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## The New Motorcycle Helmet Law: Know the Rules ©

*By:*

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On April 13, 2012, a new law went into effect in Michigan which permits, under certain circumstances, motorcycle operators and passengers to ride motorcycles without wearing crash helmets. However, the right to ride without a helmet is subject to certain significant rules and regulations, which are important for motorcycle operators and passengers to fully understand. Although the new law is relatively short, it is written in a way that is potentially confusing. Therefore, this article is intended to summarize the new law so that the right of motorcycle operators and passengers to ride without a helmet is clearly understandable and can be exercised intelligently.

### **Question #1.**     *When can a motorcycle operator ride without a helmet?*

A close reading of the new law indicates that a motorcycle operator can ride without a helmet when all of the following conditions have been satisfied:

- (a) The operator is 21 years or older;
- (b) The operator has had a motorcycle endorsement on his or her driving license for not less than two years, or the operator has passed a motorcycle course under § 811 of the Michigan Motor Vehicle Code; and
- (c) The operator has purchased "*first-party medical benefits*" under § 3103 of the Michigan No-Fault Act in amounts not less than \$20,000 per person and \$20,000 per occurrence, unless the operator's passenger purchased at least \$20,000 of this coverage, in which case, the operator only needs to purchase this coverage in the amount of \$20,000 per person.

## **Question #2.      *When can a motorcycle passenger ride without a helmet?***

The rights of passengers to ride without a helmet are similar to, but not identical to, the motorcycle operator. Motorcycle passengers can ride without a helmet when all of the following conditions have been satisfied:

- (a) The passenger is 21 years or older; and
- (b) The motorcycle operator has purchased "*first party medical benefits*" under § 3103 of the Michigan No-Fault Act in amounts not less than \$20,000 per person and \$20,000 per occurrence, or in lieu thereof, the passenger purchased this coverage in an amount not less than \$20,000 per person.

Note: *It appears from the language of the new law, that passengers but not operators can ride without helmets even though the operator of the motorcycle did not have a motorcycle endorsement for at least two years and did not pass a motorcycle course under § 811 of the Michigan Motor Vehicle Code. This anomaly may not have been intended by the Legislature.*

## **Question #3.      *What are "first party medical benefits" and when are they payable?***

These benefits are an optional coverage available under § 3103 of the Michigan No-Fault Act. This section requires insurance companies to make this coverage available to motorcycle owners or registrants in increments of \$5,000 or more "*for the payment of first-party medical benefits only.*" This phrase "*first-party medical benefits*" is actually not defined in the Michigan No-Fault Act. Presumably, it refers to the standard no-fault PIP benefits defined in § 3107 and § 3018 of the statute. However, the point is not absolutely clear. These first-party medical benefits can be purchased on a primary or coordinated basis. The most important point to remember, however, regarding these first-party medical benefits is that they are payable where there is a "*motorcycle accident.*" A motorcycle accident is defined in the Michigan No-Fault Act as an accident "*not involving the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle.*" Motorcycles are not considered to be "*motor vehicles*" under the provisions of the Michigan No-Fault Act. On the contrary, the phrase "*motor vehicle,*" for the most part means automobiles and trucks. Therefore, the *first-party medical benefits* required by the new helmet law will only be payable where the motorcycle operator or passenger sustains an injury not involving a car or truck. This would basically confine the payment of these benefits to situations where a motorcycle collides with another motorcycle, a roadside object, or some other non-vehicular entity, or simply goes out of control.

## **Question #4.      *What type of benefits are payable when motorcycle operators or passengers sustain an injury involving "motor vehicles"?***

As indicated in the answer to Question #3 above, the first-party medical benefits required to be purchased under the new helmet law do not apply when a motorcycle is involved in an accident

involving a motor vehicle (*i.e.* car or truck). When such an injury occurs, the injured motorcycle operator or passenger is entitled to receive full no-fault “*personal protection insurance*” benefits (PIP benefits) under § 3107 and § 3108 of the Michigan No-Fault Act. These PIP benefits include lifetime coverage for all reasonable charges for reasonably necessary products, services, and accommodations for the injured persons care, recovery, or rehabilitation; wage loss benefits for a three-year period calculated at 85% of gross income not to exceed the applicable monthly cap; replacement service expenses for three years, not to exceed \$20/day, to reimburse the injured person for reasonably necessary domestic services; and in cases involving death, survivors loss benefits payable to the dependents of the decedent. These no-fault PIP benefits are the most generous of any no-fault statute in the United States. Therefore, motorcyclists should be well informed about these benefits and take all reasonable steps necessary to protect their right to receive them.

