

MOTORCYCLE CRASH HELMET EXCEPTIONS

**House Bill 4823 as introduced
First Analysis (6-12-01)**

**Sponsor: Rep. Gene DeRossett
Committee: Transportation**

THE APPARENT PROBLEM:

Since 1966, Michigan has required motorcyclists to wear helmets while operating their machines, and for the same length of time motorcyclists have vociferously opposed the requirement. Many motorcyclists consider the law an abridgement of freedom, an example of the state dictating behavior to persons who should be free to choose how to conduct their lives.

Shortly after Michigan passed its helmet law, the federal government made such acts a requirement for states that wished to receive federal highway safety funds and highway construction funds. As a result, all but three states passed helmet laws. The federal requirement was dropped in 1976, however, and in the absence of the threat of lost federal dollars about half the states repealed or modified their helmet laws during the late 1970s and early 1980s.

Under the 1991 Intermodal Surface Transportation Efficiency Act, known as ISTEA, if a state did not have both a seat belt law and a helmet law in effect for all riders at any time by fiscal year 1995 or thereafter, three percent of federal grant money available to it for highway purposes would have been transferred to a special highway safety program account. However, the National Highway System Designation Act of 1995, enacted on November 28, 1995, repealed the Federal Motorcycle Helmet Use law, and states are no longer penalized if they have not enacted laws requiring use of motorcycle helmets.

Currently, about half the states require helmets to be worn by everyone, almost half have age-specific laws for usage (19 of these require helmets be worn by those under age 18), and three have no law requiring helmet use. At least two states, Louisiana and Nebraska, have repealed their mandatory universal helmet laws only to reinstate them after undertaking studies to ascertain the social and economic costs of repeal.

Although many safety officials are convinced that helmet laws save lives and reduce the severity of

injuries, many motorcyclists believe it is time Michigan liberalized its helmet law.

THE CONTENT OF THE BILL:

House Bill 4823 would amend the Michigan Vehicle Code to provide for exceptions to the requirement that those who travel on motorcycles wear crash helmets. Currently, a person operating or riding on a motorcycle, and any person less than 19 years old operating a moped on a public street, must wear a crash helmet approved by the Department of State Police. Under the bill, this requirement would not apply to a person 21 years old or older who had been licensed to operate a motorcycle for at least two years, and who had successfully completed a motorcycle safety course. Further, the crash helmet requirement would not apply to a motorcycle passenger 21 years old or older if a driver met the age, licensure, and safety training requirements. Finally, the crash helmet requirement would not apply to a person operating or riding in an autocycle if the vehicle were equipped with a roof that met or exceeded standards for a crash helmet.

MCL 257.658

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would result in increased costs to the state and to local governments due to increased insurance costs, and the state would also experience increased Medicaid costs. (6-11-01)

ARGUMENTS:

For:

This bill is about education and choice. Michigan's current helmet law is an unwarranted infringement on the personal liberty of motorcyclists. Although this bill does not repeal Michigan's helmet law, it offers an alternative since it would give motorcyclists a choice either to wear or to discard a crash helmet---if they are

veteran drivers who have taken a safety course. Far too often, laws such as the mandatory crash helmet law aim to protect an individual from engaging in an activity that presents a risk only to that person and to no one else. By removing from the individual the right to choose his or her own level of risk in a situation where the public interest--or the interest of other individuals, at least--is not involved, the state essentially is substituting its own judgment for that of the individual. This is an illegitimate interference with the right of self-determination traditionally guaranteed to each person in American society.

For:

This bill represents a good compromise. Opponents of mandatory helmet laws have argued that they do not want to do away with helmets; they merely want motorcyclists to have the same freedom of choice that others in society have to evaluate the risks associated with a particular type of activity, to choose for themselves the risks they are willing to take, and to bear the consequences, personally, of that decision. This bill would afford them that choice, but also would keep in place the helmet requirement for those under 21 years of age.

For:

At present, 22 states have age-specific helmet laws, including many of the states near Michigan: Indiana, Ohio, Wisconsin, and Minnesota require helmets for riders under age 18, and Illinois does not require any helmet use. Michigan should also have an age-specific helmet use law, giving people a choice if they are experienced drivers and well trained.

For:

Passage of the bill would not mean that the general public would pay for injured motorcyclists to any greater degree that it already pays for other injured trauma victims. According to committee testimony, the average age of a motorcyclist is 36 years old. Further, most motorcyclists have between two and four years of college education, and their average income has been reported at between \$33,000 annually (as reported by one source quoted by the bill's sponsor) and \$57,000 annually (as reported by the American Motorcyclist Association for that organization's members). In addition, there is some evidence that motorcyclists are just as likely to be privately insured as any other road user. A study by the University of North Carolina Highway Safety Research Center reported that 49.5 percent of injured motorcyclists had their medical costs covered by insurance, while 50.4 percent of the other road trauma victims were similarly insured. Further, according to one hospital's experience with insured

trauma victims that was related during committee testimony, motorcyclists were slightly less dependent upon public funds to pay their hospital bills than the general public. Specifically, at Harborview Medical Center a study reported that 63.4 percent of the injured motorcyclists in the trauma center relied on public funds while 67 percent of the general patient population relied on publicly funded health care. These reports refute the argument that motorcyclists disproportionately rely on public health care funds to pay for their hospitalization.

