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# OREGON E-SCOOTER RIGHTS:

## A Legal Guide for Electric Scooter Riders

by

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## PREFACE

This booklet about Oregon electric scooter law is the fifth in our series of Oregon law guides. The first, “Pedal Power: A Legal Guide for Oregon Bicyclists” was published in 2000 and is now in its eighth edition. That book has been widely distributed to riders, libraries, law enforcement, lawyers and has provided the textbook for the regular “Bicycle Rights Legal Clinics” conducted statewide by the lawyers in our office.

It was our intention that “Pedal Power” serve as a law and advocacy reference to help build Oregon's bicycle movement and advance knowledge of Oregon law for cyclists, pedestrians and motorists. Six years later in 2006 we produced “Action Pamphlet #1, A Do It Yourself Guide to Ticketing Bad Drivers, Citizen Initiation of Violation Proceedings” to provide a how-to guide for traffic court enforcement actions by private citizens. Then in 2008 our walking rights legal guide “Oregon Pedestrian Rights: A Legal Guide for Persons on Foot” was published. It contained Oregon laws as well as historic and legal analysis of the politics of the pedestrian right to a legal presence on the public way. It was revised and re-issued in 2018 as a second edition.

In 2018, we were pleased to issue “Oregon E-Bike Rights: A Legal Guide for Electric Bike Riders,” which is now in its second edition with updates on the changing e-bike landscape.

E-scooters are appearing in major cities in the United States with mixed reactions from city governments, disability organizations and the public. In Portland e-scooters have been officially welcomed and were launched for a four month trial in Summer 2018, and another trial, this one for a year, began at the end of April, 2019. If the number of citizen complaints is any indication of the “full picture,” e-scooters are getting a mixed reception from the populace. Since the tracking system for complaints was launched in July 2018, almost 2/3 of the over 1100 complaints relate to “unsafe riding,” including failure to wear

mandatory helmets and riding on sidewalks, which is illegal, though the rate of complaints has trended downward.<sup>1</sup>

Unlike e-bikes, for which the law is evolving somewhat to loosen prohibitions like those against riding on state parks trails<sup>2</sup>, e-scooters are prohibited by law from being ridden on sidewalks, trails and multi-use paths. Further, riders of e-scooters are required by law to wear a helmet, regardless of age of rider. It is somewhat ironic that the e-scooter, with its simplicity of operation and ease of use is accompanied by a more restrictive set of legal rules than bicycles, e-bikes, non-powered scooters, roller blades and skateboards.

We support efforts to reform state and federal park rules to allow e-scooters broader access to trails and beaches. For many riders an e-scooter creates ease of travel to places that might otherwise involve a car trip or auto ride share if e-scooters were not available. The battery operated electric motor provides these opportunities without the power, noise, erosion and pollution associated with gasoline-powered engines. It is time for the laws to create a more hospitable legal environment for e-scooter operators and coordinate the use of legal terminology and rules at the local, state and federal level to reduce presently existing confusion about where e-scooters can and cannot legally go.

This book was a team effort. Cynthia Newton, Chris Thomas, Jim Coon and Ray Thomas all participated in the research and writing.

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<sup>1</sup> “E-scooter complaints fewer, still dominated by helmet, safety issues,” The Oregonian, accessed September 7, 2018 at <https://www.oregonlive.com/expo/news/erry-2018/08/c395dde7b2317/escooter-complaints-fewer-stil.html>

<sup>2</sup> “State Parks Commission approves new rule allowing e-bikes on paths and trails,” Bike Portland, accessed September 7, 2018 at <https://bikeportland.org/2018/08/31/state-parks-commission-approves-new-rule-allowing-e-bikes-on-paths-and-trails-288379>

## I. WHAT IS AN E-SCOOTER UNDER OREGON LAW?

Oregon Revised Statutes (“ORS”) 801.348 defines “Motor Assisted Scooter” as a vehicle that:

- is designed to be operated on the ground with not more than three wheels;
- has handlebars and a foot support or seat for the operator’s use;
- can be propelled by motor or human propulsion; **and**
- is equipped with a power source that is incapable of propelling the vehicle at a speed of greater than 24 miles per hour on level ground and:
  - if the power source is a combustion engine, has a piston or rotor displacement of 35 cubic centimeters or less regardless of the number of chambers in the power source; **or**
  - if the power source is electric, has a power output of not more than 1,000 watts

