances may limit the location and manner of bicycle parking. (MCL 257.660d)

RIDING BICYCLES ON SIDEWALKS AND CROSSWALKS

Bicycles may be ridden upon a sidewalk or pedestrian crosswalk, but cyclists must yield the right-of-way to pedestrians and are required to give an audible signal before overtaking and passing a pedestrian. Further, official traffic control devices or local ordinances may restrict the use of bicycles on sidewalks in some areas. Additionally, a cyclist lawfully operating a bicycle upon a sidewalk or a pedestrian crosswalk has all of the rights and responsibilities applicable to pedestrians using that sidewalk or crosswalk. (MCL 257.660c)

RIDING DOUBLE

A bicycle may not be used to carry more people than the bicycle is designed and equipped to carry. (MCL 257.658) In other words, riding “double” is prohibited.

RIDING WHILE ATTACHED TO A VEHICLE

A cyclist may not attach themselves or their bicycle to a streetcar or a vehicle upon a roadway. (MCL 257.659)

LIMITED ACCESS HIGHWAY

A cyclist may not ride on a limited access highway. A limited access highway is defined as “every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only, and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.” (MCL 257.26) These highways are commonly referred to as expressways.

PARENTAL SUPERVISION

The parent or guardian of a child shall not authorize or knowingly permit a child to violate any provision of the Michigan Vehicle Code. [MCL 257.656(2)]

HELMETS, ALCOHOL, AND CELL PHONES

With the exception of a requirement that riders and passengers of Class 3 electric bicycles who are under the age of 18 wear a helmet, there is no



law that requires Michigan cyclists to wear a helmet. There is also no law that prohibits riding a bicycle while under the influence of alcohol. However, it is obviously a safe practice to wear a helmet and people should avoid alcohol consumption when riding a bicycle.

There is also not a law specifically prohibiting the use of a cell phone while riding a bicycle. However, use of a cell phone, including texting or talking, is not a safe practice, and could be considered a violation of MCL 257.61, which states that a cyclist may not carry a package, bundle, or article that prevents both hands from remaining on the handlebars.

PENALTIES FOR VIOLATIONS OF THE MICHIGAN VEHICLE CODE

In most cases, a violation of the Michigan Vehicle Code is a civil infraction, which is a non-criminal violation of a law and typically results in punishment in the form of a fine. When a motorist is found guilty of a moving violation of the Michigan Vehicle Code, the court is required to

notify the Secretary of State of the offense, and the driver receives what are commonly referred to as “points” on their driving record. These points remain on a person’s record for two years and typically increase insurance rates. If a driver accumulates enough points, the Secretary of State will suspend their driver’s license. However, the Michigan Vehicle Code makes it clear that a bicycle violation of traffic laws shall not result in any points being assigned to the person’s driving record with the Secretary of State. [MCL 257.732(16)(d)]

LOCAL ORDINANCES

As mentioned earlier, most of the laws that apply to cyclists are contained in the Michigan Vehicle Code. However, the Michigan Vehicle Code specifically states that local authorities may also regulate the operation of bicycles. [MCL 257.606(1)(h)] This means local authorities (cities, townships, villages) may adopt ordinances that regulate the use of bicycles in their community.



ELECTRIC BICYCLES/E-BIKES

On January 28, 2019, amendments to the Michigan Vehicle Code relating to electric bicycles (also known as e-bikes) took effect. This law defines electric bicycles and categorizes them into three classes. The class of an electric bicycle determines where it may be ridden.

E-BIKE DEFINED AND THE THREE CLASSES OF E-BIKES

The law defines an electric bicycle as “A device upon which an individual may ride that satisfies all of the following:

- (a) The device is equipped with all of the following.
 - (i) A seat or saddle for use by the rider.
 - (ii) Fully operable pedals for human propulsion.
 - (iii) (iii) An electric motor of not greater than 750 watts.”