For:

There is a potential economic impact of motorcycling on tourism and the economy in Michigan. The economic value of motorcycling in the United States is \$5.9 million a year, according to committee testimony. Further, the states that have enacted mandatory helmet laws have experienced a decrease in tourism dollars that could be spent by motorcyclists who decline to travel in the state because their freedom of choice is denied. For example, there are over 770,000 registered motorcyclists in the states surrounding Michigan, and every one of them allows the adult rider of motorcycles a choice about wearing a crash helmet. In a survey distributed by ABATE of Michigan, over 95 percent of out-of-state riders surveyed indicated that they do not travel in Michigan due to the mandatory helmet law.

For:

The best way to reduce the number of injuries and deaths stemming from motorcycle accidents is to reduce the number of accidents, and the best way to accomplish this is through education. Helmet laws merely provide a false sense of security, both for motorcyclists and motorists who share the road with them. The need for education is two-fold: first, new riders and young riders most need the protection that comes of education, since the evidence suggests that most motorcycle accidents involve inexperienced operators who have less than six months of riding experience with a particular machine; second, automobile drivers need to be educated about motorcyclists, since the single most important factor cited in motorcycle accidents is said to be the failure of motorists to honor the motorcyclists's right-of-way. This bill goes part way. It recognizes the value of education and training for motorcyclists, and rewards their proficiency and experience by giving them the option of wearing a crash helmet.

Response:

The existence of a helmet law does not prevent motorcycle education programs from being conducted. Education programs can and should continue in conjunction with mandatory helmet use. In fact,

requiring helmets to be worn is itself educational in the sense that minors and inexperienced riders tend to follow the example of older, experienced motorcyclists. For example, according to a survey conducted in 1991 by the National Highway Traffic Safety Administration (NHTSA), helmet use was nearly 100 percent in states with helmet use laws governing all motorcycle riders, but only 34 to 54 percent in states with no helmet use laws or laws limited to minors. Simply put, motorcycles are dangerous vehicles. Their operators are far more exposed than those who operate or ride in other vehicles, and it seems entirely reasonable to make the wearing of a helmet a prerequisite for the privilege of operating a motorcycle on public roadways.

Against:

The social costs of this legislation are too great. Motorcyclists generally do not carry the same level of health care coverage that is required of auto drivers under Michigan's no-fault laws. Consequently, auto drivers bear the first \$250,000 in cost of a motorcyclist's injury, up to the point that the motorcyclist can draw on the Catastrophic Claims Fund. In order to redirect this financial burden to motorcyclists where it rightfully belongs, an amendment was offered in committee to tie-bar the bill to House Bill 4913, a bill that would require motorcyclists to purchase up to \$250,000 of health care coverage. That amendment was defeated. Without the tie-bar to House Bill 4913, all motorists must bear the burden of the cost of motorcyclists' serious injuries. To minimize this unfair financial burden on drivers, public policy should require education, training, crash helmet use, and health care insurance coverage.

Against:

By removing the motorcycle helmet requirement, the bill would take a huge step backward from the state's traditional policy of promoting public safety. Studies undertaken by public health epidemiologist and health care economists during the past two decades, both in the United States and internationally, consistently report that mandatory helmet use for all motorcycle drivers has social and economic benefits. Those data are analyzed at the University of Michigan Transportation Research Institute. A review of eight studies published in peer-reviewed research journals during the past decade and analyzing data for 29,252 cases in eight states (Nebraska, Louisiana, Texas, Colorado, Rhode Island, Kansas, Washington, and California) demonstrate that repeal of a mandatory and universally applied motorcycle helmet law in favor of an age-restricted helmet law has the following effects: Observed helmet use decreases from 99 percent to 40 percent; fatality rates increase from 38 - 70 percent;

severe brain injury rates increase from 50 - 360 percent; and, hospital costs for motorcycle injuries increase from 38 - 50 percent.

Response:

Recent statistics distributed by the American Motorcyclist Association raise doubt about the efficacy of the science-based information and research findings published in public health and medical journals. For example, the Statistical Annual published by the Motorcycle Industry Council, Inc. summarized 1993 motorcycle accident statistics, reporting that the number of accidents per 10,000 registrations in universal vs. age-restricted helmet states were 222.21 and 194.02, respectively; and further, that fatalities per 100 accidents were 2.98 vs. 2.9. In states where helmets were required, the accident and fatality rates were somewhat higher than in states with age-restricted or voluntary helmet use. The association points out that during 1993, mandatory helmet law states accounted for 61 percent of total motorcycle registrations. They also accounted for 64 percent of the accidents and 65 percent of the fatalities. The association observes that while this data do not confirm that mandatory helmet laws lead to an increase in accidents, they do show that the absence of a mandatory helmet law does not result in the same.