All e-scooter brands available in 2018 in Portland (“Skip,” “Bird,” “Lime”), in the year-long second Portland pilot program beginning in April, 2019 (“Bolt,” “Lime,” “Spin”) and in most other cities, meet this legal definition. There is no statutory definition separate from “Motor Assisted Scooter” for “e-scooter” as there is for “electric assisted bicycle” that is separate from the definition for “bicycle” (see ORS 801.150 for “bicycle” and ORS 801.250 for “electric assisted bicycle”). While the defining statute does specifically limit engine power to 1,000 watts (about one and a third horsepower, the same energy required to operate a toaster oven) and a top speed of no greater than 24 miles per hour on level ground, none of the currently available rental machines exceed the power limits, unlike many currently available e-bikes which have considerably more power than the 1,000 watt limit. The fastest

rental e-scooter in the 2018 Portland market was the Skip at a little over 19 miles per hour.<sup>1</sup>

Note that the power and speed limits are combined upper limits for both electric and piston powered machines. This is probably necessary since a 1,000 watt electric motor may be capable of producing considerably more speed than 24 mph on level ground and a 35cc piston engine can produce 3.85 horsepower, enough to produce a top speed well over the 24 mph speed limit, even with a heavy frame like a small motorcycle or go-kart.<sup>2</sup>

Clearly the legal definition under Oregon law for this vehicle is one that attempts to create a relatively low speed low power machine. The full speed capacity of the electric and gas motors in the sizes included in the definition are such that each application must use a “governor” to reduce available power to keep the top speed below 24 mph. (Of course the mechanical capacity of the machine is not the same as the legislated speed limit on the road. E-scooters may be capable of 24 mph, but they’re limited to a speed of 15 mph.)

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<sup>1</sup> A comparison of Portland e-scooter speeds by Willamette Week: <https://www.wweek.com/news/2018/08/21/which-portland-e-scooter-is-the-fastest-we-raced-them/>

<sup>2</sup> <https://www.osengines.com/engines-airplane/osmg1533/index.html>

## II. OTHER MOTOR ASSISTED VEHICLES: WHAT IS *NOT* AN E-SCOOTER UNDER OREGON LAW?

Electric two- and three-wheelers with more power than 1,000 watts or faster than 24 mph are not e-scooters under Oregon law. They include:

An **e-bike** or “electric assisted bicycle” is a vehicle that:

- (1) Is designed to be operated on the ground on wheels;
- (2) Has a seat or saddle for the use of the rider;
- (3) Is designed to travel with not more than three wheels in contact with the ground;
- (4) Has both fully operative pedals for human propulsion and an electric motor; **and**
- (5) Is equipped with an electric motor that:
  - a. Has a power output of not more than 1,000 watts; **and**
  - b. Is incapable of propelling the vehicle at a speed of greater than 20 miles per hour on level ground. ORS 801.258.

A **moped** is a vehicle “other than an electric assisted bicycle” that has a motor that will make it go up to 30 mph on a level surface and, if it’s a gasoline engine, is no larger than 50 cc, with no gear shifting. ORS 801.345.

A **motorcycle** is defined as:

any self-propelled vehicle *other than a moped* or farm tractor that:

- (1) Has a seat or saddle for the use of the rider;
- (2) Is designed to be operated on the ground upon wheels; **and**
- (3) Is designed to travel with not more than three wheels in contact with the ground. ORS 801.365.



### III. WHAT LEGAL RULES FROM THE OREGON VEHICLE CODE APPLY TO E-SCOOTERS?

The Oregon laws for e-scooters have significant legal restrictions, some of which are similar to the restrictions for e-bikes and “Electric Personal Mobility Devices” (Segways). For example, while an e-scooter may be *designed* to be capable of going up to 24 mph on level ground, the maximum operating speed allowed for e-scooters is 15 mph. E-bikes are not allowed to exceed 20 mph and Segways, just like e-scooters, are limited to 15 mph. However, Segways may be lawfully ridden on sidewalks, whereas e-scooters are prohibited from use on sidewalks. E-bikes require helmets only for riders who are under 16 years old, while all e-scooters riders must wear helmets. E-scooter operators must be 16 or older.