The statute then goes onto explain the three classes of electric bicycles as follows:

- (1) Class 1 electric bicycle – equipped with an electric motor that provides assistance only when the rider is pedaling and that disengages or ceases to function when the electric bicycle reaches a speed of 20mph.
- (2) Class 2 electric bicycle – equipped with a motor that propels the bicycle to a speed of no more than 20mph, whether the rider is pedaling or not, and that disengages or ceases to function when the brakes are applied.
- (3) Class 3 electric bicycle – equipped with an electric motor that provides assistance only when the rider is pedaling and that disengages or ceases to function when the electric bicycle reaches a speed of 28mph. (MCL 257.13e)

USE OF ELECTRIC BIKES

In general, a person operating an e-bike must follow the laws that apply to human powered bicycles. [MCL 257.662a(1)] However, there are also laws specific to e-bikes.

BICYCLE AND MIXED-USE TRAILS AND PATHS

A Class 1 e-bike may be ridden on a linear trail (a multi-use trail that runs from point to point) that has an asphalt, crushed limestone, or similar surface, or a rail trail. However, the law allows local agencies that have authority over the trail to also regulate, or prohibit the operation of Class 1 e-bikes. [MCL 257.662a(8)]

A Class 2 or Class 3 e-bike may be ridden on a linear trail that has an asphalt, crushed limestone, or similar surface, or a rail trail only if authorized by the local authority or agency having jurisdiction over the trail. In other words, there is a presumption that it is illegal to ride a Class 2 or Class 3 e-bike on a trail unless expressly allowed by the local authority or entity with jurisdiction over the trail. [MCL 257.662a(9)]

MOUNTAIN BIKE AND HIKING TRAILS

Mountain bike and hiking trails are referred to as “nonmotorized trails” by the Michigan Vehicle Code. Nonmotorized trails are defined as having “a natural surface tread that is made by clearing and grading the native soil with no added surfacing materials.” Michigan law specifically forbids for the operation of all e-bikes on nonmotorized trails, unless the local entity or agency that has jurisdiction over a nonmotorized trail specifically allows the operation of an e-bike on that trail. [MCL 257.662a(10)]

Michigan’s e-bike laws do not apply to a trail system authorized by the United States Congress. [MCL 257.662a(13)] This means Michigan’s e-bike laws do not apply to the North Country National Scenic Trail.

ROADS AND HIGHWAYS

When riding an electric bicycle on a roadway, the rider has all of the rights and is subject to all of the duties applicable to the driver of a vehicle. In addition, the law requires an individual riding an electric bicycle to follow all the laws that apply to human powered bicycles. The law specifies that e-bikes may be used on bike lanes and the shoulder of a roadway. [MCL 257.662a(6)] Simply put, when an e-bike is ridden on the road, it is treated like a bicycle.

AGE RESTRICTIONS AND HELMET USE

Children under the age of 14 may not operate a Class 3 e-bike. However, they may ride as a passenger, if the e-bike is designed to accommodate passengers.

Riders and passengers of Class 3 e-bikes, who are under the age of 18, are required to wear a helmet that meets standards established by the United States Consumer Product Safety Commission or the American Society for Testing and Materials. All other e-bike riders are not required to wear a helmet. [MCL 257.662a(4)(b)]

NOT A MOTOR VEHICLE

Michigan law specifically excludes e-bikes from the definition of “motor vehicles.” (MCL 257.33) This means purchasing auto insurance for an electric bicycle isn’t required. However, it is recommended that e-bike owners consult with their insurance agent to see if it is covered under their homeowners or renters insurance policy. If not, an insurance rider may be required to insure an e-bike.



RULES INTENDED TO PROTECT CYCLISTS

A number of laws have been enacted with the intent of providing additional protection to cyclists. These laws are summarized below.

