



Street Bikers United Hawaii (SBU) Submissions

March 19, 2018

House Resolution HR No. 41 (Urging the Department of Transportation to submit legislation for a universal helmet law in Hawaii requiring all operators and riders of motorcycles, motor scooters, mopeds, and bicycles to wear safety helmets.)

Bill Introducers: BROWER, ING, NAKAMURA, QUINLAN, TODD

And

House Concurrent Resolution HRC No. 53 (Urging the Department of Transportation to submit legislation for a universal helmet law in Hawaii requiring all operators and riders of motorcycles, motor scooters, mopeds, and bicycles to wear safety helmets.)

Bill Introducers: BROWER, ING, NAKAMURA, TODD

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Description(s):

HC No. 41: Universal helmet law in Hawaii requiring all operators and riders of motorcycles, motor scooters, mopeds, and bicycles to wear safety helmets.

HCR No. 53: Universal helmet law in Hawaii requiring all operators and riders of motorcycles, motor scooters, mopeds, and bicycles to wear safety helmets.

Executive Summary

SBU Points to Flaws in the Resolutions Underlying Facts and Premises:

1. In Part III Below reviewing the statistics and literature regarding the main reasons for motorcycle accidents, injuries, head injuries and fatalities.

2. SBU Points to a constitutional legal argument that Mandatory Universal Helmet Laws are likely unconstitutional in Hawaii, according to earlier Supreme Court decisions that were narrowly divided and, if anything, the rules are much less supportive of such constitutional infringements on Motorcyclists rights today than in the 1970es.

SBU Recommends That Its Members Oppose the proposed Resolutions HR 41 and HCR 53 on Three Fundamental Grounds:

- I. Mandatory Helmet Law Already Exist for Motorcycle Operators and Passengers Under Eighteen (18) Years of Age;
- II. The Freedom of Choice for Adult Riders As to their Selection of Riding Apparel and Helmets is a Constitutional Privacy Rights pursuant to their rights to life, liberty and the pursuant of Happiness under Article 1, Section 2, of the Hawaii State Constitution;
- III. The Goal of Reducing Serious Injuries (including TBI) and Fatalities sustained in Motorcycle Accidents Is More Reasonably Achieved with “Responsible” “Comprehensive” and “Integrated” Policy Instead of a “Narrowly Focused” Mandatory Helmet Law.

SBU Recommendations.

(A) The Mandatory Motorcycle Safety Education Course should become a core requirement for qualification of either a Category #1 (Moped License) or a Category #2 (Motorcycle License)

(B) The vast majority of Adult Riders Licensees could be “grandfathered into to the mandatory license requirements” with virtually no adverse impact injury and fatality trends.

(C) At present in Hawai’i the law requires Motorcycle Insurance carriers grant owners of Motorcycle Insurance policies a discount of fifteen (15%) percent for Riders who complete a Motorcycle Safety Education Course (i.e. the “Motorcycle Education Course Insurance Premium Deduction” or the “MECIP Deduction” for short). If the MSEC--“Beginner Motorcycle Rider Course: Riding and Street Skills” was made mandatory for new licensees, the same incentive would not be necessary, since the course would be mandatory. Instead the MECIP Deduction could be used to incentivize existing Riders to take an Advanced Motorcycle Safety Training Course (“Advanced MSTC”), which would further enhance their motorcycle skills generally and especially “collision avoidance skills”. The MECIP would then be granted only if Riders take an Advanced MSTC.

(D) The very same type of incentives legislated to incentivize Hawai’i Motorcycle Riders to take the MSEC--“Beginner Motorcycle Rider Course: Riding and Street Skills” by creating the “Safety Helmet Premium Deduction” or “SHPD”), which could be used to incentivize the use of Helmets by Motorcycle and Moped Riders by amending HRS Section §431:10G-201(c) to include a further discount of fifteen (15%) percent for any Rider who voluntarily commits to wearing a Helmet.

(E) Motorcycle Traffic-Safety School (“MTSS”) is an effective alternative to payment of a fine or suspension for a citation. The requirement to attend a MTSS with multiple traffic citations (i.e. three or more in any one 12 month period) or multiple accidents (i.e. three or more at-fault in any one 12 month period), exposes these Riders to critical information, training, and experience relating to Motorcycle Skills development that can greatly reduce the likelihood of the Riders will be involved in a subsequent accident.

They would be required to satisfactorily complete (at their expense) a specialized motorcycle rider training course (MSEC/MSTC whether it is the “beginner course” or an “advanced skills course”) at their expense as part of satisfactorily completing all of the MTSS requirements.

(F) Leave the Helmet choice optional for Adult Riders, they have a constitution right to privacy and freedom of choice to wear a Helmet as long as it does not harm others, according to the Hawai’i Supreme Court, recognize and respect Hawaii motorcyclists’ rights.

The Language In Bills SB No 178 and SB No 179 Which SBU Objects to includes the following underlined or struck clauses:

In Bill SB No 178

SECTION I

SBU Recommends That Its Members Oppose Bill SB Nos. 178 and 179 On Three Fundamental Grounds:

- (1) Mandatory Helmet Law Already Exist for Motorcycle Operators and Passengers Under Eighteen (18) Years of Age;**
- (2) The Freedom of Choice for Adult Riders As to their Selection of Riding Apparel and Helmets is a Constitutional Privacy Right pursuant to their rights to life, liberty and the pursuant of Happiness;**
- (3) The Goal of Reducing Serious Injuries (including TBI) and Fatalities to Motorcycle Riders Is More Reasonably Achieved with “Responsible” “Comprehensive” and “Integrated” Policy Instead of a “Narrowly Focused” Mandatory Helmet Law.**

INTRODUCTION

SBU supports the principles underlying “Safe Motorcycling”, the use of safety equipment by riders (“Riders” in intended herein to include either the operator or passenger or both of a Motorcycle, Motor Scooter or Moped, whichever is appropriate to the circumstances in which the term “Rider” is being used), including safety helmet (“Helmet”) use by persons who operate or ride on two, three, or even four wheeled vehicles used for the transportation of a person or persons, either on or off road, depending on use in commuting, recreation or competition, in Hawaii. However, SBU places very clear limits on how any legislation seeking to regulate such Helmet use should be formulated to ensure Riders 18 years or older (herein call “**Adults Riders**”) freedom of choice is not “trammed on” in the process.

PART I Mandatory Helmet Law Already Exist for Motorcycle Operators and Passengers Under Eighteen (18) Years of Age Is Constitutional, But Not If It Were Applied to Adults In SBU’s Submission;

The present Helmet legislation safeguards the right to freedom of choice whether to wear a Helmet for Adult Riders while Creating Mandatory Helmet Legislation For Those Riders Under Eighteen (18) Years of Age (herein called “Youth Riders”)

1. Existing Mandatory Helmet Legislation for Motorcycle and Motor Scooter Operators and Passengers Under Eighteen (18) Years of Age (in combination called “Youth Riders”)

First; there is no express requirement under existing Hawai'i law that Adult Riders on Motorcycles or Motor Scooters must wear a Helmet. However, under HRS Division 1, Title 17, Chapter 286, Part 1V, Subsection §286-81 (b), Youth Riders are required to wear a Helmet if they operate a Motorcycle or Motor Scooter or ride on one as a passenger, on Hawaii roads and highways (the same is true for Moped operators). It states:

“(b) No person less than eighteen years of age shall operate or ride as a passenger on a motorcycle or motor scooter on any highway in the State unless the person wears a safety helmet securely fastened with a chin strap.”