#### A. In General, Oregon Vehicle Laws Apply to E-Scooters

ORS 814.510 states:

An operator of a motor assisted scooter upon a public way is subject to the provisions applicable to, and has the same rights and duties as the operator of, any other vehicle operating on highways except:

- (1) Those provisions that by their very nature can have no application.
- (2) When otherwise specifically provided under the vehicle code.

This law means that e-scooter riders are subject to the general Oregon “Rules of the Road” just like other vehicles, such as requiring stops at stop signs, unless there is a more specific rule specifically applicable to e-scooters. A similar law exists for bicycles. ORS 814.400.

#### B. Failure to Signal

ORS 814.522 requires signals for turns and stops:

- (1) A person commits the offense of failure to signal for a motor assisted scooter maneuver if the person is operating a motor assisted scooter and:
- (a) Stops the motor assisted scooter without giving the appropriate hand and arm signal continuously for at least 100 feet before executing the stop.
  - (b) Executes a turn or lane change on the motor assisted scooter without giving the appropriate hand and arm signal for the turn at least 100 feet before executing the turn.
  - (c) Executes a turn on the motor assisted scooter after having been stopped without giving, while stopped, the appropriate hand and arm signal for the turn.
- (2) A person is not in violation of this section if the person is operating a motor assisted scooter and does not give the appropriate hand and arm signal continuously for a stop, turn or lane change because circumstances require that both hands be used to safely control or operate the motor assisted scooter.
- (3) The appropriate hand and arm signals for indicating stops, turns and lane changes under this section are those provided for other vehicles under ORS 811.395 (Appropriate signals for stopping, turning, changing lanes and decelerating) and 811.400 (Failure to use appropriate signal for turn, lane change, stop or exit from roundabout).

The small wheels and narrow handlebars on a scooter require use of both hands to safely control the scooter often enough for most riders that if a ticket were issued or a wreck occurred and an insurance company for a driver alleged violation of the signal law the e-scooter rider could point out that the statute provides a legal justification for not always signaling.

**C. E-Scooters Are Prohibited on Oregon “Highways” Where the Speed Limit is Above 25 mph**

ORS 814.518 restricts e-scooter operation to highways where the speed limit is no greater than 25 mph. In Oregon, “highway” means “every public way, road, street, thoroughfare and place, including bridges, viaducts, and other structures... intended for use of the general public for vehicles or vehicular traffic as a matter of right.” ORS 801.305. However, there is no restriction if the e-scooter is being operated on an available bike lane or is merely crossing the highway. This law greatly limits the places an e-scooter may lawfully be operated as most arterials contain speed limits above 25 mph.

**D. E-Scooter Rights on Oregon Roadways**

ORS 814.520, “Improper Operation of Motor Assisted Scooter in Lanes,” provides the basic collection of e-scooter rights on the roadway; the statutory subsection is contained below in bold print, with explanations below each paragraph:

**(1) A person commits the offense of improper operation of a motor assisted scooter in a lane if the person is operating a motor assisted scooter on a roadway at less than the normal speed of traffic using the roadway at that time and place under the existing conditions and the person does not ride as close as practicable to the right curb or edge of the roadway.**

This means that if the e-scooter rider is able to maintain the “normal” speed of other traffic at the time, then the e-scooter can use the entire roadway lane. But if the e-scooter is going less than the normal speed of traffic then the rider must ride as close to the right curb or edge of the roadway as “practicable” which means a flexible standard that allows the rider to adjust position depending on conditions. Since the speed limit for all e-scooters is 15 mph, and, by definition, e-scooters cannot be capable of speeds greater than 24 mph, it will rarely be legal for an e-scooter to “take

the lane” – only when there is no traffic or when there is so much traffic that it moves at 15 mph or less.

**(2) A person is not in violation of this section if the person is not operating a motor assisted scooter as close as practicable to the right curb or edge of the roadway under any of the following circumstances:**

This section contains the exceptions to the general rule, allowing the e-scooter rider to take up to the entire lane for the following reasons:

**(a) When overtaking and passing another motor assisted scooter or vehicle that is proceeding in the same direction.**

The E-scooter operator may occupy the entire lane to pass.

**(b) When preparing to execute a left turn.**

E-scooters may move farther into the lane to establish a position to avoid having to turn left from the right edge of roadway.

