HB

48

9-LS0222\A.1
Ford
3/16/95

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE BRICE

TO: HB 48

1 Page 1, line 1:

2 Delete "motorcycle safety and to"

3 Page 1, lines 4 - 7:

4 Delete all material.

5 Page 1, line 8:

6 Delete "Sec. 3."

7 Insert "Section 1."

I'm not quite sure what this bill changes.

HOUSE BILL NO. 48

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES BRICE, Brown, Navarre

Introduced: 1/16/95
Referred: Transportation, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to motorcycle safety and to use of helmets by operators of motorcycles."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** POLICY. It is the policy of the state that the Department of Public Safety implement a motorcycle safety program. duties of Commissioner of PS to adopt Regs

*** Sec. 2.** AS 28.05.011 is amended by adding a new paragraph to read:

(12) regulations necessary to implement a motorcycle safety program.

*** Sec. 3.** AS 28.35.245 is repealed and reenacted to read:

Sec. 28.35.245. MOTORCYCLE HELMET. (a) A motorcycle helmet may not be manufactured or sold in the state unless the helmet conforms to standards established by regulation by the commissioner of public safety. The regulations must provide for helmets that allow normal peripheral vision and hearing and minimize neck injuries to the wearer potentially caused by the helmet. The regulations shall be adopted under the provisions of AS 44.62 (Administrative Procedure Act).

1 (b) A person who is 18 years of age or older may not be required to wear a
2 helmet while operating a motorcycle if the person is the holder of a license or
3 endorsement to operate a motorcycle.

Present law — Age of Majority — AS 25.20.010 which says 18 is Age of Majority

Sec. 28.35.225. Enforcement. All law enforcement officers in this state and employees of the department designated by the commissioner shall enforce this title and regulations adopted under this title. The state troopers shall advise and instruct all other law enforcement officers in the state concerning the requirements of this title and regulations adopted under this title. (§ 11 ch 241 SLA 1976; am § 7 ch 54 SLA 1979)

NOTES TO DECISIONS

"Law enforcement officers". — Any member of the police force of an incorporated city or borough is a "law enforcement officer" for purposes of this section. State v. Burke, 714 P.2d 374 (Alaska Ct. App. 1986).

An airport police officer is a law enforcement officer for purposes of this section. Clark v. State, 738 P.2d 772 (Alaska Ct. App. 1987).

Enforcement authority. — This section authorizes all "law enforcement officers" to stop any vehicle whose driver has committed a statewide traffic offense in the officer's presence, regardless not only of whether the offense was committed within the territorial limits of the jurisdiction which employed the officer, but also of whether the vehicle is in the territorial limits at the time the officer decides to make the stop. State v. Burke, 714 P.2d 374 (Alaska Ct. App. 1986).

Sec. 28.35.230. [Renumbered as AS 28.40.050.]

Sec. 28.35.235. Unauthorized use of handicapped parking; minimum fine. (a) A person may not park a motor vehicle in a parking place reserved for disabled or medically handicapped persons unless

(1) the person has a special permit issued by the department under AS 28.10.495;

(2) the motor vehicle displays a special license plate issued to disabled or handicapped persons under AS 28.10.181(d); or

(3) the motor vehicle displays a special license plate or permit issued to disabled or handicapped persons by another state, province, territory, or country.

(b) A person who violates this section is guilty of an infraction. Upon conviction the court shall impose a fine of not less than $100. (§ 2 ch 11 SLA 1987)

Sec. 28.35.240. Duty to obey school patrol. [Repealed, § 3 ch 68 SLA 1964.]

Sec. 28.35.245. Motorcycle helmets. (a) After January 1, 1978, motorcycle helmets may not be manufactured or sold in Alaska that do not conform to standards established by regulation by the commissioner of public safety. The regulations must provide for helmets that allow normal peripheral vision and hearing and minimize neck injuries to the wearer potentially caused by the helmet. The adoption of

these regulations shall be under AS 44.62 (Administrative Procedure Act).

