CHRISTOPHER A. SLATER

ATTORNEY AT LAW

WWW.PNWLAWYERS.COM

CHRISTOPHER A. SLATER
MANAGING ATTORNEY

2314 N.W. SAVIER STREET
PORTLAND, OREGON 97210
TEL: (503) 227-2024
FAX: (503) 224-7299

SAM HOCHBERG
OF COUNSEL

Christopher A. Slater
Admitted in Oregon and Washington
cslater@pnwlawyers.com

March 17, 2016

Senator Floyd Prozanski
Chair, Senate Committee on Judiciary
Oregon State Capitol, S-415
900 Court Street N.E.
Salem, Oregon 97301

Re: Senate Bill 385

Dear Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee:

I am a motorcyclist and an attorney that represents injured motorcyclists in Oregon and Washington. I also advocate for the passage of laws that improve motorcycle safety and result in motorcycle awareness and driver accountability. I have been riding motorcycles since 1985 and have been practicing as an attorney in Oregon since 1997. My perspective comes from years of riding motorcycles (including in California) and representing clients injured in motorcycle accidents. I have appeared before the Oregon Legislature on bills concerning motorcycle safety and other motorcycle-related issues and I have been interviewed on local television and radio regarding motorcycle-related issues in Oregon.

THE CURRENT NEED FOR LANE SHARING (LANE FILTERING)

Under current Oregon law, motorcycles are restricted to operating only within a single lane of traffic and are prohibited from operating between lanes of traffic, including on divided highways and freeways. In essence, motorcycles in Oregon are required to operate as if they were automobiles. Unfortunately, this creates safety issues for motorcyclists because it often places them in common vehicle accident situations as if they were an automobile without having the safety features of modern automobiles. Morever, as Oregon's urban areas increase in density, transportation policies will need to incentivize the use of alternative vehicles, including motorcycles. However, current Oregon law actually reduces the incentive for using motorcycles as a more fuel-efficient alternative because it forces them to operate in the same manner as less fuel-efficient automobiles. Two years

ago, when I testified before you on SB 694, Portland was ranked (2013) as the 10th most traffic-congested metropolitan area in the United States.[1] Two years later, Portland is now ranked (2015) as the 8th most traffic-congested metropolitan area in the United States.[2] Oregon continues to struggle with funding issues associated with overhauling Oregon aging transportation infrastructure at the very time in which it is coming under increasing strain from population growth. Any partial solution that helps to reduce this strain can no longer be ignored.

THE BROADER TRANSPORTATION BENEFITS OF LANE SHARING

Lane sharing consists of lane splitting and lane filtering. Lane splitting is when a motorcycle rides in between lanes of cars or other larger vehicles while traffic is moving, usually at speeds up to 50 miles per hour, but most commonly at speeds around 30 miles per hour or less. Lane filtering is a slower form of lane splitting, and is usually done when vehicular traffic is slowed or stopped, allowing motorcycles to filter through traffic congestion, most commonly at stop lights. Lane splitting and filtering have been shown to have broader traffic congestion relief benefits for all commuting vehicles. A Belgian Traffic Engineering study found that if 10% of all car operators switched to motorcycles and filtered, the "total time loss for all vehicles decreases by 40%".[3] Although about 10% of all newly-licensed drivers in Oregon have motorcycle endorsements,[4] as of 2016, there were 135,464 motorcycles registered in the state of Oregon, which constitutes approximately 4% of all passenger vehicle registrations in the state.[5] So while it would take substantially more motorcycle registrations to result in the time loss savings of the Belgian study, the data does support the assertion that incentivizing commuting by motorcycle while practicing lane splitting will result in significant and measurable reductions in time loss for all commuters, much like the incentivizing of bicycling has successfully reduced traffic congestion in the Portland metro area over the last two decades. In short, while lane splitting alone will not solve our traffic problems, it can be a partial solution with little or no fiscal impact when compared to expensive infrastructure investment.

---

[1] http://www.oregonlive.com/commuting/index.ssf/2015/03/portland_traffic_ranked_nation.html

[2] http://blog.oregonlive.com/commuting/2012/08/portland_has_nations_8th_worst.html

[3] Commuting by Motorcycle: Impact Analysis, Transport and Mobility Leuven, September 21, 2011, page 32.