**(c) When reasonably necessary to avoid hazardous conditions including, but not limited to, fixed or moving objects, parked or moving vehicles, pedestrians, animals, surface hazards or other conditions that make continued operation along the right curb or edge unsafe or to avoid unsafe operation in a lane on the roadway that is too narrow for a motor assisted scooter and vehicle to travel safely side by side. Nothing in this paragraph excuses the operator of a motor assisted scooter from the requirements under ORS 811.425 (Failure of slower driver to yield to overtaking vehicle) or from the penalties for failure to comply with those requirements.**

E-scooters are granted the right to occupy the lane when necessary to avoid specific hazards. However the statute requires

compliance with ORS 811.425 which requires on two lane highways that have no “clear lane available for passing” that the slow vehicle move over to an “area sufficient for safe turnout” so as to not block traffic. With the narrow width of an e-scooter it is the rare roadway where an overtaking driver cannot move over the center line slightly when traffic allows and pass an e-scooter without requiring the e-scooter to move over to a turnout.

**(d) When operating within a city as near as practicable to the left curb or edge of a roadway that is designated to allow traffic to move in only one direction along the roadway. A motor assisted scooter that is operated under this paragraph is subject to the same requirements and exceptions when operating along the left curb or edge as are applicable when a motor assisted scooter is operating along the right curb or edge of the roadway.**

On one way streets the e-scooter operator can choose to ride on the left or right side of the roadway.

**(e) When operating a motor assisted scooter alongside not more than one other motor assisted scooter as long as the motor assisted scooters are both being operated within a single lane and in a manner that does not impede the normal and reasonable movement of traffic.**

If e-scooters are proceeding side by side and overtaking traffic cannot safely proceed around then the scooter must temporarily go single file to allow faster traffic to pass.

**(f) When operating on a bicycle lane or bicycle path.**

## **E. Oregon Helmet Law for E-Scooter Riders**

ORS 814.534 requires all riders regardless of age to wear a helmet. The only exception is where “headgear” “would violate a religious belief or practice of the person”. For first offenders the court may dismiss the ticket if the person obtains a helmet and the

presumptive fine is \$25 if a person is convicted. If the violator is under 16 then the legal guardian for the child may receive a ticket for “Endangering Motor Assisted Scooter Operator” and this violation carries a presumptive fine of \$25.

#### **F. Oregon’s Mandatory Sidepath Law for E-Scooters**

Oregon has what is referred to as a mandatory sidepath law which means that certain user groups must use a bike lane or path if one is available. ORS814.514. There are no exceptions to this rule for e-scooters as there are for bicycles and e-bikes (See ORS 814.420). This law requires that e-scooter riders use an available bike lane or path if one “is adjacent to or near the roadway”. Oregon law also requires that an e-scooter operator on a bike lane or bike path must yield the right of way to pedestrians and provide an audible signal before passing a pedestrian. ORS 814.526. Some e-scooters have a handlebar mounted bell but a voice warning should also be legally sufficient.

#### **G. Sidewalks and Crosswalks**

E-Scooters are prohibited on sidewalks in Oregon except to get across the sidewalk from the roadway to or from an adjacent property. ORS 814.524. And the e-scooter rider must yield the right of way to pedestrians and provide an audible signal before overtaking and passing. ORS 814.524(1)(b). When entering traffic from the sidewalk to the roadway the e-scooter rider is prohibited from moving into traffic that is “so close as to constitute an immediate hazard” which means the rider is required to ease into traffic and not ride out in front of approaching vehicles. ORS 814.524(1)(a). When an e-scooter rider uses the sidewalk to get onto the roadway and is about to use a crosswalk, driveway, curb cut or pedestrian ramp and a vehicle is approaching the e-scooter rider must approach at no faster than “an ordinary walk”.

E-scooters must be walked, not ridden, in the crosswalk, and the statute similarly prohibits using foot propulsion to push and ride the e-scooter across. However, the statutory prohibition

on crosswalk riding does not apply to “a person with a disability”.  
ORS 814.528.

## **H. No Passengers**

ORS 814.530 makes it illegal to carry a passenger on a motor assisted scooter. There are no legal exceptions or qualifications contained in the statute.

## **I. Prohibited Loads**

ORS 814.532 prohibits carrying anything on an e-scooter that prevents the person from keeping at least one hand on the handlebars and having full control at all times. Given the e-scooter’s narrow handlebar and small wheels, that doesn’t allow for carrying much of anything.