(b) A person who has reached the age of majority as defined by AS 25.20.010 may not be required to wear a helmet while operating a motorcycle if the person is the holder of a license that, under regulations adopted under AS 28.15.041, is classified singly as a license to operate a motorcycle. (§ 1 ch 230 SLA 1976)

Cross references. — For provisions regulating the manufacture and sale of motorcycle helmets, see AS 28.05.081(c).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 210.

Validity of traffic regulations requiring motorcyclists to wear protective headgear, 32 ALR3d 1270.

Sec. 28.35.250. Application of law. [Repealed, § 20 ch 241 SLA 1976.]

Sec. 28.35.251. Contained or confined loads. (a) A person may not drive a motor vehicle loaded with sand, gravel, rock, or similar materials on a highway unless

(1) the load is contained or confined to prevent the load from dropping, shifting, leaking, or escaping, except that sand or other substances may be dropped, sprinkled, or sprayed for the purpose of cleaning or maintaining the highway or providing traction; and

(2) the load is subjected to treatment by methods, approved by the commissioner by regulation, designed to settle the load or remove loose material before the vehicle is driven on the highway.

(b) If a cover is used to contain or confine a load being driven on a highway, the cover shall be securely fastened to prevent the cover from becoming loose or detached, or from being a hazard to other users of the highway. (§ 1 ch 62 SLA 1986)

Sec. 28.35.253. Anti-spray devices required. A person may not drive a motor vehicle on a highway unless the vehicle is equipped with fenders, mud flaps, or other anti-spray devices adequate to prevent the vehicle from being a hazard to other users of the highway. (§ 1 ch 62 SLA 1986)

Sec. 28.35.255. Penalty. A person convicted of violating AS 28.35.251 or 28.35.253 is guilty of an infraction. (§ 1 ch 62 SLA 1986)

No. 4

FISCAL NOTE

Bill Version: HB 48

(H) Publish Date: 2/22/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date:
Title: "An Act relating to motorcycle safety and the use of helmets by operators of motorcycles."
Sponsor: Representative Brice
Requester: House Transportation Committee

Dept. Affected: Department of Law
BRU: Prosecution
Component: Criminal Justice Litigation
COMPONENT SERIAL NO. 0089

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: $ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill will not have a fiscal impact on the Department of Law.

Prepared by: Richard I. Pegues, Director — Phone: 465-3672
Division: Administrative Services Division — Date: 2/14/95
Approved by Commissioner: Bruce M. Botelho, Attorney General — Date: 2/14/95
Agency: Department of Law

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No. 3

ill Version: HB 48

(H) Publish Date: 2/22/95

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date:
Title: Motorcycle Safety
Sponsor: Representative Brice
Requester: Fred Pascoe/Brices Office

Dept. Affected: DOT & PF
BRU: Commissioner's Office
Component: Commissioner's Office
COMPONENT SERIAL NO. 530

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: $ 0.0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Sam Kito III
Phone: 465-3904
Division: Commissioner's Office
Date: 2/13/95

Approved by Commissioner: Joseph L. Perkins
Date: 2/13/95
Agency: Department of Transportation and Public Facilities

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL No. ___
Bill Version: HB 48
(H) Publish Date: 2/22/95

Revision Date: ___
Title: Motorcycle Safety
Sponsor: Representative Brice
Requestor: (H) Transportation

Dept. Affected: Public Safety
Highway Safety Planning Agency
Component: Federal Grants
COMPONENT SERIAL NO. 0499

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( ) Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 95) impact: $ ___

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)
See Attached Analysis

Prepared By: Lorn Campbell
Phone: 465-4371
Division: Highway Safety Planning Agency
Date: 2/13/95
Approved by Commissioner: D. C. Smith
Date: 2/14/95
Agency: Ronald L. Otte, Dept. of Public Safety

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Rev 11/94

Fiscal Analysis
HB 48

Section 153 of the Intermodal Surface Transportation Efficiency Act of 1991 required that every state have in place a mandatory helmet use law by FFY 95. Failure to enact a mandatory helmet use law would initiate a transfer of funds from the Department of Transportation and Public Facilities to the Alaska Highway Safety Planning Agency in the amount of one and one half percent for the first year and three percent each year thereafter.