BICYCLE PASSING LAW

In 2018, the Michigan Legislature adopted a law that mandates how motorists must pass bicycles. Michigan was one of the last states in the country to pass this type of law. The law is codified in two statutes. The first instructs motorists how to pass a cyclist riding on the right side of the roadway and states, “The driver of a motor vehicle overtaking a bicycle proceeding in the same direction shall pass at a safe distance of at least 3 feet to the left of that bicycle or, if it is impracticable to pass the bicycle at a distance of 3 feet to the left, at a safe distance to the left of that bicycle



at a safe speed.” [MCL 257.636(2)] This statute also allows a motorist to pass a bicycle in a no passing zone, provided it is safe to do so. [MCL 257.636(3)] The second statute is virtually identical, but instructs motorists how to pass a cyclist riding on the left side of the roadway. This statute provides that, “The driver of a vehicle overtaking a bicycle proceeding in the same direction shall, when otherwise permitted by this section, pass at a distance of 3 feet to the right of that bicycle or, if it is impracticable to pass the bicycle at a distance of 3 feet to the right, at a safe distance to the right of that bicycle at a safe speed.” [MCL 257.637(3)]

Prior to the state adopting a bicycle passing law, a number of cities adopted ordinances requiring a distance of 5 feet when a motorist passes a bicycle. Other municipalities have a 3 foot safe passing law. All known ordinances do not include the language contained in the state statute that creates an exception to the mandatory passing distance when “it is impracticable” to pass with at least the minimum passing distance.

DRIVERS TRAINING – MANDATORY BICYCLE EDUCATION

In 2018, Michigan also adopted a new requirement for all driver education classes. This new law, which took effect on March 29, 2019, mandates that classroom time be spent raising awareness of vulnerable roadway users, including cyclists, and states:

“Classroom instruction shall include not less than 1 hour of information concerning the laws pertaining to bicycles, motorcycles, and other vulnerable roadway users, including pedestrians, and shall emphasize awareness of their operation on the streets, roads, and highways of this state. The laws of this state pertaining to awareness of bicycles, motorcycles, and other vulnerable roadway users, including pedestrians, shall also be incorporated into other subject areas of the curriculum where appropriate.” (MCL 256.657)

INJURY AND PROPERTY CLAIMS FOR BICYCLE/AUTOMOBILE COLLISIONS

When a bicycle/motor vehicle collision occurs, the cyclist may be entitled to bring four potential claims. These claims are summarized below.

MICHIGAN NO-FAULT PERSONAL PROTECTION INSURANCE BENEFITS

The Michigan No-Fault Act provides for the payment of personal protection insurance benefits (commonly referred to as “PIP” benefits) to Michigan residents injured as the result of an incident involving a motor vehicle, regardless of who was at fault. [MCL 500.3105(2)] A bicycle is not considered a “motor vehicle” and for this reason, an injured cyclist will not be entitled to PIP benefits, unless the injury arises from the operation or use of a motor vehicle. It is important to note that actual physical contact between a bicycle and a motor vehicle is not required, provided that the operation of the motor vehicle was a factor, that is more than incidental or fortuitous, in causing an injury to the cyclist. If a cyclist sustains an injury as a result of a collision with another cyclist, a road defect, or simply losing control of their bicycle, the cyclist is not entitled to recover PIP benefits under the Michigan No-Fault Act.

Since a large percentage of cycling injuries, and particularly the most serious injuries, are caused by motor vehicle/bicycle collisions, it is important to understand some basic concepts of the Michigan No-Fault Act.

On June 11, 2019, significant amendments to the No-Fault Act took effect. One of these amendments changes which insurance company may be responsible for paying no-fault benefits to an injured cyclist. Under the new law, an injured cyclist will first look to any insurance policy in which they are a named insured, their spouse, and a relative of either with whom they reside. If the cyclist is not insured under any of these auto no-fault policies, they will be assigned an insurer through the assigned claims plan. [MCL 500.3114(1) and MCL 500.3115] This is a government office that has been established as the last resort for residents who are auto collision victims to receive PIP benefits.

There are four basic types of PIP benefits available under the Michigan No-Fault Act:



ALLOWABLE EXPENSES

An injured person is entitled to recover “allowable expenses” consisting of “reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person’s care, recovery, or rehabilitation.” [MCL 500.3107(1)(a)] These benefits include medical expenses, in-home attendant care or nursing services, handicap-accessible accommodations, room and board expenses, rehabilitation expenses, special or handicap accessible transportation, mileage to and from healthcare appointments, and guardian expenses.