This creates a Mandatory Helmet Legislation for Youth Riders. No further legislation is needed to ensure persons under the age of 18 years' operating or riding as passengers on Motorcycles or Motor Scooters must wear a Helmet. It already exists right now and is fully enforceable with SBU's support and blessing, because SBU believes a person should only be given the right and freedom to choose to wear safety riding apparel (including a Helmet), when they are an adult and can make that choice reasonably and responsibly.

The two resolutions are aimed squarely at taking away an adult Hawaii citizen's right to freely choose to wear a type of safety apparel or safety equipment (in particular a safety-helmet herein called “Helmet”). At present an adult in Hawaii can chose to wear any type of Helmet that they feel is suitable (full-face Helmet with visor, police-style partial Helmet with chin strap, smaller “skull-cap” style Helmet, variations made out of materials ranging from fiberglass to Kevlar) or no Helmet at all. This option has existed since the Hawaii Legislature revoked the universal Helmet Law on June 7, 1977, in favor of the existing law of Mandatory Helmet use for persons under 18 years of age.

What has happened since 1977 that makes it necessary after over forty (40) years of having the existing Helmet laws dealing with Motorcycle Operators and passengers (in combination “Riders”) that necessitates the implementation of laws that restrict fundamental rights and liberties embodying right to privacy and freedom of choice guarded by the United States and Hawaii Constitution? This issue was first addressed by the Supreme Court in Hawaii in the case of Hawaii v Lee, where Chief Justice Richardson¹

¹ **STATE of Hawaii v. Alfred LEE also known as Alfred Samuel F.M. Moy 465 P.2d 573 (1970)**

Richardson Chief Justice states at pa 574:

We wish to make it clear that this holding is limited to this case. We start from the proposition that where an individual's conduct, or a class of individuals' conduct, does not directly harm others the public interest is not affected and is not properly the subject of the police power of the legislature. However, where the legislature has determined that the conduct of a particular class of people recklessly affects their physical well-being and that the consequent physical injury and death is so widespread as to be of grave concern to the public and where the incidence and severity of the physical harm has been statistically demonstrated to the satisfaction of the court, then the conduct of that class of people affects the public interest and is properly within the scope of the police power. Of course, where the conduct sought to be regulated is in furtherance of a specific constitutional right, a different situation arises.

Having determined "that the interests of the public generally, as distinguished from those of a particular class" is involved, we move on to consider whether "the means are reasonably necessary for the accomplishment of the purpose." Appellant has not

for the majority acknowledge it would be unconstitutional to implement Mandatory Universal Motorcycle Helmet Use laws to simply force individuals to wear Helmets against their will, because it was beneficial to protect them for their own safety sake. It required the necessity of protecting the public interests as whole, which must be clearly demonstrated by evidence of *a particular class of people whose conduct recklessly affects their physical well-being and the consequent physical injury and death is so widespread as to be of "Grave concern to the public"*. The Minority Decision Justice Abe² was stronger in opposition to the issue of Constitutionality of the mandatory helmet law, stating is violated the US and State constitutional guarantee of and individuals right to privacy. Three years later in a narrow 3/2 majority the same Mandatory Helmet law was again challenged HRS § 286-81(1)(A) was challenged in *Hawaii v. Cotton*, (1973) and this time Justice Abe was joined by Justice Kobayashi. Justice Levinson³ stated that the Police Powers under the Constitution could not be used to enforce the Hawaii Universal Mandatory Helmet Law to force Hawaii motorcyclist to wear helmets for their own protection, it could be invoked under the State's constitutional "Police Powers" where it is shown by statistics there is an alarming trend and that the rate of increase of highway accidents and fatalities, as compared with other kinds of accidents, is alarmingly high. Also where statistics demonstrate that Mandatory Helmet legislate will remedy the situation.⁴

In an even more strongly worded dissent by both Justice Abe and joined in by Justice Kobayashi, the minority dissent stated that the Hawaii Universal Mandatory Helmet Law simply could not abrogate the

referred us to any arguments refuting the reasonableness of the regulation in light of its purpose. Nor has appellant pointed the way to less drastic or less burdensome means by which substantial head injuries to motorcyclists may be prevented. The burden imposed is directly and immediately related to the evil sought to be controlled. The legislation is not broadly prohibitive; a narrower means to protect motorcyclists could hardly be conceived.

² **STATE of Hawaii v. Alfred LEE also known as Alfred Samuel F.M. Moy 465 P.2d 573 (1970)** ABE, Justice (dissenting) at Pg. 578.

As stated by the majority of the court, the issue of this case is whether the legislature may constitutionally regulate the conduct of a person for his own safety. I disagree with the majority opinion and I would hold the provision of HRS § 286-81(1) (A) requiring appellant, a motorcyclist, to wear a helmet for his own safety unconstitutional.

Courts in other jurisdictions have declared similar laws to be unconstitutional. People v. Fries, 42 Ill.2d 446, 250 N.E.2d 149 (1969); American Motorcycle Ass'n.v. Davids, 11 Mich. App. 351, 158 N.W.2d 72 (1969).

I do not question that our legislature, recognizing the special hazards faced by motorcyclists, enacted the statute to prevent the death and injuries of our people resulting from motorcycle mishaps. Nor do I question the beneficent intent of our legislature in enacting the statute because apparently the legislation was enacted to protect immature and reckless, or careless, or foolhardy youngsters and adults, who are unwilling to protect themselves.

³ **State of Hawaii v. James E. COTTON, Defendant-Appellant, 516 P2d. 709(1973) Justice Levinson for Majority States at Pg 709:** We accept now, as we did in *State v. Lee, supra*, the fundamental tenet that the relationship between the individual and the state leaves no room for regulations which have as their purpose and effect *solely* the protection of the individual from his own folly. But to say that a motorcycle helmet law has as its primary objective the protection of the wearer from head injuries is not to say that *ipso facto* it is unconstitutional. There may be significant *secondary* harms to society as a whole which it is the purpose of the statute to remedy and which, if realistic, bottom the statute in policies which are constitutionally acceptable.

⁴ At Pg 711 Justice Levinson states: "As in so many areas of the law, the problem of deciding when secondary harms are sufficiently great in magnitude to justify remedial legislation aimed at primary behavior is one of enlightened judicial line-drawing. We start the process in this case with the observation that statistical evidence at the legislature's command indicates that the rate of increase of highway accidents and fatalities, as compared with other kinds of accidents, is alarmingly high. See, e.g., Note, *supra* at 357. Moreover there is evidence that the extent of motorcycle accidents, and particularly head injuries resulting therefrom, is at least as alarming as the general trend. See, e.g., *Simon v. Sargent, supra* 346 F. Supp. at 279. Finally, the appropriateness of mandatory helmet laws as a remedy for this situation is likewise statistically demonstrable. See, e.g., *State v. Lee, supra* 51 Haw. at 519-520, 465 P.2d at 576.

