

68th OREGON LEGISLATIVE ASSEMBLY--1995 Regular Session

House Bill 3422

NOTE: Matter within { + braces and plus signs + } in an amended section is new. Matter within { - braces and minus signs - } is existing law to be omitted. New sections are within { + braces and plus signs + }.  
LC 2510

House Bill 3422

Sponsored by Representative ROBERTS; Representatives FISHER, MARKHAM, NAITO, QUTUB, SOWA, HOMPSON  
(at the request of BikePAC of Oregon)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Requires retail and wholesale vendors of protective headgear for motorcyclists to offer for sale only those helmets approved by Department of Transportation. Creates offense of selling unapproved headgear. Punishes violation by maximum of \$\_\_\_ fine.

A BILL FOR AN ACT

Relating to protective headgear; creating new provisions; and amending ORS 815.050.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 815.050 is amended to read: 815.050. (1) The Department of Transportation shall adopt and enforce rules establishing minimum standards and specifications for safe protective headgear { - to be worn by - } { + that may be offered for sale by retail or wholesale vendors to + } people operating motorcycles or mopeds. The rules shall conform, insofar as practicable, to safety standards and specifications for such headgear issued by the Federal Government and, to the extent there are no such federal standards, to the safety standards promulgated by the United States of America Standards

Institute. (2) The department shall establish a procedure for accepting and processing applications for approval of protective headgear. The procedure shall be similar to the following:

(a) Any person may apply for approval of protective headgear.

(b) The department may require a sample to be submitted for test.

(c) The department may accept reports of tests conducted by independent testing laboratories.

(d) Samples and laboratory reports submitted by applicants become the property of the department.

(e) When an application for approval has been submitted, the department shall approve or disapprove the application within a reasonable time and in accordance with the minimum safety standards and specifications under this section.

(f) If the department approves, it shall issue a letter of approval to the applicant.

(g) An approval letter shall indicate approval of the specific model tested and shall identify such by the trademark or the type of identifying serial number which it will bear.

(3) The department may purchase in the market, and test or submit to testing laboratories any protective headgear which it has approved for sale or to be offered for sale. The department shall cancel any approval under this section if it determines that the protective headgear does not satisfy the minimum standards under this section. Cancellation of approval is effective as soon as the department notifies the person who applied for approval or the person's successor that the approval has been canceled.

SECTION 2. { + Section 3 of this Act is added to and made a part of ORS chapter 815. + }

SECTION 3. { + (1) A person commits the offense of selling unapproved headgear if the person is in the business of selling protective headgear to motorcycle or moped riders and the person sells headgear that has not been approved under ORS 815.050. (2) The offense described in this section, selling unapproved headgear, is a Class \_\_\_ traffic infraction. + }

# Coordinators Comments

I thought that my testimony before the House Transportation Committee on Feb. 24, 1997 would be of interest. So this here is my testimony in lieu of my comments this month.

**Lawsuit Update:** A hearing on our motion for summary judgment will be on March 12, 1997 at 10:30 am. In the U.S. Courthouse in downtown Portland. Unfortunately, it conflicts with the third "BIKER DAY" in Salem. I would appreciate as many supporters in the audience as possible. If you are planning on attending "BIKER DAY" please continue with those plans. If not please come to the hearing. We need support in both places.

Testimony submitted by Larry Schalk  
To the House Transportation Committee  
February 24, 1997

Chairman Montgomery, distinguished Representatives,

My name is Larry Schalk. I am the State Coordinator of ABATE of Oregon, a legislative action organization dedicated to promoting motorcycling through public awareness, education and fair motorcycle legislation. I live at 4026 S.E. Rex St. in Portland, Oregon. I would like to tell the committee about what has happened to me since the last legislative session concerning the Oregon helmet law.

Over the Memorial Day weekend in 1996, I attended ABATE of Oregon's "Fossil Campout" located near the town of Fossil, Oregon. This annual campout is one of the major fundraising events to support ABATE of Oregon, and provides motorcyclists an opportunity to get together and socialize with others from across Oregon and the northwest. I have been present at several "Fossil" campouts and have never seen any major problems that required police intervention. "Fossil" is a family oriented event. This year the American Legion Post in Condon, Oregon, operated a concession in the campground that earned them several thousand dollars with which they were able to donate to many worthwhile causes. This event also provides much income for the businesses in the town of Fossil, and the surrounding area.

On May 24, 1996, I was riding my motorcycle to "Fossil", and was stopped by an Oregon State Trooper, Senior Trooper Mitchell. I first noticed the trooper parked on the right shoulder of the highway as I was about to pass a large motorhome. In fact the trooper had only a glimpse of me as I went by because I was in the process of passing this motorhome. He immediately left the shoulder of the road in rapid fashion and was very quickly past the motorhome and following behind me.

I stopped my motorcycle, and when he approached me I asked why I had been stopped. He responded that I was stopped because I was wearing an "illegal" helmet. I asked him if he was aware of the recent changes to the Oregon Helmet Law, and I said that my helmet possessed all the required elements in the law; hard shell, padding, chin strap, and DOT sticker. He said that he was aware of the new law but "that's not the way we interpret the law". I asked him what was wrong with my helmet. He told me that it did not "cover your ears enough" and that it didn't have enough padding. I asked him to clarify the requirement about covering the ears and he said "I don't want to argue about this". I told him okay, whatever you say.

He asked for my papers and went back to his car. In about 15 minutes he returned to hand me the citation. By this time I had removed my helmet and he asked me to place it on my head so that he could take a photo of it, I complied of course. He then informed me that I should be aware that there were several other officers farther down the road towards Fossil and that I had a good chance of being stopped again because of my "illegal" helmet. I thanked him and then I left.