## **J. City of Portland Rules for E-Scooter Operation**

In the City of Portland, e-scooters are generally prohibited from using paths located in any city park. Subsection D of the Code of the City of Portland 20.12.170, which regulates “Use of Certain Devices or Equipment” provides:

D. No person shall operate any motorized vehicle or motorized wheeled vehicle or motorized wheeled device in any Park, except on Park roads or in designated vehicle parking areas, or by permit. The prohibitions of this Section do not apply to authorized service or emergency vehicles or to the following electric mobility devices used by persons who need assistance to be mobile, and used in accordance with all applicable park and traffic rules:

1. “Electric assisted bicycle” as defined in ORS 801.258;
2. “Motorized wheelchair,” “Mobility scooter” or “Power chair” defined as an electric powered transportation device for one person in a seated

position, with feet resting on floorboards or foot rests, and incapable of exceeding a speed of 20 mph; or

3. “Human or personal transporter system” defined as a self-balancing, electric-powered transportation device with two wheels, able to turn in place, and designed to transport one person in a standing position, with a top speed of 20 mph.

E-scooters constitute “motorized vehicle or motorized wheeled vehicle or motorized wheeled device,” and, therefore, are prohibited from use in Parks, which are defined in 20.04.010 as property “placed under the jurisdiction of Portland Parks and Recreation for park or recreational purposes.”

The above prohibition does contain an exception for e-scooter use in Parks when “used by persons who need assistance to be mobile.”

However, non-disabled e-scooter riders are granted no exception to the “motorized vehicle” prohibition, and are prohibited on all park paths throughout the city. According to the Portland Parks directory, parks include critical off-street paths such as the Springwater Corridor, Eastside Esplanade, and Waterfront Park Trail, as well as the Peninsula Crossing Trail, Gateway Green, Forest Park and Powell Butte. Indeed, Portland law excludes non-disabled e-scooter use on some of the city’s most convenient, safe, and scenic car-free corridors.



#### **IV. E-SCOOTERS AND INSURANCE**

Insurance coverage depends on policy language. An insurance policy is a contract – you pay the premium, and the insurer covers your losses under the agreement between you. So, if you want to know what coverage you have for e-scooter property loss, liability to others or injury to yourself, read your policy, or call your agent. Better yet, read your policy AND call your agent. But don't rely on what your agent tells you if it contradicts the policy language. The language of the policy controls your agreement with your insurer. ORS 742.016. The language of insurance policies in Oregon is construed against the insurer because the insurer wrote the policy language. Of course the insured individual did not negotiate the language of the policy, and usually has no idea what it says until after suffering or causing injury in a crash. If insurance policy language is ambiguous or unclear, Oregon courts will read it in favor of coverage. A lawyer can give you a pretty good idea what coverage you have, but most, if not all, insurance policies were not written with e-scooters in mind, and the courts haven't yet weighed in on most policy provisions as they apply to e-scooters.

##### **A. Car Insurance**

If you drive a car in Oregon, you're required to have liability insurance coverage in the minimum amount of \$25,000 for liability for causing injury to a single person and \$50,000 for liability for causing injury to more than one person in a single crash. Any car insurance policy issued in Oregon must provide at least that amount of coverage for liability to others. ORS 806.070. The bad news is that auto insurance policies always require that, in order to be covered for liability to others, a car you own be listed as an insured vehicle. But e-scooters are usually rental units and not owned by the rider. So in that sense they are akin to a rental or borrowed automobile and one could argue, should be covered under your auto insurance policy if determined to be a vehicle under the policy's language

## **B. Personal Injury Protection Benefits (PIP)**

Coverage for injury to yourself while riding your e-scooter is more ambiguous. You might get coverage for Personal Injury Protection (PIP), which is no-fault compensation up to a minimum of \$15,000 or even considerably more depending on the policy for your medical expenses and wage loss, but that will depend on the policy language. ORS 742.520 requires auto insurance policies to cover PIP for injuries to family members “from the use” of a “motor vehicle” so long as it is not “owned or furnished or available for regular use” “that is not described in the policy”. Presumably the purpose of this requirement for coverage is to include the use of a non-owned or rented motor vehicle but to prevent an insured from buying a car and not paying insurance on it but claiming after an injury involving its use that PIP benefits are due. . If it is a rented e-scooter and not owned then the analysis above applies.