Hawaii citizen's constitutional right to chose not to wear a Helmet as a matter of privacy and the individual's constitutional guarantee to the enjoyment of life, liberty and the pursuit of happiness.⁵ for the same reason the State cannot ban smoking cigarettes, consumption of fatty foods or alcohol in Hawaii despite the fact that such a ban would substantially reduce harm, injury and death to those who use them. The 2/3 split minority opinion was that: A law requiring the wearing of a Helmet is not a reasonable exercise of the States police powers and violates Article I section 2 of the Hawaii State Constitution.⁶

*Why is the Legal argument more important now than it was 40 years ago when **Lee (1970)** and **Cotton(1973)** were decided?*

The reason is that the only justification the Supreme Court could use to justify the implementation of a Hawaii Mandatory Universal Helmet law that otherwise is not a reasonable exercise of the States police powers and violates Article I section 2 of the Hawaii State Constitution, was that there was statistics that demonstrated a clear and convincing evidence that:

- (i) Conduct of a particular class of people (i.e. motorcyclists) recklessly affects their physical well-being and that the consequent physical injury and death is so widespread as to be of grave concern to the public.
- (ii) Where the incidence and severity of the physical harm has been statistically demonstrated.
- (iii) The conduct of that class of people (i.e. motorcyclists) affects the public interest and is properly within the scope of the police power.

⁵ **State of Hawaii v. James E. COTTON, Defendant-Appellant, 516 P.2d. 709(1973) Justice Abe and Kobayashi in dissent at Pg 714:**

Article I, Sec. 2 of our **State** Constitution^[3] guarantees the right to the enjoyment of life, liberty, and the pursuit of happiness. Under this guarantee one has the constitutional right to be let alone. With this right to be let alone, one has the right to determine for himself what is for his "best interest," even though some scholars contend that there is "... a general decline in the belief that individuals know their own interests best, and ... an increased awareness of a great range of factors which diminish the significance to be attached to an apparently free choice or ... consent."^[4]

Are we to accept the **state's** contention (and the reasoning of *Simon v. Sargent, supra*) that injuries to a single individual are a concern, not for himself alone but for the public in general, because of the **State's** interest in keeping its citizens healthy and productive and in preventing expenditures of public funds to aid persons injured by falls from motorcycles? I believe that our acceptance of the **State's** argument would open the door to constitutional justification for unlimited paternalism on the part of the **State**. As a corollary, our upholding of the headgear requirement under such reasoning could mean that the legislature might have virtually limitless power to curtail individual actions, even though such actions do not affect public safety, health or morals. For example, according to the **State's** argument, our legislature could, under threat of criminal punishment: prohibit the smoking of cigarettes or other tobacco products; regulate or restrict the consumption of fattening foods to prevent obesity; regulate and fix the daily hour for retiring and waking up; or otherwise regiment the lives of individuals by other regulations. I do not believe that people of Hawaii are ready to forfeit their individual liberty to a point where legislative discretion is to be the only practical bar to the determination of what one may or may not do under the doctrine of "best interest" of the individual.

⁶) **Justice Abe and joined in by Kobayashi in dissent at Pg 714:**

*"I would, therefore, hold that HRS § 286-81(1)(A), the provision requiring the wearing of a helmet, is not a reasonable exercise of the **State's** police power and violates Art. I, Sec. 2 of the Hawaii **State** Constitution, and I would overrule **State v. Lee, 51 Haw. 516, 465 P.2d 573 (1970).**"*

- (iv) There is no other less drastic or less burdensome means by which substantial head injuries to motorcyclists may be prevented.

SBU submits that based on the minority decisions in the Lee and Cotton cases the Universal Mandatory Helmet Law in Hawaii was simply unconstitutional and therefore invalid. However, even on the broader basis of the Majority decisions in those cases “*secondary harms to society as a whole which it is the purpose of the statute to remedy*” that Justice Richardson (in **Lee**) and Levinson (in **Cotton**) refer to as the basis to find the state’s police powers to infringe on constitutional rights are justified, SBU submits that argument cannot be made out in 2018. The reason is that there is no evident of any trend toward increasing incidence of head injuries or deaths from motorcyclists in Hawaii not wearing Helmets. There is no crisis, there is no “grave concern” on the public’s behalf, there is not even a recent statistically significant increasing trend in the costs of head injuries and fatalities, that statistics point to.

The proponents of this resolution are attempting to draw a dichotomy between the way things were forty-five (45) years ago, when there was Universal Helmet legislation in Hawaii (which was almost overturned even then by **Cotton**) and the way things are today over forty (40) years later. That is not what the Supreme Court in both those cases required to justify Mandatory Universal Helmet laws infringing on Hawaii Motorcyclists Constitutional rights. The courts expressly required **current, recent and up-to-date statistics of trends** in motorcycle accidents causing increased head injuries and fatalities due to Hawaii motorcyclists failing to wear Helmets. The public needs to be concerned with these “recent widespread consequences” of a particular class (motorcyclists) “recklessly” causing physical injury and death that causes “grave concern” to the public as a whole. None of these things are true. The number of head injuries and fatalities over the last ten or even twenty years on a per 10,000 motorcyclists registered in Hawaii has increased and decrease a percentage point or two at most. Even the somewhat nebulous claim that nine (9) additional lives per year could be saved between 2008-2012 if Riders in Hawaii wore Helmets does not give rise to the kind of “grave concern” of recent “widespread consequences” the Hawai’i Supreme Court suggested the law requires to abrogate citizens’ constitutional rights.

According to Island news, there were 9 ocean drownings in Maui during the last two week of January 2018. There is usually 17 a year in Maui. Both of these number pale the 9 deaths a year for non-helmeted motorcyclists. Yet there is no call for banning beaches, forcing all swimmers to wear life jackets or forcing tourists to take mandatory swimming lessons. The difference is that the Motorcycle Helmet law issue is about the “special interests” of “big insurance” and “corporate medicine”, it has nothing to do with grave public concern for the Motorcyclists lives and safety. Every motorcyclists’ life is precious, just like every swimmers’ life. But there are balancing factors that must be weighed in the protection of Motorcyclists right of choice and so too are there with swimmer’s rights, tourism and the amount of resources to devoted preventing drownings in Maui.

2. (A) House Resolution HR 41 and House Concurrent Resolution HCR No 53 Seek To Take Away the Existing Constitutionally Protected Freedom of Choice to Wear A Helmet By Hawaii Adult Riders.

(B) But on What Grounds?

There are no upward trends, no grave public concern, no widespread brain injuries and death from Adult Motorcyclists right of Choice to wear helmets in Hawaii. The comparison of 1970 statistics with 2018 statistics between Hawaii Riders wearing Helmets under mandatory Helmet laws of the 1970es and 2018 motorcycle injury statistics with the limited Helmet Laws for persons under 18 years

of age, as a way to justify abrogating Hawaii Adult Rider's Constitutional right of Helmet Choice is analogous to comparing present day statistics for alcohol related deaths with Prohibition in 1920es to justify bringing back Prohibition Laws despite them being unconstitutional. Outlawing smoking cigarettes or banning fatty foods on the same basis are invalid. Mandatory Helmet laws is legally wrong as a violation of constitutional rights of Hawaii citizens, even if well intended.