A cyclist who receives no-fault benefits from their insurer, a spouse’s insurer, or from the insurer of a resident relative will receive those benefits without any type of cap on allowable expenses until July 1, 2020. Beginning on July 1, 2020, the law requires insurers to sell policies with an option to cap or

limit allowable expenses to \$250,000, \$500,000, or no limit/cap. Additionally, certain people may qualify for a \$50,000 limit on allowable expenses and others may qualify and chose to opt out of all no-fault coverage. Any cyclist who chooses a policy which limits their no-fault coverage will be subject to the allowable expense, or no-fault limitations selected. (MCL 500.3107c and MCL 500.3107d)

Beginning June 11, 2019, in almost all cases, cyclists who receive their no-fault benefits through the assigned claims plan are limited to \$250,000 in allowable expense benefits. [MCL 500.3172(7)]

WAGE LOSS BENEFITS

When a Michigan resident is injured in an incident involving an automobile and cannot work as a result of their injuries, they are entitled to receive wage loss benefits, which are calculated at a rate of 85% of the injured person's gross pay for up to three years. [MCL 500.3107(1)(b)] Additionally, under the statute, work loss benefits cannot exceed a monthly maximum, which is adjusted in October of each year to keep pace with the cost of living.

REPLACEMENT SERVICES

An injured person may receive benefits as a result of having other people perform domestic-type services that the injured person would have performed, if not for their injuries. However, reimbursement for these services cannot exceed \$20 per day, and these benefits are only available for up to three years following the incident. [MCL 500.3107(1)(c)] Typical examples of replacement services include cleaning, laundry, cutting grass, and shoveling snow.

SURVIVOR'S LOSS BENEFITS

When an incident involving a motor vehicle results in death, dependents of the decedent are entitled to recover survivor's loss benefits (MCL 500.3108) and funeral and burial expenses. [MCL 500.3107(1)(a)]

Survivor's loss benefits are payable for three years and are comprised of several components, which include after-tax income, lost fringe benefits, and replacement service expenses. Additionally, survivor's loss benefits are subject to the same statutory monthly maximum applicable to work loss benefits.

MICHIGAN NO-FAULT PROPERTY PROTECTION INSURANCE BENEFITS

Michigan's No-Fault Act also provides for something called "property protection insurance," which is commonly known as "PPI coverage." The law requires that when there is "damage to tangible property arising out of the ownership, operation, maintenance, or use of a motor vehicle, as a motor vehicle," the no-fault insurance carrier is responsible for paying PPI benefits. [MCL 500.3121(1)]

Under the law, an insurance carrier is required to pay reasonable repair costs or replacement costs, less depreciation, whichever is less. Additionally, if applicable, the insurer is obligated to pay the value of loss of use. [MCL 500.3121(5)]

Vehicles and their contents, including trailers, are excluded from PPI benefit claims. [MCL 500.3123] Accordingly, when a cyclist is hit by a car, damage to their bicycle, helmet, clothing, lights, computer, and other





equipment is covered and eligible for repair or replacement costs by the appropriate PPI insurer. If a bicycle is damaged when it is being transported in (or on) a motor vehicle, it is specifically excluded from a PPI benefit claim. However, the owner of the bicycle may still be able to make a claim for property damage under their homeowners insurance policy, renters insurance policy, or bicycle specific insurance policy.

Like no-fault PIP benefits, PPI benefits are available regardless of who was at-fault for the collision. Additionally, the law does not require physical contact between the bicycle (or bicyclist) and the motor vehicle. Rather, the law only requires that the operation, maintenance, or use of a motor vehicle be a contributing factor to the collision.

PPI benefits are owed by the automobile insurance company for the owner of the vehicle involved in the collision. If the owner does not have insurance, the insurance carrier for the driver of the vehicle is obligated to pay PPI benefits. If the owner and driver of the vehicle involved in the

collision are not insured, there will be no automobile insurance company responsible for paying PPI benefits. However, insurance coverage for property damage may be available from other sources.

