

A Legal Handbook For Michigan Cyclists

By: **BRYAN WALDMAN**
Sinus Dramis Law Firm

A practical guide
for people who
rely on bicycles
as a form of
recreation and
transportation





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INTRODUCTION

A growing number of people rely on bicycles as a form of recreation and transportation.

According to the League of American Bicyclists, the number of people who frequently commute by bicycle in the United States increased 39% from 2000 to 2010. During the same time period, the percentage of frequent bicycle commuters increased by 63% in the 70 largest cities in the United States. Further, a survey conducted by the U. S. Department of Transportation's National Highway Traffic Safety Administration and the Bureau of Transportation Statistics concluded that approximately 66% of cyclists primarily use public roads while riding, as opposed to bike paths, trails, or sidewalks. Accordingly, it is important that all people that use public roads understand the laws that apply to cyclists. This handbook summarizes and attempts to clarify the laws that most often apply to Michigan cyclists.



THE RULES OF THE ROAD FOR MICHIGAN CYCLISTS

The laws that apply to the operation of bicycles on Michigan's roads, sidewalks, and pathways are set forth in the Michigan Vehicle Code. A violation of a provision of the Michigan Vehicle Code is a civil infraction, which is a non-criminal violation of a law which typically results in punishment in the form of a fine.

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.”* 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.”*

First and foremost, it must be understood that **cyclists have an absolute right to use public roads**. The Michigan Vehicle Code clearly states that each person riding a bicycle upon a roadway has all the rights and is subject to all of the duties applicable to the driver of a motor vehicle. (MCL 257.657) However, when using the roads, a cyclist is 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 (5) 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 unreasonably unsafe 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 operating 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 (2) 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 (2) ABREAST

Cyclists must not ride more than two (2) bicycles abreast. (MCL 257.660b)

LIGHTS

If riding one-half hour after sunset, or 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 five hundred (500) feet to the front and a red reflector on the rear which is visible from all distances from one hundred (100) feet to six hundred (600) feet when directly in front of lawful low beam headlights. A lamp emitting a red light visible from a distance of five hundred (500) feet may be used in addition to the red reflector. [MCL 257.662(1)]

BRAKES

A bicycle must be equipped with a brake which 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 him/her 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

Bicycles may be ridden upon a sidewalk, 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 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 himself or his bicycle to a street car or a vehicle upon a roadway. (MCL 257.659)



LIMITED ACCESS HIGHWAY

A cyclist may not ride on a limited access highway. (MCL 257.679a)
A limited access highway is defined as “a highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right or access to or from except at such points only, and in such a manner, as made to be determined by the public authority having jurisdiction over such highway, street, or roadway.” (MCL 257.26)

HELMETS AND CELL PHONES

There is no law that requires Michigan cyclists to wear helmets or prevents them from talking on cell phones while riding. However, it is obviously safe practice to wear a helmet and avoid cell phone use while riding a bicycle.

MICHIGAN NO-FAULT INSURANCE

The Michigan No-Fault Act provides for the payment of certain insurance benefits to all people injured in a motor vehicle accident, 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 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 significant factor 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 his/her bicycle, the cyclist is not entitled to recover no-fault 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.

There are four (4) basic types of no-fault benefits payable under the Michigan No-Fault Act:

ALLOWABLE EXPENSES

An injured person is entitled to recover “*allowable expenses*” consisting of “*all reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person’s care, recovery, or rehabilitation.*” [MCL 500.3107(1)(a)] Additionally, these benefits are payable for life and are payable without regard to any type of “*cap*” or “*ceiling.*” 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.

WAGE LOSS BENEFITS

When a person is injured in an automobile accident and cannot work as a result of their injuries, they are entitled to receive wage loss benefits,

which are calculated at a rate of eighty-five percent (85%) of the injured person's gross pay for up to three (3) 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 twenty dollars (\$20.00) per day, and these benefits are only available for up to three (3) years following the accident. [MCL 500.3107(1)(c)] Typical examples of replacement services include household chores, such as cleaning, laundry, cutting grass, and shoveling snow.

