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Cyclists' Equal Right to the Road

What Transportation Article §21-1202 gave, the tort law takes away

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Contents

- We have high confidence that tort law undermines equal right to the road
- SB 808 is one of several options considered
- SB 808 has an acceptable risk of unintended consequences

Tort Law Undermines Equal Right to the Road: Lines of Evidence

- General principals of negligence law
- Case law
- Other evidence

Unequal protection of cyclists is to be expected

Unequal size

Cyclist always the one needing remedy

Contributory negligence

Cuts off remedy, always to cyclist disadvantage

Flexible definition of negligence
“reasonable person”

A skilled cyclist does not rely on drivers respecting right of way; so cyclist negligent if crash occurs due to driver violation

Average juror not a cyclist.

...and may view some “safe cycling” as unreasonable

Bike clubs train defensive cycling

So if struck, one must not have been cycling safely.

Case Law: Does duty to ride defensively mean that cyclist is negligent when driver violates right of way?

| Type of crash | Cyclist is not negligent | A matter for the jury | | | Directed verdict for driver sustained |
|----------------------|--------------------------|-----------------------------------|-----------------------------------|-----------------|---------------------------------------|
| | | Trial finds cyclist negligent | Directed verdict for driver | | |
| | | | Reversed | Denied | |
| Right hook | SB 808 | | | | DC ¹ |
| Door zone | SB 808 | | | NY ² | |
| Left cross | | CA ³ , MD ⁴ | VA ⁵ , AL ⁶ | | |
| Driver has stop sign | | | | SC ⁷ | |

^[1] Washington v. A&H Garcias Trash Hauling Co, 584 A2d 544 (DC 1990). Motorists look for other motor vehicles, so cyclist riding in parking lane where motor vehicles can not fit can not reasonably expect truck driver to make sure right lane is clear before making right turn from left lane.

^[2] McFadden v. Bruno, 37 AD 3d 177 (NY Appellate Div., 1st Dept. 2007). Speed of cyclist is a fact for jury to consider in a door-zone case.

^[3] Fietz v. Hubbard, 59 Cal. App. 2d 124 (1943). Whether cyclist riding on sidewalk should have seen and avoided car is matter for jury

^[4] Ennis v. Argueta (Montgomery Circuit Court Case #293853V, May 6, 2009) (Cyclist hit rear of truck so should be able to avoid crash).

^[5] Rascher v. Friend, 689 SE2d 661 (VA 2010). Whether cyclist may take eyes off a vehicle signaling left, to check speedometer, is matter for the jury.

^[6] Lindsay v. Cantrell, 649 So. 2d 1277 (AL 1994). Cyclist riding on sidewalk.

^[7] Bradley v. Keller, 156 SE 2d 638 (SC 1967). Whether cyclist should have avoided car is a matter for the jury.

Other evidence that tort law imposes uncodified duties

- Police Reports and Police Statements
 - Attribute fault to cyclists with the right of way (e.g. Yates case)
 - Statements to media help condition jury expectations
- Insurance companies deny claims by cyclists with right of way
 - Calls to WABA seeking assistance/WABA crash tracker
 - Geico treats cyclists in door zone as 20% responsible for crash

Legislative Options Considered

Unequal size

Cyclist always the one needing remedy

Contributory negligence

First draft of bill: Exempted cyclists operating legally

Flexible definition of negligence “reasonable person”

SB 808: Title 21 defines due care

Alternative: Identify specific sections that define due care for specific duties; *e.g.* §21-201, subtitle 3, §21-1205, §21-1205.1 for lane position

Average juror not a cyclist.

...and may view some “safe cycling” as unreasonable

Bike clubs train defensive cycling

So if struck, one must not have been cycling safely.

Risk of Unintended Consequences

Risks SB 808 does not enable:

Innocent driver liable where cycling was legal but risky (e.g. driver unable to see a nearly invisible cyclist during bad weather)

Reason

Driver not negligent

Cyclist escapes liability to others:

Driver suddenly steps into door zone)

Damages if cyclist violates uncodified duties

Driver contributorily negligent

Bikes small, few such duties

Risk SB 808 could enable:

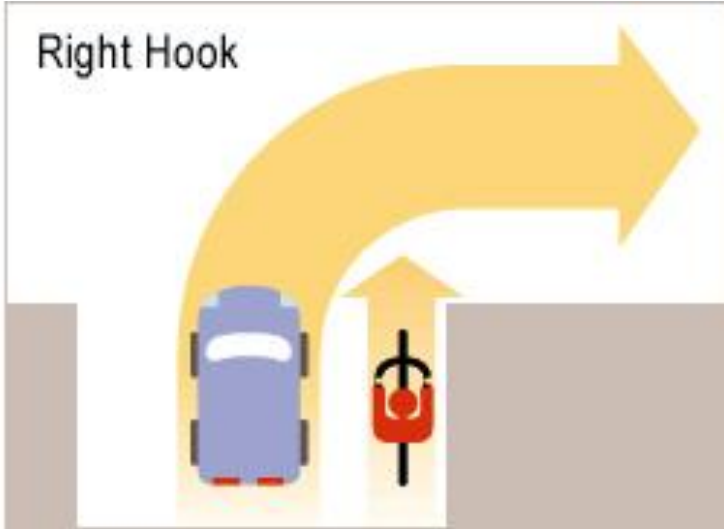
Cyclist escapes liability in certain freak accidents (e.g.)

Cyclist swerves to avoid car door, driver swerves to avoid cyclist, kills pedestrian

Toddler jumps out of car into the path of a cyclist riding in the door zone

Compensation for secretly suicidal opportunistic accident-seeking tort plaintiff who allows himself to be struck by negligent driver

Common Crashes where Drivers Violate Cyclist's Right of Way



Dooring, Door-Zone Crash

