

Department of Legislative Services
 Maryland General Assembly
 2005 Session

FISCAL AND POLICY NOTE

House Bill 943 (Delegate McComas, *et al.*)
 Environmental Matters

Motor Vehicle Administration - Required List of Protective Headgear and Eye-Protective Devices for Motorcyclists

This bill requires the Administrator of the Motor Vehicle Administration (MVA) to publish lists of all protective headgear and eye-protective devices, by name and type, that meet the MVA standards for operators and passengers on motorcycles. The administrator must make a copy of these lists available to any holder of a Class M (motorcycle) license who requests a list in person. The administrator may opt to publish the lists on the MVA web site.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures could increase by an estimated \$38,400 in FY 2006 to support one additional part-time position at the MVA. Future year expenditure estimates reflect annualization, salary increases, and inflation. Revenues would not be affected.

| (in dollars) | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|----------------|------------|------------|------------|------------|------------|
| SF Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| SF Expenditure | 38,400 | 34,900 | 36,700 | 38,700 | 40,800 |
| Net Effect | (\$38,400) | (\$34,900) | (\$36,700) | (\$38,700) | (\$40,800) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: A person may not operate or ride on a motorcycle unless the individual is wearing protective headgear that meets the standards established by the administrator. A person may not operate a motorcycle unless:

- wearing an eye-protective device of a type approved of by the administrator; or
- the motorcycle is equipped with a windscreen.

The administrator may approve or disapprove required protective headgear and eye-protective devices, and must publish lists of all approved protective headgear and eye-protective devices, by name and type. The administrator may adopt and enforce regulations establishing standards and specifications for the approval of protective headgear and eye-protective devices.

By regulation, federal Motor Vehicle Safety Standard (FMVSS) 218 is adopted as the minimum standard for protective headgear required to be worn by operators and passengers on motorcycles. That standard only applies to helmets. The MVA must accept all helmets which comply with the requirements of FMVSS; however, regardless of that standard, all protective helmets must have a chin or neck strap properly fastened when the motorcycle is in motion. In addition, the U.S. Food and Drug Administration (FDA) standard for impact resistance has been adopted for eye-protective devices.

Background: The U.S. Department of Transportation (USDOT) has established FMVSS 218 as a minimum safety standard for motorcycle helmets. The standard is based on whether or not a helmet can withstand certain direct force impacts when dropped on an anvil, and the amount of headform deceleration when dropped (how fast the head stops when the helmet hits the anvil). A sticker with the letters “DOT” is affixed to the helmet so that consumers can know that the helmets meet minimum safety standards. USDOT operates on the honor system and relies on reporting from manufacturers as to whether helmets pass or fail FMVSS standards, though USDOT conducts a limited number of tests per year. The manufacturer applies the sticker.

In addition to FMVSS standards, several other organizations, the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), and the Snell Memorial Foundation (SMF) have their own set of standards and methods which should be used to test the helmet. The Snell standard is considered the highest standard by many motorcyclists. A manufacturer who wishes to seek Snell approval provides five helmets to SMF, who conduct a series of tests similar to the ones that USDOT performs. However, these foundations and standards are optional, not

mandatory like FMVSS standards. Many manufacturers of low-end helmets do not seek Snell, ASTM, or ANSI certification.

Unlike the other organizations listed, SMF does publish a list of helmets that meets its standards, which are revised every five years. The most recent standards are the 2005 standards, and SMF has already begun testing helmets to make sure they meet this standard.

While the administrator is required to produce and publish a list of personally approved protective headgear and eye-protective devices, the administrator is not required to produce one for items that merely meet regulations for protective headgear and eye-protective devices.

The MVA has never produced a list of approved devices, mainly because the administrator of the MVA has never “approved” of products but relied on the federal standards adopted under regulation. Individuals who argue that mandatory helmet laws are an infringement of constitutional rights have also argued that the failure to produce such a list renders the law vague and therefore unconstitutional. One such individual, William “Mike” Lewis, took the State to court over its failure to produce such a list in 1997. The Circuit Court of St. Mary’s County ruled in his favor, stating that without publishing such a list the law was vague. That decision was overturned on appeal the following year.

State Expenditures: While the MVA advises that most eyewear sold over the counter meets the FDA’s impact resistance standards, despite an exhaustive search, Legislative Services was not able to locate a definitive list of eye-protective devices that meet these standards. Further, the National Highway Traffic Safety Administration advises that there is no comprehensive list of helmets that meet FMVSS standards, though the results of its own testing is available on the Internet. Therefore, the MVA would have to compile these lists. As new helmets and eye-protective devices are brought onto the market and discontinued, the MVA would need personnel researching the issue.

Assuming that the MVA would have to compile such a list and would not have to test devices itself, TTF expenditures would increase by an estimated \$38,429 in fiscal 2006, which accounts for the bill’s October 1, 2005 effective date. This estimate reflects the cost of hiring one part-time administrator (grade 17) to research new products, and create and update the list, and \$10,000 to publish the list. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | |
|---|-----------------|
| Salary and Fringe Benefits | \$21,949 |
| Printing Costs | 10,000 |
| Operating Expenses | <u>6,480</u> |
| Total FY 2006 State Expenditures | \$38,429 |

Future year expenditures reflect: (1) a full salary with 4.6% annual increases and 3% employee turnover; (2) publishing the list once a year; and (3) 1% annual increases in ongoing operating expenses.

The MVA advises that it would need a full-time administrator to research and develop the list, and would need to publish the list twice a year. It also advises that it would cost \$10,000 to publish the list the first time, and \$3,000 each time to update and republish the list. Legislative Services advises that, while new products are introduced into the market often and old ones continued, the list would only have to be published once a year and the task could be handled by a part-time administrator.

If the MVA were forced to conduct its own safety tests to determine if the protective headgear and eye-protective devices met FMVSS and FDA standards, the costs associated would increase significantly. The MVA would have to contract with an outside organization to perform the tests, which would cost approximately \$750 to \$1,000 for eye-protective devices and between \$1,100 and \$2,000 per helmet. There are hundreds of helmets and eye-protective devices available.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Transportation, *Motorcyclist Magazine*, *North American Motorsports Journal*, BMW of Orlando, National Highway Traffic Safety Administration, Nova Scotia Dual Sport Commission, Snell Memorial Foundation, Department of Legislative Services

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