AUTOMOBILE LIABILITY CLAIMS

In addition to having the right to Michigan no-fault PIP benefits, a cyclist who is injured as a result of an incident involving a motor vehicle may also be entitled to bring a liability claim against the driver at-fault for the injury. The compensation recoverable in liability claims against negligent motorists includes damages for “noneconomic loss” and “excess economic loss.”

In order to successfully pursue a liability claim, an injured cyclist must first prove that the driver of the motor vehicle was at-fault for the incident. The legal word for fault is “negligence,” which simply means that the motorist failed to act as a reasonably careful person would act under the same or similar circumstances. Violations of the Michigan Vehicle Code, including speeding, failing to yield, and improper lane usage, are all evidence of negligence. If both the injured cyclist and the motorist were, in some way, negligent in causing the occurrence, the injured party may still recover damages, but the amount of those damages will be reduced by the percentage of the injured party’s fault. This concept is referred to as the “rule of comparative negligence.” If an injured person’s comparative negligence is greater than 50%, they may not receive noneconomic damages. [MCL 500.3135(2)(b)] Accordingly, if a cyclist fails to follow the laws outlined under “The Rules of the Road for Michigan Cyclists,” they will not necessarily be barred from bringing a liability claim. Rather, a violation of the rules of the road or the Michigan Vehicle Code by cyclists is simply evidence of comparative negligence.

Excess economic damages consist of those past, present, and future out-of-pocket expenses that are not compensable as no-fault benefits.

Noneconomic damages consist of those losses that affect a person’s quality of life, such as pain and suffering, incapacity, disability, loss of function, diminished social pleasure and enjoyment, scarring and disfigurement, and emotional distress. However, to recover noneconomic damages, it is not enough to prove that a motorist’s negligence caused a cyclist to be injured. In addition, the cyclist must establish that they

sustained a “threshold injury.” Under Michigan law, a threshold injury consists of one or more of the following: (1) serious impairment of body function; (2) permanent serious disfigurement; or (3) death. [MCL 500.3135(1)]

Serious impairment of body function is defined as “an objectively manifested impairment of an important body function that affects the injured person’s general ability to lead his or her normal life.” [MCL 500.3135(5)] Whether an injury constitutes serious impairment of body function or permanent serious disfigurement is dependent upon the facts and circumstances of each individual case.

UNINSURED AND UNDERINSURED MOTORIST CLAIMS

Uninsured motorist and underinsured motorist coverages are optional insurance coverages that may be purchased as part of an automobile insurance policy. It is highly recommended that cyclists purchase these important insurance coverages.

Michigan law requires all vehicles operated on roads and highways to be insured. Yet, statistics indicate that as many as 20% of Michigan drivers are uninsured. If an uninsured driver causes a collision resulting in an injury, uninsured motorist coverage allows the injured person to assert a claim against their auto insurance company, who will then stand in the shoes of the uninsured driver. This allows the injured person to recover noneconomic damages and excess economic damages up to the amount of uninsured motorist coverage in the same manner they would have if the at-fault driver had been insured.

Underinsured motorist coverage is similar to uninsured motorist coverage. In Michigan, drivers are currently only required to carry \$20,000.00 worth of insurance coverage to compensate someone injured or killed as a result of their negligence. Underinsured motorist coverage allows a person injured in a collision to bring a claim against their own insurance company for all damages above and beyond those covered by the negligent driver’s insurance coverage, up to the amount of underinsured motorist coverage purchased.



OTHER TYPES OF INJURY CLAIMS

In addition to an automobile liability claim, a cyclist who is injured due to the negligence of others may be entitled to bring other types of liability claims, which are discussed below.

DANGEROUS HIGHWAYS, STREETS, SIDEWALKS, AND BIKE PATHS

As a general rule, when a person is injured due to the negligent, wrongful, or unlawful conduct of a government entity or one of its employees, the law prevents a lawsuit which attempts to hold the government entity accountable for the injury. This concept is typically known as “sovereign immunity” or “governmental immunity,” and is contained in the Government Tort Liability Act, MCL 691.1401, et seq. However, the Government Tort Liability Act contains three exceptions to governmental immunity, which

include claims for harm caused by: (1) defective highways; (2) defective public buildings; and (3) negligently driven government motor vehicles. Accordingly, if a cyclist is injured due to a government agency's failure to adequately maintain a roadway or sidewalk, they may have a cause of action, provided the facts and circumstances of their injury fit within the highway exception to Michigan's governmental immunity law.