SBU takes the position that the decision whether to wear a Helmet and the type of Helmet selected are choices that an experienced Adult Rider can and should make for themselves, but should not be left to an inexperienced Youth Rider, which is why the “**Mandatory Helmet Legislation for Youth Riders**” created under HRS Division 1, Title 17, Chapter 286, Part 1V, Subsection §286-81 (b), has always been fervently supported by SBU. Some might suggest that some Youth Riders have more experience with riding a Motorcycle than Adult Riders, so some Adult Riders should not be given that freedom of choice using SBU's “experienced Adult Rider” definition (herein we include Motor Scooter in the same category as “Motorcycle” as is the case under the law, but exclude “Mopeds” as separately defined to be exclusive of the Motorcycle definition)⁷.

SBU's logic, in focusing on an Adult Rider's “experience” as the primary factor determining whether a rider should be given the freedom to choose their riding apparel and even safety equipment (including Helmets), does not translate to an “experienced” Youth Rider who may have ridden Motorcycles extensively should therefore be able to decide whether or not to wear a Helmet and an “inexperience” Adult Rider who has only started riding recently should be subject to “Mandatory Helmet Legislation”. SBU uses the term “experienced Adult Rider” and “inexperience Youth Rider” to mean more than one level or dimension of “experience” in both definitions. An “experienced Adult Rider” refers to both the experience gained from riding a Motorcycle, which does equip the Adult Rider with the prior knowledge, skill and judgment to decide if and when they will wear a Helmet, and if so what type of Helmet, would be most suitable, as well as whether to use steel-toed riding boots as opposed to other footwear, leather or Kevlar riding wear as opposed to other clothing, goggles or a visor as opposed to glasses, shaded, clear or colored lenses. These are just a few examples of the choices of riding apparel and safety equipment the Rider will make before riding their Motorcycle in Hawaii. Each of the choices could have a profound effect on the rider's safety in avoiding an injury or even loss of life under various circumstances, which they might encounter while riding their Motorcycle. The other type of “experience” the Adult Rider is assumed to possess is “mature judgment” that results from prior life experiences and allows Adults to make responsible decisions about their own safety and exhibit respect for the law and responsibility toward other motorists using the road. It is this “mature judgment” that makes the difference between the “experienced Adult Rider” and the “inexperienced Youth Rider”.

⁷ Moped is expressly excluded from the definitions of Motorcycle and Motor Scooter in the statutory definitions §286-2 Definitions. The following terms whenever used and referred to in this chapter shall have the following meanings unless a different meaning is clearly apparent from the context:

"Moped" means a device upon which a person may ride which has two or three wheels in contact with the ground, a motor having a maximum power output capability measured at the motor output shaft, in accordance with the Society of Automotive Engineers standards, of two horsepower (one thousand four hundred ninety-two watts) or less and, if it is a combustion engine, a maximum piston or rotor displacement of 3.05 cubic inches (fifty cubic centimeters) and which will propel the moped, unassisted, on a level surface at a maximum speed no greater than thirty miles per hour; and a direct or automatic power drive system which requires no clutch or gear shift operation by the moped driver after the drive system is engaged with the power unit.

"Motorcycle" means every motor vehicle having a seat or saddle for use of the rider and designed to travel on not more than three wheels in contact with the ground, but excludes a farm tractor and a moped.

"Motor scooter" means every motorcycle with a motor, which produces not more than five horsepower, but excludes a moped.

3. Exceptional Risk and Responsibility Activities” or “ERRAs” Are Traditionally Deemed Acceptable

It is the Adult Rider’s mature judgment that is the reason adults are given a choice in law to freely engage in certain activities which may create a risk of harm or danger to themselves and also to others around them as a result of engaging in those actions or activities (herein called “**Exceptional Risk and Responsibility Activities**” or “**ERRAs**”). In our democratic society we recognize a citizen’s freedom of choice and privacy rights to engage in ERRAs, but we may also place reasonable limits on when, where, how, and even who may engage in such ERRAs. ERRAs span a wide range of activities, but in Hawaii that may include everything from sky-diving to surfing, hang-gliding to motor-sports racing. As a society we do not “ban” activities simply because they are risky, hazardous, dangerous or require a heightened level of care and responsibility toward the ones-self (as an activity participant) or towards others who may be affected by participating in such ERRAs. Instead, we as a society, usually require two basic things from such participants: first, that they be adults who are deemed capable of assuming person responsibility and exercise mature judgment, when engaging in such ERRAs; second, that they are required to complete a course or training to attain a certain minimum level of proficiency, competence or skill to be licensed, certified or approved to participate in such ERRAs. The same approach applies to “everyday activities”, which might also be ERRAs and is not just applied to the type of exceptional risk sports activities described above. The following examples of everyday activities that persons under 18 years of age are prohibited from engaging in absolutely or (only with parental supervision) and are also sometimes permitted only after an adult participant (18 years or older) completes a course or training to attain a certain minimum level of proficiency, competence or skill to be licensed, certified or approved to participate in such activity.

- (1) Driving an automobile without adult presence or supervision (after completing a graduated driving program);
- (2) Handling a firearm without adult presence or supervision (After successfully completing a fire-arms safety course);
- (3) Operating a powerboat without adult presence or supervision (after completing a safe boating course and obtaining a certificate that allows a person to operate a vessel in many states although not required in Hawaii);
- (4) To be employed as an “employee”, without a child labor certificate (no certificate is required after a worker reaches 18 years);
- (5) To work in an establishment that serves alcohol (Some states require servers who not only attain 18 years, but also satisfactorily complete a “alcohol server course” before they can serve liquor, in Hawaii the server need only be 18 years or older);
- (6) To join the military (no parental consent is required to join the armed services after an applicant attains 18 years);
- (7) To ride a Motorcycle or Moped on the street in Hawai’i without a Helmet (Upon attaining 18 years, a person with a valid category #2 motorcycle license can operate a Motorcycle without a Helmet, and is not even required to successfully completing a “**Motorcycle Safety Education Course**” (“**MSEC**”) or a “**Motorcycle Skills Training Course**” (“**MSTC**”)).

There is a general recognition that for most things in Hawaii, a person who has reached 18 years of age has developed judgment though life experiences that is sufficient to allow them to make decisions over their own safety and control their actions and activities in a matter that reasonably respects other persons safety as well. That does not mean that in Hawaii we do not still insist that those persons receive proper and adequate training and also passing various courses to demonstrate sufficient proficiency, competence

or skill to be granted self-supervision and discretionary choice or judgment in those risky or dangerous activities even after they have attained 18 years of age. A number of the activities in the above list required both that the person reach 18 years and successfully complete a mandatory skills training program prior to being authorized, certified or licensed to carry on that activity as a supervised adult. That is for the safety of both the person engaging in the activity as well as others around them that are exposed to the risk of harm, injury and loss of life that could result from them engaging in that Exceptional Risk and Responsibility Activity.