[4] Oregon Department of Motor Vehicles, Drivers License / ID Issuance Statistics 2005-15, page 2.

[5] Oregon Department of Transportation - Driver and Motor Vehicle Services Division, Oregon Motor Vehicle Registrations by County (note 1), As of December 31, 2016

THE SAFETY BENEFITS OF LANE SPLITTING AND FILTERING

There is a common public misperception that lane splitting is more dangerous than the current practice. One of the most common misperceptions is that drivers will not see motorcycles when they change lanes. The opposite is true. Currently, motorcycles must often operate in the driver's "blind spot" in the lane next to the driver. However, when the motorcycle is riding between lanes, it is in plain view to the driver in either side mirror where there is no blind spot.

One important safety benefit of lane splitting is the resulting reduction of rear-end accidents and accidents when motorcycles are "pinched" between two larger vehicles. According to the National Highway Traffic Safety Administration ("NHTSA"), 40% of all motor vehicle accidents are rear-end accidents. According to the Oregon Department of Transportation ("ODOT"), in 2013 37% of all accidents were rear-end accidents, and the number one driver error was not stopping for a stopped or parked vehicle. On highways and freeways, rear-end accidents most commonly occur during stop-and-go traffic situations, notably during commuting hours when the vehicular traffic is the most dense and traveling the slowest. Multi-vehicle collisions often occur under these circumstances resulting in vehicles being impacted at both the front and rear of the vehicle. And while injuries often do occur to drivers and passengers in these accidents, the injuries to a motorcyclist can be significant or even fatal in these situations. This is because of the relatively low mass of motorcycles and the exposure of the rider. I have seen the results of rider collisions with automobiles in my law practice.

This is a longstanding problem that has not received the attention it deserves, but the few studies that have been done demonstrate the safety benefits of lane splitting. In 1981, the Hurt Report was released. It is still considered the most comprehensive study on the cause of motorcycle accidents in the United States. The report found that nearly 60% of all multi-vehicle motorcycle accidents occur in heavy traffic situations.[6] In 2000, the NHSTA released a proposal through the National Agenda for Motorcycle Safety ("NAMS") to further study the safety benefits of lane splitting:

> A motorcycle's narrow width can allow it to pass between lanes of stopped or slow-moving cars on roadways where the lanes are wide enough to offer an adequate gap. This option can provide an escape route for motorcyclists who would otherwise be trapped or struck from behind. There is evidence (Hurt, 1981) that traveling between lanes of stopped or slow-moving cars (i.e., lane splitting) on multiple-lane roads (such as interstate highways) slightly reduces crash frequency compared with

[6] Hurt, H.H. Jr., Ouellet, J.V. & Thom D.R. (1981b). Motorcycle Accident Cause Factors and Identification of Countermeasures. (DOT HS 805 862). Washington, DC: National Highway Traffic Safety Administration, page 57.

staying within the lane and moving with other traffic.[7]

In 2015, the University of California at Berkeley ("UC Berkeley") released a groundbreaking study in coordination with the California Motorcyclist Safety Program ("CMSP") of the California Highway Patrol ("CHP"). 5,969 motorcycle accidents were studied in the final analysis, including 997 accidents where the motorcyclist was lane splitting (17% of total). The UC Berkeley study found that in lane splitting accidents there were: **60% fewer fatalities; 46% fewer head injuries; 34% fewer torso injuries; 17% fewer neck injuries; and 10% fewer arm and leg injuries, when compared to non-lane splitting accidents.** Rear-end accidents where the motorcycle was struck by a vehicle decreased by 43%, but rear-end accidents where the motorcycle was the striking vehicle increased by 57%. The study concluded that lane splitting was safest when vehicular traffic is 50 mph or less and the speed differential of the motorcycle is 15 mph or less. Interestingly, the study further found that the majority of motorcyclists were already lane splitting consistent with one or both of these speed variables. Only a very small percentage of motorcyclists engaged in lane splitting with neither of the speed variables being present.[8] In 2013, the CHP released Lane Splitting Guidelines for the first time.[9] The CHP Guidelines were consistent with the findings of the UC Berkeley study – that lane splitting is safest when traffic is 30 mph or less and there is a speed differential of 10 mph or less. In 2016, the State of California passed AB 51 which formally legalized the practice of lane splitting and established that the CHP can promulgate guidelines for safe lane splitting.