The law requires government agencies that have jurisdiction over a highway or roadway to maintain the highway or roadway in reasonable repair, so that it is "reasonably safe and convenient for public travel." (MCL 694.1402 and MCL 224.21)

The law allows bicyclists (as well as motorists and pedestrians) to bring a lawsuit if they are injured due to the government agency's failure to repair and maintain the roadway. However, the law limits the state and county's duty to maintain the highway to "the improved portion of the



highway designed for vehicular travel and does not include sidewalks, trail ways, crosswalks, or any other installation outside of the approved portion of the highway designed for vehicular travel.” In other words, a cyclist may be entitled to compensation from a county or the state for its failure to maintain the surface of a roadway if they are riding in a lane that is also available for motor vehicle travel. However, if the same cyclist is traveling on a bike lane or shoulder adjoining a highway which is not in reasonable repair, the law does not allow the cyclist to be compensated by the state or a county government. Additionally, the Government Tort Liability Act does not impose a duty on the state and county road commissions for a defective or dangerous design, negligence due to the posting of signs, or negligent maintenance of traffic control devices. Rather, liability only extends to a failure to maintain the roadway surface designed for vehicular travel.

In order to succeed against a governmental agency for injuries or damages caused by defective highways, it is also necessary to establish that the governmental agency knew, or in the exercise of reasonable diligence should have known, of the existence of the defect and had reasonable time to repair the defect before the injury took place. (MCL 691.1403)

Municipalities have a duty to maintain a sidewalk installed adjacent to a municipal, county, or state highway in reasonable repair. However, in order to successfully maintain a cause of action against a municipality for its failure to maintain a sidewalk, it is necessary to establish that the municipality knew of the defect in the sidewalk, or in the exercise of reasonable diligence should have known about the existence of the defect in the sidewalk, at least 30 days before the incident or injury occurred. Further, the defect must be “(1) a vertical discontinuity defect of 2 inches or more in the sidewalk and/or (2) a dangerous condition in the sidewalk itself of a particular character other than solely a vertical discontinuity.” (MCL 691.1402a)

To preserve this type of claim, an injured person must provide “notice” in a manner that complies with applicable statutes. These notice requirements can be complicated and if not done correctly, can result in an individual being barred from bringing an otherwise meritorious claim. Generally,



notice for claims against the State of Michigan and municipalities must include the exact location and nature of the defect, the injury sustained, and the names of any witnesses to the occurrence, within 120 days from the date the injury occurred. (MCL 691.1404) Claims for damages due to the failure of a county or county road commission to maintain roads, bridges, or culverts in reasonable repair require an appropriate notice within 60 days of the occurrence to the county clerk and chairperson of the county road commissioners and must “set forth substantially the time and place where the injury took place.” (MCL 224.21) Different deadlines may apply to the notice provisions and time limitations for minors and individuals deemed to have a disability which causes them to be incapable of giving notice.

PARKING LOTS

When a cyclist is injured as the result of a defective or dangerous condition that is part of a private parking lot, they may have a claim

against the possessor of the property/parking lot. This type of claim is typically referred to as a negligence or premises liability claim. In order to successfully pursue a premises liability claim, an injured person must establish that: (1) the property owner owed the injured person a legal duty; (2) the property owner was negligent and/or breached their duty; (3) the injury caused the injured person to suffer damages; and (4) the property owner's negligence was a proximate cause of the person's injuries.

Michigan courts have adopted a legal doctrine typically known as the "open and obvious defense," which plays a major role in most premises liability claims. Essentially, this legal doctrine states that if a dangerous or defective condition is so open and obvious that a reasonable person would take care to avoid it, the possessor of the property does not owe a duty of reasonable care to the injured party, and the injured party is barred from bringing a claim for their injuries.