SBU Submission Part I

SBU submits that the present law adequately deals with the issue of the difference between Adult Rider's decisions whether or not to wear a Helmet which is constitutionally protected and a **Mandatory Helmet Legislation for Youth Riders** which gives Youth Riders no choice on the matter is not. This is the traditional approach legislators in Hawai'i have applied to other **Exceptional Risk and Responsibility Activity**, as described above. With good reason, the present law treats Adult Riders differently than Youth Riders, by recognizing the balance between protecting their freedom of choice as adults who are deemed to be able to make mature and responsible decisions and protecting Youth Riders by forcing them to wear Helmets until they reach an age and a maturity level where they can make that decision for themselves.

PART II The Freedom of Choice for Adult Riders As to their Selection of Riding Apparel and Helmets is a Constitutional Privacy Right pursuant to their rights to life, liberty and the pursuant of Happiness;

1. SBU Submissions Part II

SBU submits that the present law reflected by HRS §286-81(a) and (b) recognizes a citizen's constitutional right to privacy and the enjoyment of property under the Fourth and Fifth Amendments and not to be unreasonably deprived of those rights except by due process of law. The complimentary protections afforded under Article 1 Sections 2 and 4 of the Hawai'i Constitution gives rise to inherent and inalienable privacy rights, which can only be restricted or infringed upon by the state's police powers (as a "*primary purpose*") in the legitimate protection of the public interest and not to protect an individual from themselves pursuing legitimate activities that do not harm others such as riding a motorcycle without a Helmet. Both courts in *Lee* and *Cotton* recognized the existence of these privacy rights (i.e. the right to liberty and the pursuit of happiness by not wear a Helmet while riding a Motorcycle, as long as it did not cause harm to other citizens), **could only** be infringed upon and curtailed, by Mandatory Helmet Legislation, where it was demonstrable that mandatory helmet legislation was a reasonably necessary way of reducing the "secondary harms" associated with the social costs of head injuries. The *Lee* majority concluded the ("*secondary purpose*") of reducing the social costs of head injury to persons not wearing Helmets in Motorcycle accidents was established by reason that⁸:

- a. The consequent physical injury and death is so widespread as to be of grave concern to the public and where the incidence and severity of the physical harm has been statistically demonstrated to the satisfaction of the court.

⁸ State v Lee, 465 P.2d 573 (1970) 575-6.

- b. *“Having determined “that the interests of the public generally, as distinguished from those of a particular class” is involved, we move on to consider whether “the means are reasonably necessary for the accomplishment of the purpose.”*
- c. *“Appellant has not referred us to any arguments refuting the reasonableness of the regulation in light of its purpose.”*
- d. *“Nor has appellant pointed the way to less drastic or less burdensome means by which substantial head injuries to motorcyclists may be prevented.”*

The Court in *Lee* upheld the Hawaii Mandatory Helmet Law because the defendant failed to provide any evidence that the secondary purpose of reducing the social costs of head injury to persons not wearing Helmets could be reduced by a ***“...less drastic or less burdensome means by which substantial head injuries to motorcyclists may be prevented.”*** The court in *Cotton* was even more tentative with a narrow 3/2 majority, with the minority lead by Justice Abe held the law was unconstitutional period. The Majority lead by Justice Levinson acknowledged Justice Abe’s position *“...the fundamental tenet that the relationship between the individual and the state leaves no room for regulations which have as their purpose and effect solely the protection of the individual from his own folly.”*⁹ However the majority found that in this limited case the secondary purpose of protecting the public interest against the costs of head injury still justified the intrusion into the constitutional rights of the motorcyclists’ privacy rights to choose not to wear a Helmet.

Therefore, SBU submits because these two proposed Resolutions HR 41 and HCR 53, both fail the test applied by the Supreme in both *Lee* and *Cotton* decisions. The law makers must establish in the absence of the “primary purpose” of the legislation protecting the public interests under the state’s police powers, which clearly Mandatory Helmet Laws have been repeatedly held by the courts not to be concerned with, then there must be demonstrative evidence that they are justified in infringing or curtailing a citizen’s privacy rights by proof of the secondary purpose of achieving the public’s interest in avoiding the “secondary harms” associated with head injury to persons failing to wear Helmets in motorcycle accidents. The “secondary harms” test described by the majorities in the *Lee* and *Cotton* courts is to establish its justification in curtaining Adult Rider’s freedom of choice whether to wear a Helmet:

- 1) Is the legislation reasonable in light of its purpose of reducing the social costs associated with motorcycle accident injuries and fatalities that result from head injuries to riders who do not wear Helmets?
- 2) Is there a less drastic or burdensome means to reduce the social costs associated with motorcycle accident injuries that result from head injuries and fatalities to riders who do not wear Helmets?

PART III The Goal of Reducing Serious Injuries (including TBI) and Fatalities sustained in Motorcycle Accidents Is More Reasonably Achieved with “Responsible” “Comprehensive” and “Integrated” Policy Instead of a “Narrowly Focused” Mandatory Helmet Law.

- 1. The Repeal of Comprehensive Mandatory Helmet Legislation Never Resulted in Predicted “Catastrophic Consequences” to Society

⁹ Ibid FN 8.

In 1976 Congress eliminated the contingency of federal funding for state highways based on the states enacting helmet laws.¹⁰ The Hawaii Mandatory Helmet Law was repealed, in June 1977, for Adult Riders and only retained for Youth Riders; yet the very fabric of society remained intact! None of the dire, grave, alarming, widespread and catastrophic consequence that Helmet Law supporters, proponents and advocates say were predicted by the statistics ever occurred. Unfortunately, some Motorcycle Riders were injured, some suffered brain injuries and some even died in accidents while both wearing and not wearing Helmets. So did persons riding in automobiles, flying in airplanes, surfing, cliff diving, hang-gliding, horseback riding, swimming, rock climbing and doing a host of other activities in Hawai'i, which may be dangerous and even fatal for a variety of reasons including if one strikes their head at the time. Some of those head injuries were within the persons own power to avoid by taking safety precautions (including wearing head protection) and some were not. Yet, none of the participants in those activities was mandatorily required by law to wear Helmets under Hawaii legislation as a result of those fatalities. SBU submits that in any case, the very fabric of society was not torn or destroyed by the repeal of the Hawaii Mandatory Helmet Legislation. Truthfully, "the very fabric of society" was never actually threatened in the first place. From and after 1977 Hawai'i law-makers restored the balance between protecting individual freedom of choice for Adult Riders by implementing the **Safety Helmet Exclusion Clause** to protect their privacy rights, while also recognizing that the **Mandatory Helmet Legislation for Youth Riders** was also necessary to protect inexperienced Youth Riders from risks of harm and injury that may arise from their lack of experience in operating a Motorcycle and their lack of "mature judgment" in making safe choices while operating the Motorcycle.

Hawaii Motorcycle Laws once was again legally permitted Adult Riders to choose not to wear a Helmet. Yet the very fabric of society remained intact the social catastrophe never happened. The reason is that brain injuries and deaths among motorcycle riders are due to a combination of factors and the wearing of a Helmet is only one of many factors that may contribute to the incidence of injury or death due to a Motorcycle Accident ("Motorcycle Accident" is intended to include "Motor Scooter Accident" herein and the terms are also used interchangeably with "Crash" and "Collision").

