

Your Right to the Road

by Steven M. Magas, The Bike Lawyer



Many of us believe that as cyclists we have a right to the road. While you may be familiar with the rules in your home state or city, do yourself a favor the next time you head out for your next trip and look up the laws where you will be riding.

John Forester wrote some famous words in his book *Effective Cycling*: “Cyclists fare best when they act and are treated as drivers of vehicles.” If you think and behave as a “vehicle operator” you will generally get the right answer to most “What should I do if?” questions.

Bicycle operation is permitted on the roads of all 50 states. In general, bicycles are either defined as a “vehicle” or are granted the rights and responsibilities of one while on roadways. Either way, once you cross the threshold from being “not on” the road to being “on” the road, you step into a new legal world filled with duties and obligations.

Where do you find the rules?

The sidebar includes a listing of links to each state’s laws. From there you can search

for each state’s traffic code and bike laws. Another good source is the League of American Bicyclists state law webpage: www.bikeleague.org/action/bikelaws/state_laws.php.

City codes can be more difficult to find, but two good sources for locating them are www.mrsc.org/codes.aspx?r=1 and www.municode.com.

Traffic signals and stop signs

Very little causes more animosity against cyclists than cyclists who ignore stop signs and red lights. Cyclists must obey stop signs, traffic lights and other traffic control devices and can be ticketed, just like motorists, for violating these rules. The rules are modified in some jurisdictions. For example, under an eminently sensible Idaho law, a cyclist is required to “slow down” when approaching a stop sign and yield to oncoming traffic, but may “cautiously make a turn or proceed through the intersection without stopping.”

Where to ride? The AFRAP rule.

The AFRAP rule is one of the most important, virtually universal rules of the road for cyclists. AFRAP stands for “As Far Right As Practicable” and the concept is found, in some form, in virtually all 50 states. In essence, the rule says that once on the roadway bicycle operators don’t get to ride wherever they want. Bicycle operators must ride to the right. But how far to the right? What does as far right as “practicable” mean?

Legislatures, in using the word “practicable” clearly intended to give the bicycle operator the right to both use the road and pick a path that is safe given conditions. I have always argued a “practicable” distance from the right side of the lane is a dynamic concept – one that is constantly changing based on road conditions, weather, debris, traffic, lane width, obstructions, parked cars, and more. I argue that there is *no* distance which is automatically “practicable” and that, at a minimum, the cyclist should be permitted to ride in the right hand tire track, two to three feet

off the white edge line. Depending on circumstances, however, a “practicable” distance from the right may expand to a point in the middle of the lane.

A legal discussion of what “practicable” means only arises after a crash, when cops and lawyers are trying to assess blame. For you, the touring cyclist, keep Forester’s words in mind and behave like a vehicle operator. This guiding principle will usually keep you “in the right.”

Riding two abreast and impeding traffic

In most states, riding two abreast is specifically permitted, though some states still keep the single file rule. Check your planned riding state *before* you leave so you know what the rule is.

You will also want to check to see how you the states you are riding in handle “impeding traffic” charges. Cyclists are often seen by motorists as slow-moving vehicles which “impede” faster moving cars. The law in many states is that vehicles may not be operated “at such a slow speed as to impede the reasonable and normal flow of traffic...” Cyclists are, from time to time, charged with violating this law.

An important Ohio case, *Trotwood v. Selz*, is relevant here. Steven Selz was ticketed for “impeding traffic” even though he was pedaling 17 miles per hour *uphill* on a five-lane roadway. The prosecution argued that if Steve could not travel the 45-mile-per-hour speed limit he should not be allowed on the busy state route. The trial judge agreed, acting to “protect” Steve. Fortunately, the court of appeals reversed the conviction and agreed with our argument that as long as Steve was traveling at a reasonable speed for a *cyclist* he could not impede traffic — rather, he *was* traffic.

Bike lanes and paths

Bike lanes are a very controversial topic. In many states you are required to use a bike lane if one is available to you. The language is typically that you must use “a bicycle lane or path when a bicycle lane or path is adjacent to or near the roadway.” There are frequently a variety of exceptions to this rule, such as:

- When passing another vehicle or pedestrian in the lane.
- When preparing to turn left.
- When preparing to turn right.
- When continuing straight through an intersection and the bike lane is to the right of the right turn lane.
- When avoiding “debris” or other conditions.