## **C. Uninsured and Underinsured Motorist Insurance (UM/UIM)**

Oregon law also requires that auto insurance policies issued in the state provide “uninsured/underinsured motorist” (UM/UIM) coverage. ORS 742.500. That’s coverage for injuries you might suffer in a collision with an uninsured motor vehicle or with a motorist who has less coverage than you do. So, if you’re injured in a crash with a car that has minimum policy limits (\$25/\$50,000), and you have higher limits, such as \$100/\$300,000, you can make a UIM claim against your own policy to cover your medical expenses, wage loss and pain and suffering damages. The total amount available is your higher policy limit if the policy was last issued or renewed before January 1, 2016 or the total of your policy limit and the limit of the underinsured motorist if it was issued or renewed after that date.

**Note:** Higher policy limits are much less expensive than basic auto coverage, so it’s worth checking out what you can afford. The basic \$25,000 limit can disappear on medical expenses with a couple of days in a hospital.

## **D. Homeowners or Renter's Insurance**

Homeowners or renter's insurance is another place to find coverage for injury to you, injury you cause someone else or property damage to an e-scooter or another vehicle. Language to watch out for will be in the "Exclusions" and "Definitions" sections of the policy. Look for exclusion of coverage for injury or property damage caused by "motor vehicles" or "motorized vehicles," and read the "definitions" of these terms in the policy to see if it's clear whether e-scooter coverage is excluded. Remember, if the policy language is ambiguous, Oregon courts will construe it in favor of coverage.

## **E. Umbrella Coverage**

Umbrella insurance coverage provides higher liability policy limits on top of underlying insurance coverage like auto or homeowners insurance. You can get very high limits to protect against liability for causing catastrophic injury to others, for relatively low premiums. It's reasonable to question whether you need that kind of insurance for riding an e-scooter because it's not likely you would cause catastrophic injury to someone else with such a small vehicle. State law protects basic assets like a home from recovery in injury lawsuits, and a person with limited assets can resort to bankruptcy to avoid paying a judgment, so you may not need umbrella coverage if you don't have a lot of assets.

However, umbrella coverage may also be purchased as part of an umbrella policy that includes UM/UIM coverage. This means that if an uninsured or underinsured driver caused a major injury to you on an e-scooter you may be able to make a claim for the damages you would otherwise have been able to collect against the at-fault driver if they had enough insurance.

If you do have substantial personal assets, umbrella coverage is worth considering. Umbrella coverage usually requires that you also purchase auto and homeowners as a package with the same insurance company.

## V. **WHAT TO DO IF YOU ARE IN A CRASH ON AN E-SCOOTER**

If you are in a crash on an e-scooter involving another vehicle “when property is damaged,” ORS 811.700 requires:

A person commits the offense of failure to perform the duties of a driver when property is damaged if the person is the driver of any vehicle and the person does not perform duties required under any of the following:

- (a) If the person is the driver of any vehicle involved in an accident that results only in damage to a vehicle that is driven or attended by any other person the person must perform all of the following duties:
  - (A) Immediately stop the vehicle at the scene of the accident or as close thereto as possible. Every stop required under this subparagraph shall be made without obstructing traffic more than is necessary.
  - (B) Remain at the scene of the accident until the driver has fulfilled all of the requirements under this paragraph.
  - (C) Give to the other driver or passenger the name and address of the driver and the registration number of the vehicle that the driver is driving, the name and address of any other occupants of the vehicle and, if the vehicle is a motor vehicle, the name of the insurance carrier and the insurance policy number of the insurance policy insuring the motor vehicle.
  - (D) Upon request and if available, exhibit and give to the occupant of or person attending any vehicle damaged the number of any

documents issued as evidence of driving privileges granted to the driver.

- (b) If the person is the driver of any vehicle that collides with any vehicle that is unattended, the person shall immediately stop and:
  - (A) Locate and notify the operator or owner of the vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle and, if the vehicle is a motor vehicle, the name of the insurance carrier and the insurance policy number of the insurance policy insuring the motor vehicle; or
  - (B) Leave in a conspicuous place in the vehicle struck a written notice giving:
    - (i) The name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof; and
    - (ii) If the vehicle is a motor vehicle, the name of the insurance carrier and the insurance policy number of the insurance policy insuring the motor vehicle.
- (c) If the person is the driver of any vehicle involved in an accident resulting only in damage to fixtures or property legally upon or adjacent to a highway, the person shall do all of the following:
  - (A) Take reasonable steps to notify the owner or person in charge of the property of such fact and of the driver's name and address and, if the vehicle is a motor vehicle, the name of the insurance carrier and the insurance policy number of the insurance policy insuring the motor vehicle and of the registration number of the vehicle the driver is driving.