For the reasons set out below SBU submits the absence of Mandatory Helmet Legislation is not one of the most significant factors in determining the number of injuries or deaths among Motorcyclists in Hawaii. SBU does not deny the use of Helmets as safety equipment by Motorcyclists is not an important safety consideration. On the contrary, SBU has always maintained that the freedom to choice as to safety equipment and riding apparel should be exercised wisely and responsibly by Riders. With freedom of choice comes responsibility for Adult Riders to choose wisely and make riding safely a priority including making safe choices regarding safety equipment and riding apparel. That is where SBU submits the focus of Motorcycle legislation in Hawai'i could be much more effective in reducing all injuries (in particular serious injuries including brain injuries) and fatalities associated with Motorcycle Accidents by taking a Responsible, Comprehensive and Integrated Policy approach to identifying and redressing the underlying causes of Motorcycle Accidents. SBU submits that Mandatory Helmet Legislation is not a panacea for a multi-faceted problems of the underlying the causes of Motorcycle Accidents and the social costs resulting from serious injuries (including TBI) and fatalities suffered by Riders.

¹⁰ M. Margaret Knudson et al., *Motorcycle Helmet Laws: Every Surgeon's Responsibility*, 199 J. AM. COLL. SURG. 261-63, 261 (2004).

2. A Brief Look At What Are Some of the Most Prevalent Causes of Motorcycle Accidents and How These Causes Can Be Prevented or Diminished.

(1) Speed of Vehicle and Helmet Effectiveness

- (i) In a recent Hawaii study on fatal accidents involving Motorcycles and Mopeds for 2001-05¹¹, the fatality trend rate is stated to have increased from 18% in 2001 to 43% in 2005. It mentions 41% of the 106 (86 motorcyclists fatalities and 19 Moped riders) fatal crashes involved alcohol. Only 31% of the 106 victims (86 Motorcyclists and 19 Moped riders) wore a Helmet. None of the 19 Moped fatalities wore Helmets. However, this means that 38 of 86 Motorcyclists or 44% (almost half of the Motorcyclists who died were actually wearing a Helmet).¹² In other words there was almost an equal chance of Motorcyclist dying in this study whether they wore a Helmet or not. However, 100% of the 19 Moped riders who died were not wearing a Helmet. These results suggest that as the speed of crashes increases Helmets becomes less effective in saving Rider lives. That is common knowledge; as is the fact that Motorcycles generally travel much faster than Mopeds (Mopeds by definition are legally limited 30 mph, to having a capacity limit of 2 h.p. and 50 cc)¹³.
- (ii) A large portion of the Motorcycle accidents resulting in fatalities are occurring at higher speeds (i.e. 50+ mph) when Helmets are much less effective, because Riders sustain multiple fatal injuries caused by high-speed trauma induced injuries when the Motorcyclists body strikes objects during the accident sequence. Therefore, the trauma induced fatalities are often independent of the fact the decedent may also sustain TBI (“traumatic brain injury”) in the same Crash. All Moped accident fatalities occur at low speeds (i.e. below 30 mph) and are often a direct result of a head injury for which Helmet use could make a significant difference. Focusing on Helmets as a means of substantially reducing or eliminating serious or fatal injuries (including TBI) in Motorcycle Accidents misses the point that a large number if not the majority of serious or fatal injuries (including TBI) in motorcycle accidents occurs at high speeds in which Helmets are comparatively less effective, because they only protect the head (not necessarily the brain, neck and certainly not the rest of the Rider’s body) from trauma induced injury and fatality due to the Crash.

(2) The Focus of Legislation Seeking to Prevent Serious Injuries (including TBI) and Fatalities for Motorcycle Accidents Should be on Motorcycles Skills, Training and Education.

¹¹ Dan Galanis of the Injury Prevention and Control Program, Hawaii Department of Health Presentation (the “**IPCP-HIDOH Study**”) to the TIA Committee Hearing February 6, 2013

¹² Ibid IPCP-HIDOH Study FN 19 at slide #8.

¹³ Ibid FN 1 Section HRS 286-81(2) Definitions. A “Motor Scooter” is defined as every motorcycle with a motor, which produces not more than five horsepower, but excludes a Moped. While a “Motorcycle” means every motor vehicle having a seat or saddle for use of the rider and designed to travel on not more than three wheels in contact with the ground, but excludes a farm tractor and a Moped. See also footnote 1 for a general description of Mopeds and the differences between Mopeds and Motorcycles. Also, there is considerable evidence that Moped owners “cheat” the system by modifying their Mopeds with larger engines, which while illegal is virtually impossible to detect under present law enforcement procedures, because until 2016, regulations did not require Mopeds to submit to annual registration or annual safety inspections as do Motorcycles. There is clear documented and anecdotal evidence that many Moped owners modify their motors capacity to make them much faster and more powerful than the regulations permit, therefore making them into the category of “Motorcycles” by definition. Although these “**Outlaw Mopeds**” are illegal they have become very common on Hawai’i roads and highways.

- (i) Where a large number or even most of the serious injuries (including TBI) are sustained by riders in relatively high speed accidents prevention of the accident is more important than “protection” of the motorcycle accident victim, because Helmets are much less effective at reducing or preventing serious injury (including TBI) or fatalities in high speed Motorcycle Accidents. The goal of prevention is generally unrelated to Helmet use. There is no statistical evidence that wearing a Helmet prevents a rider from becoming involved in a Motorcycle Accident. There was some evidence in the Hurt Report¹⁴ that persons who wore Helmets were somewhat less likely to be involved in a Motorcycle Accident, but there was no evidence that wearing a Helmet prevented Crashes. Instead, the Hurt Report suggested that there was a higher probability of Rider who had taken a “**Motorcycle Safety Education Course**” (“MSEC”) or a “**Motorcycle Skills Training Course**” (“MSTC”)¹⁵ was significantly less likely to be involved in an Motorcycle Accident and was more likely to wear a Helmet after successfully completing such a course than a Rider who did not take a MSEC or a MSTC.¹⁶
- (ii) Returning to the IPCP-HIDOH Study statistics, when considering the non-fatal traffic Crashes involving Motorcycles and Mopeds for the period 2001-05; of the 718 Crashes, 61% were Motorcycles and 39% were Mopeds. The peak age for Crashes was 20-24 years old and 61% of the Crashes involved persons between the ages of 15 to 34 years of age. Of the Crash victims 44% of motorcyclists were wearing Helmets, but only 8% of Moped operators. Speed was a factor in 17% of Motorcycle Crashes and only in 5% of Moped Crashes. Alcohol was a factor in less than 4% of the crashes, while inattention and judgement were by far the most prevalent causal factor accounting for 38% of the Crashes. This is also consistent with the Hurt Report findings, which also attributed inattention with the most prevalent factor contributing to Motorcycle accidents.¹⁷ The IPCP-HIDOH Study statistics suggest that although almost half (44%) of the Motorcyclists involved in Crashes wore Helmets, only 8% of Moped riders did.¹⁸ With Moped Riders possessing no special skills, training, or driver’s license requirements related to operating motorized two-wheeled vehicles, there is a logical connection between the relatively high incidence of Moped Crashes and the operator’s absence of driving skills. It also suggests that the Crash victims were generally young males (over 61 % between 15-34

¹⁴ Motorcycle Accident Cause Factors and Identification of Countermeasures, January 1981. H.H. Hurt, Jr. J.V. Ouellet and D.R Thorn. Traffic Safety Centre, University of Southern California, Los Angeles, California 90007, Contract No. DOT HS-5-01160 (Final Report) Funded by National Highway Traffic Safety Administration, U.S. Department of Transportation. The Hurt Report study involved accidents for the period from 1975 to 1980, and reported in 1981. (Also see FNs 30-36 below).