SURVIVOR'S LOSS BENEFITS

Where a motor vehicle accident 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 (3) 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.

Typically, an injured person will receive no-fault benefits from his/her own no-fault insurance company. If a cyclist does not own an automobile or have auto insurance, he/she may receive no-fault benefits from the insurer of any relative with whom he/she resides. If the injured person does not have a no-fault insurance policy, and does not live with a relative who has a no-fault insurance policy, then a cyclist will receive his/her benefits from the insurer of the "vehicle involved" in the accident. If the vehicle is uninsured, the injured cyclist may make a claim with the Michigan Department of State, Assigned Claims Facility. This is a government office that has been established as the last resort for auto accident victims to receive no-fault benefits.

The Michigan No-Fault Law is far too complicated to be explained adequately in a publication of this nature. For more information regarding the Michigan No-Fault Act, please visit the Sinas Dramis Law Firm website dedicated to the Michigan Auto No-Fault Law at **www.AutoNoFaultLaw.com**. Additionally, feel free to contact the Sinas Dramis Law Firm and request a copy of a separate publication entitled, “*The Michigan No-Fault Automobile Insurance Law: Your Rights and Benefits*,” written by George Sinas.

In addition to a claim for no-fault benefits, an injured cyclist may also have a tort or liability claim if another person or party is at fault and/or their negligence causes the cyclist to be injured. The potential types of liability claims are discussed below.



POTENTIAL LIABILITY CLAIMS

AUTOMOBILE NEGLIGENCE

In addition to having the right to Michigan no-fault 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 fifty percent (50%), they may not receive noneconomic damages. [MCL 500.3135(2)(b)] Accordingly, if a cyclist fails to follow the rules of the road outlined in Section II, he/she 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 noneconomic 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 he/she 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.

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

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 (3) exceptions to governmental immunity, which include: (1) claims for 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 Act.

The Government Tort Liability Act’s highway exception describes the duty of government agencies to maintain roadways as follows:

Each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. (MCL 694.1402)

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 state and county highway agencies’ duty to “*the improved portion of the highway*

designed for vehicular travel and does not include sidewalks, trailways, 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 he/she is riding in a lane that is also available for motor vehicle travel. However, if the same cyclist is traveling on a bike path or shoulder adjoining a highway which is not in reasonable repair, the law does not allow him/her 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 thirty (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)

Finally, an injured person **must** serve notice on the governmental agency of the exact location and nature of the defect, the injury sustained, and the names of any known witnesses to the occurrence within one hundred twenty (120) days from the time the injury occurred. This notice

requirement can be more complicated than it appears and if done incorrectly, can result in an individual not being able to pursue a claim against a governmental agency. The notice may be served upon any individual, either personally or by certified mail, return receipt requested, who may be lawfully served with civil process directly against the governmental agency. In the case of the State, the notice shall be filed in triplicate with the Clerk of the Court of Claims. Different deadlines may apply to the notice provisions and time limitations for minors and individuals deemed physically disabled or 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, he/she 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 his/her 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 his/her 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 release a person 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 Michigan Recreational Land Use 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 a 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 and 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, he/she 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 his/her 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.

OTHER INSURANCE COVERAGE AND CLAIMS

UNINSURED AND UNDERINSURED MOTORISTS

Uninsured and underinsured motorist coverage is an optional coverage that may be purchased as part of one's automobile insurance policy.

Uninsured motorist coverage provides a source of recovery when an injury is caused by a negligent or reckless driver who is not insured.

Underinsured motorist coverage provides an additional source of recovery when an injury is caused by a negligent or reckless driver who is not adequately insured.

PERSONAL LIABILITY INSURANCE

This coverage allows cyclists protection if their negligent or wrongful conduct harms or injures someone else. This type of coverage may be available through a homeowners policy, renters policy, or umbrella policy.