(B) Upon request and if available, exhibit any document issued as official evidence of a grant of driving privileges to the driver.

(2) The offense described in this section, failure to perform the duties of a driver when property is damaged, is a Class A misdemeanor and is applicable on any premises open to the public.

Note that drivers must:

- Stop
- Remain at the Scene
- Give the registration, name and address of occupants, insurance carrier and policy number and Driver License of the driver.

Note that it is a misdemeanor crime to fail to do so!

And if someone is injured then ORS 811.705 also requires:

(e) Render to any person injured in the accident reasonable assistance, including the conveying or the making of arrangements for the conveying of such person to a physician, surgeon or hospital for medical or surgical treatment, if it is apparent that such treatment is necessary or if such conveying is requested by any injured person.

(f) Remain at the scene of an accident until a police officer has arrived and has received the required information, if all persons required to be given information under paragraph (c) of this subsection are killed in the accident or are unconscious or otherwise incapable of receiving the information. The requirement of this paragraph to remain at the scene of an accident until a police officer arrives does not apply to a driver who needs immediate medical care, who needs to leave the scene in order to secure medical care for another person injured in the accident or who needs to leave the scene in order to report the accident to the authorities, so long as the driver who leaves

takes reasonable steps to return to the scene or to contact the nearest police agency.

And if the person fails to follow the law it is a FELONY crime, often referred to as “Hit and Run”. Make sure that you obtain the required information if you are in a crash! Promises at the scene or cellphone numbers left behind are often attempts to cover up the fact that the person has no insurance and is not willing to provide the required information so you can follow up with a claim after the crash.

If you are injured it is best to call the police. Note paragraph (f) above requires that the driver remain at the scene with you.

### **A. More Information**

If you make an insurance claim for your damages and injuries you may want to read more about the process. See our articles on our website and our legal guides for a more in-depth analysis of how to make a claim for insurance and damages.

### **Thomas, Coon, Newton & Frost**

<https://www.tcnf.legal/>

Our home page provides links to our series of free legal guides including:

- Pedal Power: A Legal Guide for Oregon Bicyclists
- Oregon Pedestrian Rights: A Legal Guide for Persons on Foot
- Oregon E-Bike Rights: A Legal Guide for E-Bike Riders

### **Bicycle & Pedestrian Law Resources**

<https://www.tcnf.legal/bikelinks/>

### **TCNF Blog**

<https://www.tcnf.legal/blog/>

## Oregon Bike Law

<http://oregonbikelaw.com/>

### **B. What to Do if Liability for an Injury is “Denied”**

When a collision results in a claim the insurance company assigns an adjuster to investigate and make a recommendation based upon the facts and law on who was at fault and who should pay. Sometimes a “full denial” or “partial denial” of benefits is issued by the insurance company, or the amount offered is way below actual value or costs. In these instances sometimes the insurance adjuster is in another state without first hand knowledge of any of the facts and is just looking for reasons not to pay. Other times the adjuster has made a careful and thoughtful analysis of what happened. However, whatever the process involved it is important that you know your legal rights and the legal rules the adjuster is required to follow. There are several laws and regulations to protect you:

#### **ORS 746.230, Unfair claim settlement practices**

(1) No insurer or other person shall commit or perform any of the following unfair claim settlement practices:

- (a) Misrepresenting facts or policy provisions in settling claims;
- (b) Failing to acknowledge and act promptly upon communications relating to claims;
- (c) Failing to adopt and implement reasonable standards for the prompt investigation of claims;
- (d) Refusing to pay claims without conducting a reasonable investigation based on all available information;
- (e) Failing to affirm or deny coverage of claims within a reasonable time after completed proof of loss statements have been submitted;
- (f) Not attempting, in good faith, to promptly and equitably settle claims in which liability has become reasonably clear;