The Hurt Report studied 900 motorcycle accidents on site and 3600 police accident reports involving motorcycles and conducted interviews of 2310 motorcyclists who were involved in those accidents during the period 1975-80. The study comprises 435 pages and generated 55 conclusions. The Hurt Report is outdated in some ways, but it was and remains the most comprehensive Motorcycle statistical and scientific study ever conducted.

¹⁵ An example is the Motorcycle Safety Foundation (“MSF”) “Basic Rider Course” offered through the Leeward Community College and is recognized by the Hawai’i Department of Transportation for participants who successfully complete that course constituting a licensing waiver for a Hawai’i Category 2 motorcycle operator’s license. However there are many advanced skills training courses that increase motorcyclists’ proficiency from intermediate to expert levels that are also offered through the MSF and similar organizations.

¹⁶ Ibid FN 14 Hurt Report pages 250-53. “*The trained motorcycle riders (although they are scarce) showed very high rates of helmet use and the comparison with untrained riders was very significant*”. Table 9.3.18 indicated 68.3% Riders with formal MTPs training were helmeted although they were only involved in 5.1% of the accidents.

¹⁷ Ibid FN 11 IPCP-HIDOH Study at slide #10. Also see Hurt Report at page 417.

¹⁸ Ibid FN 11 IPCP-HIDOH Study at slide #8

years of age) and the most prevalent causation factor was not speed or alcohol, but rather “inattention and judgement”¹⁹. This points to the fact that Crashes were most highly correlated with a lack of formal Motorcycle skills (“**Motorcycle Skills**”) training, proper motorcycle skills development (through skills training and experience), and the absence of formal motorcycle skills testing as part of the licensing prerequisites as the prominent contributory factors for Crash victims generally and especially Moped Riders.²⁰

- (iii) The preceding statistical findings reported by the IPCP-HIDOH Study are generally consistent with the findings of many other larger more comprehensive reports on motorcycle accidents, injuries, causes and the relation of brain injuries to the absence of Helmet use; the most famous being the Hurt Report.²¹ SBU suggests that Pro-Helmet Law Advocates use these statistical results to advance their cause of implementing Helmet laws in Hawaii, and ignore the more salient issues these statistics raise. The overwhelming majority of accident related fatalities and injuries are associated with a young, inexperienced, untrained and unskilled group of male Motorcycle and Moped riders (referred to as the “**High Risk Young Male Riders**”). The High Risk Young Male Riders who form the group of 15-34 year old male operators of Motorcycles and Mopeds are highly represented with the accident related fatalities and injuries. Yet, Pro-Helmet Law Advocates somehow justify implementing wide reaching Helmet legislation that infringes on the constitutional rights of all Motorcyclists of all ages and both sexes to address what appear to be a relatively narrow problem. That group of Riders including all females and those males over the age of 34 years may also be not be wearing Helmets; but the statistical evidence suggests they were rarely involved in accidents that resulted in fatalities or non-fatal injuries. SBU is not suggesting these findings necessarily justify mandatorily requiring that subgroup of High Risk Young Male Riders who form the group of 15-34 year old male Riders

¹⁹ Ibid FN 11 IPCP-HIDOH Study at slide #10

²⁰ Although we describe them as “**Motorcycle Skills**”, but they apply equally to Mopeds, in that all motorized two wheeled motorized vehicles have the same or similar handling, collision avoidance and accident involvement characteristics, which relate generally to the nature, size, dimensions, profile and mechanics of a motorized two wheeled vehicles. The Hurt Report (see foot note 14 at pages Sections 5, 6, 7, 9,10,and 11; pages 35-161 and 149-414; spends considerable time discussing these matters, which is beyond the scope of this paper) as well as other similar reports and materials on Motorcycle safety focus on developing “**Motorcycle Skills**” to avoid accidents. The motorcycle safety training courses offered privately and state sponsored courses and clinics teach Riders about the nature of these special characteristics and how they must be understood and employed in safe Motorcycle (and Moped) riding to minimize the risk and consequences of Motorcycle Accidents.

²¹ Ibid Hurt Report FN 14

See US DOT , M.E. Peters, Secretary of Transportation, “Action Plan to Reduce Motorcycle Fatalities, 2007” Citing the Hurt Report 1981 findings as to causes of Motorcycle collisions the DOT Secretary pointed to four main factors:

1. The failure of motorists to detect and recognize motorcycles in traffic is the predominating cause of motorcycle accidents;
2. The driver of the other vehicle involved in collision with the motorcycle did not see the motorcycle before the collision, or did not see the motorcycle until too late to avoid the collision;
3. Approximately three-fourths of these motorcycle accidents involved collision with another vehicle, which was most usually a passenger automobile;
4. The most frequent accident configuration is the motorcycle proceeding straight then the automobile makes a left turn in front of the oncoming motorcycle.

²⁹ US DOT, M.E. Peters, Secretary of Transportation, “Action Plan to Reduce Motorcycle Fatalities, 2007” and see Center for Disease Control and Prevention “Motorcycle Crash-Related Data” which showed the during the period 2001-2008 by far the highest incidence of Motorcycle accidents (fatal and non-fatal) were in the 15-34 age group (peaking at 20-24) and the lowest was over 34 years of age.

of Motorcycles and Mopeds be legally required to wear Helmets (although SBU does support Youth Riders, who are a subset of High Risk Young Male Riders, should be legally required to wear Helmets). The Hurt Report showed 82% of all accident victims fell in to this High Risk Young Male Riders group with a median age of 24.8 years.

- (iv) To target High Risk Young Male Riders who are 15-34 years old with Helmet legislation would clearly be unconstitutional, age based discrimination, that would be a breach their equality rights. Nevertheless, SBU does suggests that reasonable and effective measures that reduce the number of Motorcycle and Moped accidents need to be implemented to get these High Risk Young Male Riders out of harm's way. On the basis of these statistics, the proposed Resolution HR 41 and HRC 53 grounds for supporting Mandatory Universal Helmet Laws, would not meet the test set out by the majority decisions by the *Lee* and *Cotton* courts:
 - (a) Is it "Reasonable" in light of its purpose of reducing the social costs associated with motorcycle accident injuries and fatalities that result from head injuries to riders who do not wear Helmets?
 - (b) Is there a "less drastic or burdensome means" to reduce the social costs associated with Motorcycle Accident injuries that result from head injuries and fatalities to riders who do not wear Helmets?