DEFECTIVE EQUIPMENT

If an injury is caused by a defective bicycle or product, the injured person may be entitled to recover under a legal theory referred to as "product liability." Typically, product liability claims allege that a product was negligently manufactured or designed. Product liability claims may also be brought under a theory that the manufacturer or seller of a product breached an express or implied warranty. An express warranty is a representation or statement made by a manufacturer or seller that the product has certain characteristics or will meet certain standards. An implied warranty is a duty imposed by law which requires the manufacturer's product to be reasonably fit for the purposes and uses for which it is intended, or uses which are reasonably foreseeable, by the manufacturer.

PROMOTERS OF RACES AND/OR ORGANIZED RIDES

Claims alleging an injury due to the negligence or wrongful conduct of the promoter of a race or organized ride are extremely difficult under Michigan law. Almost all races and organized rides require a signed release as a condition of participation in the event. Michigan courts have consistently held that a release is enforceable and a complete defense for damages caused by ordinary negligence. However, courts have held that claims

may be pursued, even when a release is signed, if the injury is caused by gross negligence or willful and wanton misconduct, or when the injury arises from an unreasonably dangerous condition that is not associated with a risk inherent in the sport.

Pursuant to MCL 700.5109, a parent or guardian of a minor may only release a nongovernmental, nonprofit organization from liability for personal injury sustained by the minor during a specific recreational activity.

Additionally, a participant in a race or organized ride may be injured due to the wrongful conduct of another racer or participant. However, Michigan courts recognize that participants in these types of activities assume certain risks when they agree to participate in sports or recreational activities. Accordingly, in order to succeed in a claim against another participant in a sporting event, it must be established that the wrongdoer acted recklessly. Mere negligence on the part of the wrongdoer is not enough to establish a successful claim.

LANDOWNER LIABILITY

Landowners and those that possess land can be held liable for injuries caused by their negligence or wrongful conduct. However, the Natural Resources and Environmental Protection Act (MCL 324.73301) bars a claim for injuries to a person who is on the land of another without paying the owner, tenant, or lessee of the land valuable consideration for the purpose of any outdoor recreational use or trail use, with or without permission, unless the injuries were caused by gross negligence or willful or wanton misconduct of the owner, tenant, or lessee.

DOGS AND OTHER ANIMALS

If a cyclist is injured as the result of a domestic or farm animal, they may have a claim against the animal's owner. Dogs are the animals most likely to injure a cyclist. In Michigan, a dog owner is strictly liable for damages caused to a person bitten by their dog. (MCL 287.351) The only exceptions to this rule are if the injured person provoked the dog or was trespassing at the time of the bite. A landlord may also be held liable for injuries caused by a bite inflicted by a tenant's dog, if the landlord is aware of the dog's vicious nature.

STOLEN AND DAMAGED BICYCLES

Earlier in this handbook, property damage claims due to automobile/bicycle collisions were discussed. However, collisions involving automobiles are not the only way that cyclists suffer property damage. For example, it is common for cyclists to forget there is a bicycle on their roof rack before attempting to pull into a garage. Unfortunately, bicycles are also frequently stolen. Stolen or damaged bicycles are often covered under a homeowners insurance policy or a renters insurance policy. However, many insurance carriers require bicycles to be covered under an insurance policy rider and/or additional insurance coverage.



LIABILITY CLAIMS AGAINST CYCLISTS

When a cyclist is negligent in the operation of a bicycle and causes an injury or property damage to a motorist, pedestrian, property owner, or another cyclist, they may be liable for the harm caused by their negligence. Typically, homeowners insurance or renters insurance policies provide coverage for claims like these, which are made against cyclists. This coverage also typically includes the cost of an attorney and other expenses associated with the defense of the claim.