It is important to note that Trooper Mitchell was able to determine that my helmet did not have enough padding without even looking inside the helmet. Also FMVSS218 standards do not specify the quantity or type of padding to be used in a helmet, or that the helmet must cover a specific portion of the head or that the size of the helmet will determine if it complies or not.

When I arrived at the campsite, I learned that many of the people attending were stopped by the police and that the reason for the bulk of these stops were so-called "illegal" helmets. Some people were stopped but not cited for anything. Many people were concerned about leaving the campsite and being "harassed" by the police. This harassment continued throughout the 24th and during the next day.

On the 25th, a small group of ABATE members including myself and Spenser Neal, (attorney and ABATE member) visited the command center for the OSP that had been established in the Forest Service compound near Fossil. We spoke with an OSP lieutenant who was in charge of the "operation". We discussed the stops and the new helmet law with him, and Mr. Neal asked him how an officer sitting along the side of the road could make a determination about whether a helmet was "legal" or not. He told us that he would discuss our concerns with his officers.

It was at this meeting that we learned that a "special detail" of OSP motorcycle officers had been brought in from Portland to monitor our event. I don't know for certain but, after our meeting with the OSP lieutenant, the stops and harassment, for the most part, ended. Was it just a coincidence? Who knows.

I suppose that in some ways I was naive to think that after all the testimony last session concerning the harassment of motorcyclists due to the vagueness of the helmet law, and the subsequent clarification in the new law, that the harassment would not continue. Obviously I was wrong. I was hoping that our campout would not be targeted by the OSP as it has for the last several years. It is clear to me that a pattern of harassment, by the OSP and some other police agency's, is a deliberate attempt to thwart our efforts to stand up for our rights. The work of ABATE and BikePAC is well known to the OSP.

By targeting our "Fossil Campout" with a detail of OSP officers (and in one case Oregon National Guard troops) I think every effort has been made by top level commanders to reduce the number of participants to our events and therefore undermine ABATE's fundraising abilities. Since ABATE is a major supporter of BikePAC then it seems reasonable to me that by undermining ABATE's fundraising, BikePAC would also be undermined. And therefore BikePAC's legislative efforts would be greatly diminished. Or in other words, the police don't like it when you point out their wrong doing, and this is how they intend to get even. When the legislature changed the helmet law to eliminate the vagueness over the FMVSS218 standards, and the State's own policing agency chooses to ignore the very reason for these changes...needless harassment of motorcyclists, then we as citizens have a problem.

ABATE of Oregon, and I filed a class-action lawsuit against the OSP on July 9, 1996. This was not an easy decision to make, but I think a necessary one. We had no other choice. The actions over the past several years by the OSP against ABATE are a deliberate and irresponsible attempt to damage our fundraising ability. These actions violated our right as citizens to freely assemble with each other without governmental interference.

Trooper Mitchell's closing remarks to me are very telling. We violated no laws, caused no problems for anyone in the area of Fossil, Oregon, or elsewhere. There is no justification for the huge police presence in the Fossil area over Memorial day weekend, other than what seems to be in the minds of the individuals that authorized this waste of taxpayers funds and harassment of the State's citizens.

Shortly after filing the lawsuit, we were made aware of an OSP memo dated July 1, 1996 to all field officers concerning the enforcement of the helmet law. The memo clearly states that the FMVSS218 standards no longer apply. The FMVSS218 standards are at the heart of the OSP's justification for their enforcement tactics. Confused? So are we. My helmet citation was dismissed by request of the OSP as were others. So why was I stopped in the first place? Now the officers in their depositions are saying, in essence, that they don't understand the helmet law. In fact, they refer to the FMVSS218 standards for determining what is a legal helmet, but by their own admission they say they haven't read the FMVSS218 standards.

The OSP officers don't understand the Oregon helmet law that the legislature changed by unanimous vote, to make it easy for anyone to determine what is a legal helmet. I don't get it. If I am ignorant of the law, it makes no difference. If the police are ignorant of the law, its okay? I am convinced that the only way to eliminate this law as a tool to harass motorcyclists is to eliminate the law itself.

The countless stops by police over what is or is not a legal helmet is a waste of time and money for the courts, police and the motorcyclist. Time and money better spent elsewhere in areas that we as motorcyclists feel have a greater impact on safety than mandatory helmet laws. Helmet laws do nothing to prevent accidents, education and training does. Remove this tool for the needless harassment of motorcyclists, and lets use our energy wisely and place the emphasis where it will do the most good.... training, education, and public awareness.

Thank you, if you have any questions I will do my best to answer them.

Respectfully submitted,

Larry Schalk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

A.B.A.T.E. OF OREGON, INC.  
and LARRY SCHLAK,

Plaintiffs,

vs.

LERON R. HOWLAND, Superintendent  
of the Oregon State Police, and John Doe 1  
through 100,

Defendants.

)  
) Civil No. 96-957 JE

)  
) DECLARATORY JUDGMENT

**IT IS HEREBY ADJUDGED AND DECLARED** that Oregon House Bill 3422 means that as long as a motorcycle rider is wearing a protective covering on his head that has a hard outer shell, padding adjacent to and inside the outer shell and a chin-strap retention system with a sticker indicating that the motorcycle helmet meets standards established by the United States Department of Transportation the rider is in compliance with state law with respect to his helmet and a police officer may not inquire further to determine if the helmet worn meets United States Department of Transportation testing standards.

DATED this 9th day of May, 1997.

/s/ JOHN JELDERKS  
John Jelderks  
United States Magistrate Judge

Submitted by:

/s/ Spencer M. Neal  
Spencer M. Neal  
Of Attorneys for Plaintiffs