RELATIVE OUTCOMES TO MOTORCYCLISTS BY ACCIDENT TYPE

As a motorcycle accident attorney I have a unique perspective when it comes to the human impact from different types motorcycle accidents. It should be noted at the outset that in the majority of accidents involving motorcycles and other vehicles, it is the motorcycle that is the striking vehicle. However this fact is misleading because it implies rider error. In my experience, the most common motorcycle accident is when a car makes a left-hand turn in front of a motorcycle, usually because the driver is not looking for, or does not otherwise see, the oncoming motorcycle. The second-most common motorcycle accident is when a vehicle pulls out of, or into, a side street or driveway, also usually because the driver does not look for, or otherwise see, the motorcycle. In both of these accident types the motorcycle is almost always the striking vehicle. The third-most common

[7] National Agenda for Motorcycle Safety, U.S. Department of Transportation, National Highway Traffic Safety Administration. (DOT HS 809 156), 2000, page 51.

[8] Motorcycle Lane-splitting and Safety in California, Thomas Rice, Ph.D., et al., Safe Transportation Research & Education Center, University of California Berkeley, May 29, 2015, pages 10-15, Tables 12-13.

[9] CMSP Lane Splitting General Guidelines, 2013. In California there are no mandated speed parameters for Lane Splitting. The CHP pulled the Guidelines down in 2014 due to rule making issues with the Guidelines.

motorcycle accident is when a car rear ends a motorcycle because the driver is inattentive or distracted, usually by a mobile electronic device. In this type of accident the motorcycle is struck by the heavier vehicle. Lane filtering, as is currently being proposed, will not have a direct impact on the frequency of, or human impact from, the first two types of accidents. However, there could be an indirect impact from more motorcycles utilizing highways where these types of impacts are far less common. Lane filtering would have a direct impact on the frequency of rear-end accidents, so I will focus on the human outcomes from these types of accidents versus the type a accidents likely to occur during lane filtering.

Injuries have resulted in the overwhelming majority of accidents that I have seen involving a motorcycle being struck from behind by a much larger vehicle. Within this group of crash victims, there is a strong correlation with resulting orthopedic fractures, including arm, leg, and collarbone fractures that usually result from being thrown from the motorcycle with force to the ground or onto another vehicle. Depending upon the fracture type, these injuries often result in surgical treatment. Joint injuries are also seen from hyper-extension injuries, notably shoulder injuries, which often require surgical repair. Traumatic brain injuries are also seen when a rider's helmet strikes the ground with force or when it is directly struck by a vehicle. In addition, soft tissue injuries are almost always involved, particularly to the neck and back areas. In some instances, riders are pushed onto or under a vehicle in front of them, and this can result in additional serious injuries, including rib fractures and internal injuries.

Low-speed accidents where the motorcycle is the striking vehicle can also result in injuries to the rider, particularly when the rider strikes his or her body against another vehicle, which can result in lower extremity fractures, rib fractures and internal injuries. Injuries can also result when a rider is thrown over the top of a vehicle onto the ground. However, these events are most often associated with other vehicles that cross directly into the motorcycle's path, such as a vehicle making a left turn in front of an oncoming motorcycle, or a vehicle pulling into the path of a motorcycle. In these cases, the motorcycle usually strikes the other vehicle at approximately a right angle, forcing the rider into or over the vehicle. However, these types of impacts are unlikely to occur when all vehicles are traveling in the same direction at speeds of 20 miles per hour or less. Setting aside the rare "opening car door" and "hitting a mirror" events that are unlikely to result in any injuries, the most common injury-producing scenario will be the glancing impact from an inattentive driver changing lanes in front of an oncoming motorcycle that is filtering. This results in the motorcycle glancing off of the vehicle and into the lane space that the other vehicle was intending to move into. This may or may not result in an injury to the rider, but most injuries associated with similar types of "low-side" accidents typically involve road-rash abrasion injuries and other soft-tissue injuries. These are the types of injuries that I have seen in my practice with glancing-type accidents, and while no injuries should ever be discounted, they are relatively minor when compared to the injuries commonly associated with vehicle strikes to motorcycles such as rear-end accidents as described above.

In short, it is my opinion as a motorcycle accident attorney that accidents will happen regardless of what rules are in place. However, the gravity of the resulting injuries to riders can be positively impacted with the implementation of proper rules that contemplate the unique safety features of motorcycles.