PROPERTY DAMAGE

Stolen or damaged bicycles are also often covered under a homeowners insurance policy or renters insurance policy. However, expensive bicycles may require a rider and/or additional coverage.

BICYCLE SPECIFIC INSURANCE

Bicycle specific insurance allows certain types of coverages for cyclists that would 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. Unfortunately, this coverage is not widely available and at this time, is not available in Michigan. However, all of the coverages available through a bicycle insurance policy may already be available or purchased through other insurance policies, such as homeowners insurance, renters insurance, and automobile insurance policies.

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.sdbicyclelawyer.com for updates and developments on laws and legislation which may affect the rights of bicyclists.



ABOUT THE AUTHOR

Bryan Waldman



Bryan Waldman is a partner at the Sinas Dramis Law Firm. He has been a trial lawyer for over twenty years, has litigated cases in over forty jurisdictions, and has been listed in multiple legal publications, including *The Best Lawyers in America* and *Michigan Super Lawyers* in the field of personal injury litigation. The National Trial Lawyers Association has recognized him as one of “*The Top 100 Trial Lawyers.*” In 2003-2004, Bryan served as the President of the Michigan Trial Lawyers Association (currently Michigan Association for Justice), and in 2008 and 2009 he served as Chair of the Michigan Civil Service Commission.

Bryan has been an avid cyclist for over twenty years. He is a member of the League of Michigan Bicyclists and USA Cycling. Bryan is a member of the CFT-Sinas Dramis Law Cycling Team and competes in road races, criteriums, and cyclocross races. He enjoys a variety of outdoor sports and has also competed in numerous triathalons and distance runs. Bryan’s favorite events include the Barry-Roubaix Gravel Road Race, Mad Anthony Cyclocross Race, Grand Rapids Cycling Classic Criterium, Chicago Triathlon, Dances With Dirt, and Big Sur Marathon. However, his most cherished moments on a bicycle are those spent with family and friends — particularly, rides with his father, Barry, and son, Max.

ABOUT THE FIRM

Sinas Dramis Law Firm

The Sinas Dramis Law Firm was established in 1951 and is best known for its excellent reputation representing plaintiffs in matters dealing with serious personal injury and wrongful death. Each year since 2010, *U.S. News & World Report*, in conjunction with the publication *The Best Lawyers in America*, ranked the Sinas Dramis Law Firm as a “Tier 1” firm in the area of plaintiff’s personal injury law – the only law firm in the mid-Michigan area to consistently receive that distinction. Additionally, five of the firm’s attorneys (Barry Boughton, George Sinas, Timothy Donovan, Jim Graves, and Bryan Waldman) have been recognized by *The Best Lawyers in America* in the field of plaintiff’s personal injury litigation. Another member of the firm, Bernie Finn, has been recognized in the same publication in the field of family law. Three members of the law firm (George Sinas, Bryan Waldman, and the late Lee Dramis) have served as President of the Michigan Trial Lawyers Association (currently the Michigan Association for Justice). In addition, two members of the law firm (George Sinas and Timothy Donovan) have served as Chairperson of the State Negligence Law Section. One former member of the law firm, Donald L. Reisig, served as President of the State Bar of Michigan.

The Sinas Dramis Law Firm frequently represents cyclist and runners and has a deep commitment to the safety of outdoor athletes. The firm is a title sponsor of the CFT-Sinas Dramis Law Cycling Team. Additionally, each year the law firm co-sponsors an event called “Heads Up for Safety,” which gives bicycle helmets to children and ensures that they are properly fitted. Since 2003, the event has fitted over 4,200 children with bicycle helmets.

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





SINAS DRAMIS LAW FIRM

Toll Free: (866) 758-0031

www.sinasdramis.com

Lansing Office:

3380 Pine Tree Road,
Lansing, MI 48911

Grand Rapids Office:

15 Ionia Ave., S.W., Ste. 300
Grand Rapids, MI 49503

Chicago Office:

321 N. Clark St., 5th Floor
Chicago, IL 60654-4714