Transferred funds come from three discrete highway programs: The Surface Transportation Program, the National Highway System, and the Congestion Mitigation and Air Quality Improvement Program.

On October 1, 1994, $2.8 million was transferred for FFY 95. The estimated transfer for FFY 96 will be $5.5 million.

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FISCAL NOTE

No. 1
Bill Version: HB 48
(H) Publish Date: 2/22/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO

Revision Date:
Title: Motorcycle Safety
Sponsor: Representative Brice
Requestor: H TRANS

Dept. Affected: Public Safety
BRU: Motor Vehicles
Component: Driver Services
COMPONENT SERIAL NO. 0500

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL	1.4					
CONTRACTUAL	2.5					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	3.9	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( ) Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	3.9					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	3.9	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 95) impact: $

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)
This bill will require the Department to promulgate regulations regarding motorcycle safety programs and motorcycle training classes. Cost analysis is as follows:

Hearings would be held in Anchorage, Fairbanks, Soldotna/Kenai and Juneau. Travel =$980.00 Airfare from Juneau to Anchorage, Anchorage to Fairbanks, Fairbanks to Soldotna and return to Juneau. Per-diem =$336.00, Car Rental in Anchorage, Fairbanks, Soldotna $75.00. Total of travel = $1.4.

Contractual = Publishing cost to publish notice of regulations 2 times in 6 different newspapers = $2.1, Cost of contracting with the Legislative Information Offices to hold public hearings $25.00 an hour, 4 hours in each location = $.04. Total cost of contractual is $2.5.

Prepared By: Juanita M.Hensley
Phone: 465-2650
Division: Motor Vehicles
Date: 2/12/95

2/13/95

Approved by Commissioner: [signature]
Date: 2/13/95
Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

Representative Tom Brice
ALASKA STATE LEGISLATURE

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Fairbanks, AK 99701
907-456-7423 / Fax: 451-9293
While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-3466

REPRESENTATIVE TOM BRICE
HB 48 Sponsor Statement

The federal highway safety act, ISTEA, requires each state to adopt a mandatory helmet law. The penalty for noncompliance in the first year (FY95) is 1.5 % of federal transportation funding which must be transferred from DOT&PF to the 402 fund for safety, training, and enforcement. In October 1994 (FY95) $2.6 million was transferred to the 402 fund. Each year thereafter for the remaining four years of the act 3% will be moved. Depending on whether the act is fully funded by the US Congress, $5.2 million will be moved to 402 each year. Over the life of ISTEA the total would be approximately $23.5 million.

During the summer and fall of 1993, the state's Attorney General's office, in an attempt to bring Alaska into compliance with ISTEA mandates, issued an opinion supporting the state's ability to mandate the use of a helmet for motorcycle operators. The opinion's argument revolved around the use of "singularly licensed to drive a motorcycle." Although the opinion has been withdrawn, this is a new interpretation of a statute that has been on the books since 1976, and is contrary to legislative intent and current enforcement policy.

To address this, HB 48 clarifies the statute. To ensure that some of these funds would be used for improving motorcycle safety, a motorcycle safety program would be established under DPS.

HOUSE COMMITTEE REPORT

2/22/95

(7)
Date Referred: January 16, 1995

FURTHER REFERRALS: Judiciary, Finance

Date of Committee Action: 2/20/95

The TRANSPORTATION Committee considered: HB 48

HOUSE BILL NO. 48 MOTORCYCLE SAFETY

"An Act relating to motorcycle safety and to use of helmets by operators of motorcycles."

recommends it be replaced with the following committee substitute _____ [ ] the same title [ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[✓] fiscal note(s) Public Safety [ ] fiscal note(s) _____

(3) [✓] zero fiscal note(s) Public Safety, DOT+PF, Dept of Law [ ] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Tom Brice — Brice	✓			
Gail Maclean — Maclean	✓			
Jeanette James — James	✓			
Beverly Masek — Masek	✓			
Williams — Williams	✓			
Jeff Sanders — Sanders	✓			
Gary L. Davis — G. Davis	✓			
	(7)			

CHAIR'S SIGNATURE Gary L. Davis
G. Davis

(2) the motor vehicle displays a special license plate issued to disabled or handicapped persons under AS 28.10.181(d); or

(3) the motor vehicle displays a special license plate or permit issued to disabled or handicapped persons by another state, province, territory, or country.