BICYCLE RACKS

The Michigan Vehicle Code prohibits motorists from “obscuring or partially obscuring their license plate.” However, the relevant statute specifically states that the attachment of a bicycle rack or a bicycle on a rack that obscures or partially obscures a license plate is not considered a violation of the law. [MCL 257.225(2)]

It is important to securely mount a bicycle on a bike rack and remove anything that could fall off the bike, including seat bags and water bottles. All motorists are required to prevent cargo from dropping or escaping from a vehicle they operate. [MCL 257.720(1)]

BICYCLE SPECIFIC INSURANCE

Bicycle specific insurance allows for certain types of coverages for cyclists that may not otherwise be available. For example, it allows cyclists who do not own an automobile to purchase uninsured and underinsured motorist coverage. Other coverages available include coverage for liability, bicycle theft and damage, medical payments, and trip interruption. Bicycle specific insurance can be extremely valuable for some cyclists. However, most of the coverages available through bicycle specific insurance policies may already be available or purchased through other insurance policies, such as homeowners insurance, renters insurance, and automobile insurance policies. For this reason, the value of bicycle specific insurance will be dependent upon each individual cyclist's unique situation.

CONCLUSION

There are numerous laws that may apply to a bicyclist. These laws and the manner in which they are applied to a given factual scenario can often be complicated and require a thoughtful and thorough legal analysis. If you, a family member, or a friend are in need of legal representation, or simply have a question, please contact the author or one of the other attorneys at the Sinas Dramis Law Firm. Additionally, please visit the law firm's website and blog devoted to bicycling at www.michiganbikelawyer.com for updates and developments on laws and legislation which may affect the rights of bicyclists.



ABOUT THE AUTHOR

Bryan Waldman is a partner and the President of the Sinas Dramis Law Firm. He has been a trial lawyer since 1992, has litigated cases in over 40 jurisdictions, and has been recognized in multiple publications, including “The Best Lawyers in America,” for his work in the field of personal injury litigation. In 2003-2004, Bryan served as President of the Michigan Trial Lawyers Association, and in 2008-2009, he served as Chair of the Michigan Civil Service Commission.

Bryan has been an avid cyclist for over 25 years and is a tireless advocate for all who ride a bicycle in the State of Michigan. He was named 2016 Michigan Cyclist of the Year by PEAC (Programs to Educate All Cyclists) and in 2013, he received the Bicycle Advocate of the Year Award from the League of Michigan Bicyclists.

Bryan is a member of Bike Law, a national network of attorneys dedicated to serving cyclists around the country. He serves on the Board of Directors and is the Advocacy Chair for the League of Michigan Bicyclists, and is a member of the League of American Bicyclists, Michigan Mountain Biking Association, International Mounting Biking Association, and USA Cycling. Bryan has competed in road races, criteriums, cyclocross races, and mountain bike races. In addition to racing bikes, he often commutes to work by bicycle and uses his cargo bike to shop and run errands. However, his most cherished moments on a bicycle are those spent with family and friends.



ABOUT THE FIRM

SINAS, DRAMIS, LARKIN, GRAVES & WALDMAN, P.C.

The Sinas Dramis Law Firm was established in 1951 and is best known for representing people in matters dealing with serious personal injury and wrongful death throughout the entire State of Michigan. Five of the firm's attorneys are included in the publication "The Best Lawyers in America" in the field of plaintiff's personal injury litigation. Another member of the firm has been recognized in the same publication in the field of family law. Nine of the law firm's attorneys have been recognized as Michigan Super Lawyers and two attorneys have been selected as Rising Stars by the same publication.

The Sinas Dramis Law Firm frequently represents cyclists and runners and has a deep commitment to the safety of outdoor athletes. The firm sponsors multiple cycling clubs and regularly sponsors cycling and running events, including races and organized rides. Additionally, each year the firm co-sponsors events known as "Lids for Kids," which give bicycle helmets to children and ensure that they are properly fitted. Since 2003, the events have resulted in over 11,000 children being given and fitted with bicycle helmets.

Members of the firm frequently participate in bicycle races, bicycle tours, triathlons, duathlons, and distance running events.





The Sinas Dramis Law Firm is committed to helping people know the law and understand their rights. The firm has created the following websites to provide information regarding specific areas of Michigan law:

- www.sinasdramis.com** – Michigan Personal Injury Law
- www.autonofaultlaw.com** – Michigan Automobile Law
- www.sdmichiganfamilylaw.com** – Michigan Family Law
- www.michiganbikelawyer.com** – Michigan Bicycle Law



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