Sidewalks

Most readers of this publication would not dream of riding on the sidewalk, particularly

while on tour. I believe this is because we realize, either intuitively or deductively, that the typical sidewalk is not conducive to safe riding at reasonable cycling speeds. Sidewalks are filled with pedestrians, children, animals, signs, posts, and more obstructions. Further, each intersection presents the cyclist with a number of lousy choices. Slow down, dismount, and walk? Ride into the path of right-turning traffic from a point off the roadway? Finally, in many areas, particularly bigger cities, riding a bicycle on the sidewalk is against local law.

Brakes

State law typically mandates specific braking requirements. Some states simply require an “adequate” brake, while others follow the Uniform Vehicle Code’s requirement (“stop in 15’ from 10 mph on flat, dry, level pavement”), while others have some type of “skid” requirement (e.g., “a brake which will enable the operator to make the braked wheel skid on dry, level, clean pavement”).

Police almost never ticket cyclists for violating the “brake” rules and most readers here will be using powerful brakes to slow down fully loaded touring steeds. However, if you choose to venture out on a fixed-gear bike, be warned that cyclists have been given tickets if those bikes are not equipped with some sort of braking device.

Lights

Bicycle operators have been required to have lights when riding in the dark since the late 1800s. Back then lawmakers wanted to make sure pedestrians could see oncoming bikes and leap out of the way. Today, lights are required for night riding in every state. However, the purpose is primarily to let other bigger faster vehicles know that you are there. Today’s technology provides us with many lighting options that actually work to light up the road *and* provide protection. You generally must light up both the front (with a white light) and the rear (with a red light). Many states have modified lighting requirements to permit blinking lights.

Helmet Laws

There is no federal law mandating helmets for cyclists. As of this writing, the Bicycle Helmet Safety Institute (www.bhsi.org) notes there are helmet laws on the books in 22 states and the District of Columbia. In addition, there are numerous local helmet laws of varying flavors and requirements. For example, according to BHSI there were no less than 39 cities in Missouri alone that had separate helmet laws. Most state and local laws apply to minors, although the age varies from

“all ages” to under 18, under 17, under 16, to “passengers under 5.” As always, consult local listings for the most up-to-date laws.

Headphone laws

Like your iPod? Be careful in Rhode Island, California, and a few other states, where operating a bicycle while wearing “earphones” is unlawful. Oddly, in Ohio wearing headphones is only unlawful if you are operating a motor vehicle, but not a bicycle. Some states have no rules about earphones.

DUI/BUI

One statistic that has always troubled me indicates that of the 600-800 bicycle riders killed each year on our roadway, some 20 percent have a blood alcohol level that is in excess of the legal limit. If you choose to drink and ride, you should know that you can be busted for “biking under the influence.” In some states, the full array of DUI penalties apply regardless of your choice of vehicle. Thus, you can have points assessed against, or lose, your motor vehicle operator’s license, or even spend time in jail, for operating a bicycle while impaired. In other states, penalties are limited and your motor vehicle license is not effected.

If you get a BUI conviction you can also face travel restrictions. Bob Mionske notes in *Bicycling and the Law* that access into Canada may be limited for a BUI. Under Canadian law, cyclists convicted of a criminal offense, such as a BUI conviction, may be deemed “criminally inadmissible” by Canadian Immigration and not permitted to enter Canada.

Indecent Exposure!

Touring cyclists, like everyone else on the planet, sometimes hear the “call of nature” at the most inopportune times, when no indoor facilities are available. If you elect to answer that call outdoors you may face some legal exposure — a ticket for “urinating in public,” or, at worst, “indecent exposure.” You should seriously consider hiring a lawyer for any such ticket, especially the “indecent exposure” charge, since this is considered a “sex crime” in some jurisdictions and you could be placed on a sex offender list! CYP

Steven Magas is an avid cyclist and Ohio trial lawyer who has handled hundreds of bicycle cases over the past 25 years. He is the co-author of the epic tome, Bicycling and the Law with Olympic cyclist-turned-lawyer, Bob Mionske. He also sits on the board of the Ohio Bicycle Federation, and lobbies at all levels of government for laws favoring cyclists. He can be reached at BikeLawyer@aol.com or 513-484-BIKE.