SENATE BILL 385

SB 385 is essentially a restricted lane filtering bill. It is the same bill (SB 694) that received initial support from the Governor's Advisory Committee on Motorcycle Safety[10], passed out of this committee unanimously, and passed the Senate with a 2/3 bipartisan majority. It only permits motorcyclists to operate between lanes of traffic on highways and freeways: where the posted speed limit is 50 mph or greater; when traffic is stopped or traveling less than 10 mph; and only when the motorcyclist is traveling at a speed of 20 mph or less. Accordingly, it is a very restrictive form of lane splitting. Under SB 385, lane filtering would only be permissible on a small percentage of Oregon roadways, and then only under circumstances where traffic is stopped or nearly stopped. SB 385 does not allow motorcyclists to split lanes at higher speeds or even at speeds approaching the limits suggested by the CHP. **According to the UC Berkeley study, lane filtering at speeds less than 25 miles per hour and a speed differential of 10 mph or less, result in: 69% fewer head injuries; 61% fewer torso injuries; and 24% fewer arm/leg injuries, when compared to all non lane-splitting accidents.**[11] This illustrates the relative safety of riding under the parameters of SB 385 versus riding a motorcycle in general. In addition, it should be noted that SB 385 does not allow motorcyclists to ride on the shoulder or in bicycle lanes, a practice which does not have documented safety benefits.

The law enforcement aspects of SB 385 are also relatively straightforward. Under current law, law enforcement can cite any motorcyclist who rides between lanes of traffic. Because of the restrictions contained in SB 385, enforcement of the law will only be marginally different from existing law. Motorcycles seen riding between lanes at a higher speed differential or even at moderate speeds will be subject to citation, just like under the current law. Civil liability should also be minimally impacted. Motorcyclists and drivers will still owe a duty of reasonable care to each other. Drivers that change lanes without checking for other vehicles may be subject to legal liability when an accident results. Motorcycles that ride between lanes outside of the permitted parameters will also be subject to legal liability if their violation was the cause of a motor vehicle accident.

[10] The GAC-MS changed its position after SB 694 passed the Senate and opposed the bill at the House Committee on Transportation and Economic Development.

[11] Motorcycle Lane-splitting and Safety in California, Thomas Rice, Ph.D., et al., Safe Transportation Research & Education Center, University of California Berkeley, May 29, 2015, Tables 12 and 16.

What SB 385 does allow is for motorcyclists to have the *option* of riding between lanes when they are the most vulnerable to rear-end collisions – in stop-and-go situations when traffic comes to a sudden halt and moves again, or is traveling so slowly where stoppage is likely to suddenly occur. Team Oregon currently teaches a similar strategy – to always find an exit option. Moreover, once legal, Team Oregon would be able to teach riders how to safely perform the practice. On a crowded highway or freeway, that exit option is likely to exist between lanes of traffic. SB 385 would also have the added benefit of incentivizing motorcycle use in dense urban areas by providing traffic flow advantages over less fuel-efficient automobiles, particularly during traffic jams on highways and freeways, thereby reducing traffic congestion for everyone.

Since the ultimate failure of SB 694 two years ago, the data on the safety benefits of lane splitting has only become more convincing and the traffic problems in the Portland metro area have only become worse. In addition, California has now officially legalized lane splitting, and a lane splitting bill just recently passed the Washington Senate. Several other states also have lane-splitting bills that have been introduced. The current trends indicate that as traffic congestion continues to get worse, partial solutions like lane splitting will become more popular in Oregon, much in the same way it recently became legal in New South Wales, Australia when they were forced to address increased traffic congestion. In fact, as a result of the strong publicity following the Senate's passage of SB 694 in 2015, the public is already aware of the lane-splitting issue. SB 385 is not a radical leap - it is a limited and safe step which will help drivers adjust to the changing reality of Oregon's traffic situation and will lead to drivers being more aware of motorcycles, and will ultimately improve motorcycle safety in Oregon. Oregon should not just get behind lane splitting, it should get ahead of it. I urge the Committee to recommend passage of SB 385 as a reasonable and cautious step in that direction.

Very truly yours,

/S/ CHRISTOPHER A. SLATER

Christopher A. Slater
Attorney at Law

CAS:rn