There are strictly enforced rules regarding the payment of these no-fault PIP benefits and, therefore, a thorough understanding of the law is necessary. The statute contains very specific provisions regarding which no-fault insurer is obligated to pay these PIP benefits. The order of priority set forth in the statute provides that these benefits are payable first from the insurer of the owner for payment of PIP benefits to motorcycle operators and passengers or the registrant of the motor vehicle involved in the accident; then from the insurer of the operator of the motor vehicle involved in the accident; then from the auto no-fault insurer of the operator of the motorcycle involved in the accident; and then from the auto no-fault insurer of the owner or registrant of the motorcycle involved in the accident. A person who is injured while a passenger on a motorcycle is unable to recover no-fault PIP benefits under any of the above referenced levels of priority will draw no-fault PIP benefits from the passenger’s household auto no-fault insurer. If no PIP benefits are recoverable at any of these levels, the passenger and the operator of the motorcycle can receive no-fault PIP benefits from the Michigan Assigned Claims Facility (ACF).

It is also very important to note that in order for the owner or registrant of a motorcycle to be eligible to recover these no-fault PIP benefits, the owner or registrant of the motorcycle is required to purchase traditional liability insurance coverage commonly referred to as “*PLPD coverage.*” If the owner or registrant of the motorcycle does not purchase PLPD coverage, he or she will be legally disqualified from receiving no-fault PIP benefits. This requirement to purchase PLPD coverage continues to be in effect and is not in any way affected by the new motorcycle helmet law.

**Question #5.** *Are first-party medical benefits and no-fault PIP benefits payable if a motorcycle operator or passenger rides without a helmet in violation of the new law?*

The short answer to this question is “yes” – both types of benefits are recoverable regardless of whether the motorcycle operator or passenger was riding without a helmet in violation of the law. This is true because there is absolutely nothing in the new motorcycle helmet law or the Michigan automobile no-fault insurance law that disqualifies a person from receiving first-party medical benefits or no-fault PIP benefits because they rode a motorcycle without a helmet in violation of the law. It is obvious; however, that if a motorcycle operator or passenger has not purchased the first-party medical benefits required by the new helmet law, then no such benefits would be available to the passenger or operator in those motorcycle accidents not involving other motor vehicles.

**Question #6. *What effect does riding without a helmet have on the legal rights of motorcycle operators and passengers to sue at fault drivers for damages?***

This is a very important question and one which should be carefully considered by motorcycle operators and passengers in deciding whether they should ride without a helmet. Under current Michigan law, a motorcycle operator or passenger who sustains serious injury in an accident involving a motor vehicle has a right to pursue a tort liability claim against the at-fault driver who caused the accident. This tort liability claim includes damages for “*non-economic loss*” (i.e. pain and suffering, disability loss of function, denial of social pleasure and enjoyment, etc.) as well as “*excess economic loss damages*” (i.e. loss of income in excess of the three-year PIP benefit period, etc.). The rights of motorcycle operators and passengers to pursue liability claims for these damages are subject to the “*law of comparative negligence*.” This legal doctrine provides that liability damages recoverable by an injured person will be reduced by the percentage of negligence attributable to the injured person. The percentage of comparative negligence attributable to the injured person is derived by comparing the injured person’s conduct with the conduct of the at-fault driver. If the injured person’s comparative negligence exceeds 50% of the total cause of the accident, the injured person will not be entitled to recover any compensation for *non-economic loss* damages.

The rule of comparative negligence will come into play in at least two major ways regarding liability claims of motorcycle operators or passengers who ride without a helmet. First, if the motorcycle operator or passenger is riding without a helmet in *violation* of the new helmet law, the insurance company for the at-fault driver will argue that the violation of the helmet law renders the injured motorcycle operator or passenger comparatively negligent, thus entitling the at-fault driver’s insurance company to reduce the injured person’s damages accordingly. Second, if the injured motorcycle operator or passenger is *legally* riding without a helmet, in full compliance with the new motorcycle helmet law, the at-fault driver’s insurance company will still argue that the injured person is guilty of comparative negligence because it is simply unreasonably dangerous to ride a motorcycle without a helmet, regardless if there is a legal right to do so. This is a very important concept because motorcycle operators and passengers who are exercising their legal right to ride without a helmet, may very well have their liability claims significantly reduced by the doctrine of comparative negligence because the failure to wear the helmet resulted in far greater injury than would have been the case had the helmet been worn. Accordingly, motorcycle operators and passengers may lose substantial liability claim compensation if they choose to exercise their legal right to ride without a helmet.

### ***Conclusion***

It is clear that the recent passage of the new motorcycle helmet law creates new legal rights for motorcycle operators and passengers that, prior to this law, did not exist. This means people must be very knowledgeable about their rights so that they can make informed decisions regarding the operation of motorcycles on Michigan roadways.