

Email Sent on the 4<sup>th</sup> of July, 2007  
from jan  
to the NC Senate Judiciary Committee  
Subject: HB 563 Transportation and Personal Safety Changes

Dear Senators in the NC Senate Judiciary II Committee,

Next Tuesday, the Senate Judiciary II Committee will be reviewing House Bill 563, which contains a very controversial, unconstitutional statute.

## Motorcycle Helmets

H563 Section 1, Paragraph 2 calls for a major change to G.S. 20-140.4, the safety helmet statute, in which the state demands motorcycle riders wear safety helmets. The state seeks this change because the current statute is unenforceable due to the Commissioner of Motor Vehicles having no list of approved helmets.

Statutes similar to the one proposed in paragraph 2 have already been adjudicated in California as unconstitutional due to vagueness.

*"FMVSS 218 clearly provides nothing by way of authority to approve helmets. The federal government, in fact, has stated in its interpretive letters, that the government does not approve helmets, and that the phrase "DOT Approved" has no meaning in fact or in law".*

*Source: California Superior Court Judge Michael Barton, August 2006. [Full text in pdf format](#)*

If HB 563 is enacted without striking paragraph 2, the state should expect enough of a spike in helmet tickets to **backlog the court system**. At great cost to the state and its' citizens, the courts will eventually find the proposed statutes unconstitutional as enforced, just as they did in California.

If enacted, the state should also expect a decline in **tourism**. Motorcycles get better fuel mileage than automobiles, but vacationing motorcyclists will avoid North Carolina in favor of "biker-friendly" states. In June of 2007, Smokeout Rally, and sub-rallies which piggyback onto Smokeout Rally, brought substantial revenue to hotels and restaurants, in the area from Salisbury to Greensboro. In 2008, the rally is moving to South Carolina. SC was selected by its promoters due to a more "biker-friendly" perception, for one and only one reason; the helmet laws.

Over the next several days, I ask the committee to **please remember the overall purpose for a Senate Judiciary II (Criminal) Committee.**

I believe that one of your primary responsibilities is to review proposed legislative bills, prior to advancement to the Senate floor, so that if a law is enacted, it should survive legal and constitutional

challenges, rather than create a burden on an overworked judicial system due to poorly worded and vague statutes.

The state is telling citizens to comply, or face the consequences of being stopped and ticketed. Yet, FMVSS 218, which is not a law for motorcycle riders, provides nothing for the citizen to comply with. **At best, it is like forcing citizens to research how their make of automobile performed in crash tests**, but it only provides test results for a few vehicles, and limits the tests to 13.6 mph at a few specific angles.

As Rep. Marilyn Avila said, on the house floor, the Nissan Sentra got terrible crash test results, but people can buy them, and they're still on the road. This may be good information for consumers, but crash test results and testing standards are nothing that the citizens need to research and understand in order to comply.

In the next few days, you are likely to hear from many citizens.

Some citizens, and the NCHP and Executive Committee for Highway Safety, will want to convolute your discussions by arguing the virtues of one type of safety helmet over another. As a judiciary committee, please focus on topics of more relevance to your committee, such as how the law will be enforced without harassment, and whether or not the basis of the law is constitutional, or if it is vague.

**If an average person of reasonable intelligence cannot take reasonable actions in order to ensure compliance, the law is vague and unconstitutional.**

Some citizens will advise you that motorcycle riders are currently being harassed, even without FMVSS 218. Their travel is being interrupted, by law enforcement officers who do not understand G.S. 20-140.4, the current statute. In a recent interview, Sgt. Williams who is in charge of Troop H District VI wrongly believes that the current statute says that "safety helmets must be DOT". Trooper JC Burroughs is pulling over motorcycle riders in Aberdeen, and issuing many citations, due to a similar misunderstanding of the law. The trooper also threatens the riders with repeated tickets if he sees them continue their travel with the helmets he does not approve of! These are law-abiding citizens, some of whom are retired military, who are being treated as criminals simply because the officer wrongly believes the citizens are not complying with the law. According to the current law, the selection of a safety helmet is completely at the discretion of the individual rider, because the DMV Commissioner has **NO LIST OF APPROVED HELMETS**.

**Embedding FMVSS 218 into the language of the statute is how the NCHP hopes to make riders wear DOT approved helmets, but there is no such thing as a DOT approved helmet, in fact, or in law! The DOT does not approve motorcycle helmets.**

The NCHP and Highway Safety Commission will ask for the change, claiming the current statute is not enforceable. They want to issue citations to people who wear what they refer to as "novelty helmets". They will say the NCHP choice of helmets is better than our choice, but it is our heads! Will the state prosecute motorcycle helmet manufacturers if the helmet fails? The NCHP will cite safety statistics which say there are more fatalities this year, so please be aware that there are also more riders.

The state has a history of seriously flawed thinking about motorcycle safety, with helmets as a panacea. Almost all motorcycle fatalities in North Carolina have occurred to helmeted riders. Helmets do not

prevent accidents, but may cause them.

The state needs to rethink its' approach. It needs to be open to such ideas as increasing motorcycle awareness by motorists, who are distracted by cell phones and Big Macs. The state should have April or May be motorcycle awareness month, every year, and should be willing to do more than just issue a proclamation. The state should listen to ideas, such as use of the ALERT system to use "Share the Road with Motorcycles" and other reminders. The state could spend some money on public service announcements, to remind motorists to be aware of motorcycles and stop tailgating motorcycles. Please listen to experienced bikers!

**PLEASE STOP THE ADOPTION OF UNCONSTITUTIONAL LAWS IN YOUR JUDICIARY COMMITTEE, RATHER THAN LEAVE THE MAKING OF LAWS UP TO DECISIONS FROM THE BENCH.**

I will be pleased to supply additional information between now and next Tuesday, and will be present in your committee meeting.

Thank you for your service,

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