- (g) Compelling claimants to initiate litigation to recover amounts due by offering substantially less than amounts ultimately recovered in actions brought by such claimants;
  - (h) Attempting to settle claims for less than the amount to which a reasonable person would believe a reasonable person was entitled after referring to written or printed advertising material accompanying or made part of an application;
  - (i) Attempting to settle claims on the basis of an application altered without notice to or consent of the applicant;
  - (j) Failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them, of the coverage under which payment has been made;
  - (k) Delaying investigation or payment of claims by requiring a claimant or the physician of the claimant to submit a preliminary claim report and then requiring subsequent submission of loss forms which both require essentially the same information;
  - (l) Failing to promptly settle claims under one coverage of a policy where liability has become reasonably clear in order to influence settlements under other coverages of the policy; or
  - (m) Failing to promptly provide the proper explanation of the basis relied on in the insurance policy in relation to the facts or applicable law for the denial of a claim.
- (2) No insurer shall refuse, without just cause, to pay or settle claims arising under coverages provided by its policies with such frequency as to indicate a general business practice in this state, which general business practice is evidenced by:
- (a) A substantial increase in the number of complaints against the insurer received by the Department of Consumer and Business Services;
  - (b) A substantial increase in the number of lawsuits filed against the insurer or its insured by claimants; or

(c) Other relevant evidence.

**Oregon Administrative Rule 836-080-0220,  
Misrepresentation and other prohibited claim  
practices:**

An insurer shall not:

- (1) Fail to fully disclose to a first party claimant all pertinent benefits, coverages, and other provisions of an insurance policy under which the claim is asserted.
- (2) Conceal from a first party claimant any insurance policy benefits, coverages, or other provisions that are pertinent to the claim.
- (3) Deny a claim on the grounds of the claimant's failure to exhibit the relevant property without proof of the insurer's demand and the claimant's unfounded refusal.
- (4) Except where there is such time limit specified in the policy, make statements, written or otherwise, that require a claimant to give written notice of loss or proof of loss within a specified time and that seek to relieve the insurer of its obligations if the time limit is not complied with, unless the failure to comply with the specified time limit prejudices the insurer's rights.
- (5) Request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment.
- (6) Issue checks or drafts in partial settlement of a loss or claim under a specific policy coverage that contain language releasing the insurer or its insured from its total liability.

**Oregon Administrative Rule 836-080-0225,  
Required claim communication practices:**

An insurer shall:

- (1) Not later than the 30<sup>th</sup> day after receipt of notification of claim, acknowledge the notification or pay the claim. An appropriate and dated notation of the

acknowledgement shall be included in the insurer's claim file.

- (2) Not later than the 21<sup>st</sup> day after receipt of an inquiry from the Director about a claim, furnish the Director with an adequate response.
- (3) Make an appropriate reply, not later than the 30<sup>th</sup> day after receipt, to all other pertinent communications about a claim from a claimant that reasonably indicate a response is expected.
- (4) Upon receiving notification of claim from a first party claimant, promptly provide necessary claim forms, instructions and assistance that is reasonable in the light of the information possessed by the insurer, so that the claimant can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this section not later than the 30<sup>th</sup> day after receipt of notification of a claim constitutes compliance with section (1) of this rule.

**Oregon Administrative Rule 836-080-0230,  
Standard for Prompt Claim Investigation:**

An insurer shall complete its claim investigation not later than the 45<sup>th</sup> day after its receipt of notification of claim, unless the investigation cannot reasonably be completed within that time.

If it looks like the adjuster's goal is to take advantage of you or avoid dealing with your claim, or if you think the process is not fair based upon the facts or law of the crash, it may be time to consult with a lawyer. We do not charge for consultations and at the very least you will find out a little about how your claim stacks up and what to do next even if you choose to go it alone or hire someone else.

**C. The Insurance Company or Police Say I Broke the Law in My E-Scooter Crash—What Should I Do?**

If it appears you are being blamed unfairly for a crash or that your failure to follow a law caused the fault in a crash to shift to you, then you should probably consult with a lawyer and see what they advise that you should do next. But while violation of a law, sometimes called “statutory negligence” is a defense to a negligence claim for damages, it may have little to do with the actual cause of the crash. For example, if you were riding an e-scooter with a passenger on board (and passengers are prohibited by ORS 814.530) and a car driver ran a stop sign and hit you then having a passenger had little to do with the actual legal cause of the crash. It is important that you recognize your legal rights. Do not accept a superficial analysis that points out what you did wrong when the cause of your injuries is actually the fault of someone else.