Reply:

A more accurate comparison than one that juxtaposes injuries to accidents is a comparison that sets rates of injuries for both modes of transportation side-by-side.

Against:

Crash helmets reduce risks; the state should retain its mandatory helmet law. Evidence that universal mandatory helmet laws reduce the risk of serious injury and death is available from two states (Nebraska and Louisiana) that repealed and then later reinstated their mandatory universal helmet laws. For example in Nebraska, once the helmet law was re-enacted, moderate motorcycle injuries declined by 45 percent, critical injuries by 44 percent, and fatalities by 62 percent. Indeed, the motorcycle collision rate itself declined, strengthening the claim of helmet proponents who argue helmets do not restrict hearing or vision to cause collisions.

Based on evidence provided by the National Highway Traffic Safety Administration, an unhelmeted motorcyclist is 40 percent more likely to incur a fatal head injury and 15 percent more likely to incur a non-fatal head injury than a helmeted motorcyclist when involved in a crash. In a 1991 report prepared by the Government Accounting Office, thirteen studies (among 46 studies summarized) had data on some aspect of the

societal cost of motorcycle accidents. These studies indicate that unhelmeted riders are more likely to (1) need ambulance service, (2) be admitted to a hospital as an inpatient, (3) have higher hospital charges, (4) need neurosurgery and intensive care, (5) need rehabilitation, and (6) be permanently impaired and need long-term care.

Response:

Statistics regarding the increase in injuries and deaths attributable to helmet law repeal can easily be manipulated and are not to be trusted. (Opponents of helmet laws, for instance, point out that many of the studies used to justify helmet usage are funded by the insurance industry, suggesting they lack objectivity.) It simply cannot be established with any consistency that states that have repealed their helmet laws have witnessed higher fatality rates for motorcyclists than states that have retained their laws. Some states with helmet laws, in fact, have a higher fatality rate than states without helmet laws. Also, some people attribute the drop in the motorcycle fatality rate in states that have enacted a helmet law to the resulting decline in motorcycle usage by riding enthusiasts after enactment of the law, not to any increased protection provided to helmeted riders.

Against:

Society has come to expect the regulation of certain human activities when it is necessary to safeguard the public interest: the mandatory seat belt law stands as an example of such regulation. What's more, requiring helmets to be worn is not simply a matter of protecting individuals from themselves. The cost of treating injuries suffered in motorcycle accidents is high, and in many cases the public must indirectly bear those costs (via surcharges on vehicle insurance for catastrophic claims, for example). Research studies in California, Louisiana, and most recently in Washington, published in the American Journal of Public Health and the Journal of Trauma, present findings that describe a considerable financial burden which results when unhelmeted motorcyclists sustain injuries. For example, in Washington, 2,090 crashes included in the study resulted in 409 hospitalizations (20 percent) and 59 fatalities (2.8 percent). Although unhelmeted motorcyclists were only slightly more likely to be hospitalized overall, they were more severely injured, nearly three times more likely to sustain head injuries, and nearly four times more likely to have been severely or critically head injured than helmeted riders. Unhelmeted riders were also more likely to be readmitted to a hospital for follow-up treatment and to die from their injuries. The average hospital stay for unhelmeted motorcyclists was longer and cost more per case; the cost of hospitalization for unhelmeted

motorcyclists was 60 percent more overall (\$3.5 vs. \$2.2 million).

The GAO highway safety report summarizing 46 motorcycle helmet studies concluded that overall the studies showed that unhelmeted riders were more likely to die or lose earning capacity through disability. For example, one study attempted to estimate the cost of lost years of productive life for 516 riders, the number the authors calculated had died in 1980 because of helmet law repeals. Their estimate, updated to 1990 dollars, was nearly \$250 million, or about \$480,000 per death.

Response:

States that have repealed their helmet laws have not experienced significant increases in insurance costs, according to representatives of motorcycle organizations. For example, some have cited the fact that vehicle insurance rates in Michigan failed to drop in the years following enactment of the state's helmet law; conversely, they point out that since Wisconsin repealed its helmet law in 1978, insurance rates there have not significantly increased. This version of the motorcycle helmet legislation would allow insurance companies to charge for premiums based on crash helmet use, in the event that insurance costs go up due to serious injury.

POSITIONS:

American Bikers Aiming Toward Education (ABATE) of Michigan supports the bill. (6-7-01)

The Department of Community Health opposes the bill. (6-6-01)

The Department of State Police opposes the bill. (6-6-01)

The Michigan Traffic Safety Association opposes the bill. (6-6-01)

The American Automobile Association (AAA) strongly opposes the bill. (6-6-01)

The Epilepsy Foundation of Michigan opposes the bill. (6-6-01)

The Brain Injury Association of Michigan opposes the bill. (6-6-01)

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.