(b) A person who violates this section is guilty of an infraction. Upon conviction the court shall impose a fine of not less than $100. (§ 2 ch 11 SLA 1987)

Sec. 28.35.240. Duty to obey school patrol. [Repealed, § 3 ch 68 SLA 1964.]

Sec. 28.35.245. Motorcycle helmet. (a) After January 1, 1978, motorcycle helmets may not be manufactured or sold in Alaska that do not conform to standards established by regulation by the commissioner of public safety. The regulations must provide for helmets that allow normal peripheral vision and hearing and minimize neck injuries to the wearer potentially caused by the helmet. The adoption of these regulations shall be under the provisions of the Administrative Procedure Act (AS 44.62).

(b) A person who has reached the age of majority as defined by AS 25.20.010 may not be required to wear a helmet while operating a motorcycle if the person is the holder of a license that, under regulations adopted under AS 28.15.041, is classified singly as a license to operate a motorcycle. (§ 1 ch 230 SLA 1976)

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 210.

Sec. 28.35.250. Application of law. [Repealed, § 20 ch 241 SLA 1976.]

Sec. 28.35.251. Contained or confined loads. (a) A person may not drive a motor vehicle loaded with sand, gravel, rock, or similar materials on a highway unless

(1) the load is contained or confined to prevent the load from dropping, shifting, leaking, or escaping, except that sand or other substances may be dropped, sprinkled, or sprayed for the purpose of cleaning or maintaining the highway or providing traction; and

(2) the load is subjected to treatment by methods, approved by the commissioner by regulation, designed to settle the load or remove loose material before the vehicle is driven on the highway.

(b) If a cover is used to contain or confine a load being driven on a highway, the cover shall be securely fastened to prevent the cover from becoming loose or detached, or from being a hazard to other users of the highway. (§ 1 ch 62 SLA 1986)

MEMORANDUM

State of Alaska
Department of Law

TO: The Honorable Bruce Campbell
Commissioner
Department of Transportation
and Public Facilities

DATE: September 28, 1993

FILE NO:

TEL NO: 465-3603

SUBJECT: Motorcycle Helmet Law

FROM: Deborah Vogt DV
Assistant Attorney General
Transportation Section-Juneau

You have asked for an interpretation of the statutory and regulatory requirements for motorcycle helmets in Alaska.

AS 28.35.250 provides:

> (b) A person who has reached the age of majority as defined by AS 25.20.010 may not be required to wear a helmet while operating a motorcycle if the person is the holder of a license that, under regulations adopted under AS 28.15.041, is classified singly as a license to operate a motorcycle.

The classes of licenses are set out in 13 AAC 08.150, which is "adopted under AS 28.15.041." While many classes license the driver for any motor vehicle, class M1 licenses the driver only for "motorcycles, motor-driven cycles, and motorized bicycles, singly or in combination with trailers or sidecars designed to be used with these vehicles." 13 AAC 08.150(b)(2)(B). Thus, it is my opinion that only a Class M1 license is "classified singly as a license to operate a motorcycle."

The requirement for a helmet is set out in 13 AAC 04.350. That regulation provides:

> (a) Except as otherwise provided by statute, a person operating or riding upon a motorcycle or motor-driven cycle upon a public roadway must wear protective headgear . . . .

Thus, this regulation makes helmets mandatory unless "otherwise provided by statute . . . " The only statute that qualifies the helmet requirement is AS 28.35.250(b), set out above, prohibiting the requirement of a helmet when an adult holds a license classified singly for motorcycles.

/DV:ae

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