SBU submits that the answer to (a) above is yes there are less drastic and burdensome means to reduce the social costs associated with Motorcycle Accident injuries that result from head injuries and fatalities to Riders who do not wear Helmets than to deprive Adult Riders from exercising their constitutional right to privacy and freedom of choice in regard to Helmet use. Such means would include:

- (a) Implementing a mandatory motorcycle safety training course for all new applicants for Category #1(Moped) and #2 (Motorcycle and Motor Scooter) operator's licenses.
 - (b) Creating appropriate financial incentives for Adult Riders to enroll in advanced motorcycle safety training courses (MSTC-Deduction 15% on insurance premium).
 - (c) Creating appropriate financial incentives for Adult Riders to enter into a declaration and legally enforceable agreement to ensure that anyone (including the declarant) who rides the insured Motorcycle, Motor Scooter or Moped, will wear a Helmet at all material times the vehicle
- (3) The Studies and Statistics Suggest Formal Motorcycle Skills Training and Four (4) Years of Experience Are Most Significant Indicators a Rider's Likelihood to Be Involved in a Motorcycle Accident. Most Motorcycle/Automobile Accidents are the Motorist's Fault
- (i) The Hurt Report²² studied 900 motorcycle accidents on site and 3600 police accident reports involving motorcycles and conducted interviews of 2310 Motorcyclists who were involved in

²² Ibid FN 14 Hurt Report. The Hurt Report (now over thirty years old) is outdated in a number of ways and yet it is still the most comprehensive US Study on Motorcycle Accident idiocies available. However the same or similar techniques and results were duplicated by the **MAIDS (Motorcycle Accidents In Depth Study) Report**, 2000 Field Study 2009 Final V.2.0

those accidents during the period 1975-80. The study comprises 435 pages and generated 55 conclusions. However, its conclusions and recommendations are relevant to the arguments for and against the efficacy of proposed Resolution HR 41 and HRC 53 achieving their stated goals in terms of reducing Motorcycle Accident injuries through Helmet use. Helmets use was not mandatory at the time of the Hurt study in California so it is actually very reflective of the circumstances in Hawai'i today. Approximately 50% of the Riders voluntarily wore Helmets (it is about the same in Hawai'i today). However, the Hurt Report findings indicated only 40% of the helmeted Riders were involved in accidents and only 20% of the fatalities were helmeted. Therefore, it is reasonably reflective of the status of helmet use in Hawai'i today. The Hurt Report states: *"Also note that the distribution of injuries counted for helmet and unhelmeted riders now appears essentially the same as the accident population. When the effect of helmet use is examined for the counted most severe head, neck and face injuries the same approximate advantage is shown for helmeted riders having less head injuries, less neck and face injuries."*²³ The Hurt Report found that most motorcycle accidents (66.6%) occurred in intersections; **(66%) were cause by the other driver**. Usually, the accident was the fault of a motorist (64.9%) due to a failure to see, recognize, or notice the oncoming Motorcycle (**i.e. lack of Motorcycle conspicuity or Motorist inattentiveness or both**), even though most of those accidents (75%) occurred in broad daylight, and under clear visibility conditions (86.3%) of the time. Of the total accidents involving Motorcycles (75%) involved another vehicle. Of the remaining (25%) of the total accidents, these were classified as "single vehicle" Motorcycle Accidents only 64.3% were the Rider's fault (i.e. Rider inattention, misjudgments, or carelessness). Another 10.9% of the "single vehicle" Motorcycle Accidents were actually caused by a motorists, although no contact with the Motorcycle was made. The rest of the single vehicle Motorcycle Accidents resulted from other factors such as animals, uneven road surfaces, etc.²⁴ Most of the accidents (68.9%), involve the Motorcyclist's hesitation and failure to initiate any form of evasive maneuver (herein called "**Collision Avoidance Skills**"). The Motorcyclist failed to initiate any evasive action when presented with the imminent threat of collision, due to a lack of formal training, inexperience, improper or ineffectively braking and an absence of collision avoidance skills.²⁵ **Only 5.1% of Motorcyclists involved in accidents had any formal Motorcycle Safety Skills training course (i.e. what we have called "MSEC" or "MSTC")**, while 92% had absolutely no training at all.²⁶ **Riders with over four (4) years' experience comprised only 3.2%** of the accident victims while 42.3% of the accident victims had less than two years' experience riding a motorcycle.²⁷ The Hurt Report authors went on to state that the most reliable measure of actual riding experience was the time operating the Motorcycle actually involve in the accident. On that basis, the study found that

MAIDS was started in September 1999, over 2000 variables were coded in each of 921 accidents, and exposure data was collected on an additional 923 cases, collected at five locations in France, Germany, Netherlands, Spain and Italy. The investigation was carried out under the auspices of the Association of European Motorcycle Manufacturers (ACEM) with the support of the European Commission

²³ Ibid FN 14 Hurt Report at pg 233.

²⁴ Ibid FN 14 Hurt Report at pgs 44, 45, 49, 50 and 54. (See also Tables 5.4.1, 5.4.2 and 5.4.3.)

²⁵ Ibid FN 14 Hurt Report at pgs 140-47

²⁶ Ibid FN 14 Hurt Report at page 126 at Table 7.7.1 and page 250. Formally Trained Motorcyclists were (5.1%) of the total number of Riders involved in accidents and showed very high rates of helmet use by comparison to untrained Riders.

²⁷ Ibid FN 14 Hurt Report at pg 128-9

57.4% of Riders involved in accidents had less than six (6) months experience, 86.4% had less than two (2) years' experience, and **96.8% had less than four years' experience.**²⁸ Clearly, **experience riding** a motorcycle or having taken a MSEC/MSTC were both **extremely significant indicators** of a Riders likelihood of being involved in an accident.

- (ii) In addition to recommending Motorcyclist should wear a Helmet to protect their head, face and neck from serious injury in the event of an accident, the Hurt Report strongly recommended the following steps and procedures for accident prevention:²⁹
- i. Riders should all take a specialized motorcycle rider training course (MSEC/MSTC) developing skills, strategies and attitudes to limit accident involvement, reduce injuries and incorporating the critical areas of knowledge on safe traffic strategies, collision avoidance skills and safe handling and braking techniques.
 - ii. Motorcycle training should be associated with some aspect of licensing or traffic enforcement.
 - iii. The significant number of riders without licenses or a special motorcycle endorsement is a reliable indication these riders do not have the necessary skills and traffic strategies to operate their motorcycles safely in traffic. The specialized motorcycle-training course offered through the Motorcycle Safety Foundation (MSF) should be incorporated into the licensing process as part of qualifying for motorcycle license endorsement.
 - iv. Law Enforcement has a special role to play in motorcycle accident prevention by utilizing any form of traffic stops or enforcement action to also screening for unlicensed drivers. Research data showed that where motorcycle riders have had traffic violations and accidents, **Motorcycle Traffic-Safety School** ("MTSS") was an effective alternative to payment of a fine or suspension for a citation. The requirement to attend a MTSS with multiple traffic citations or accident records exposes these persons to critical information, training, and experience relating to Motorcycle Skills development that can reduce the likelihood of these accident candidates will subsequently be involved in an accident.
 - v. The Hurt Report finding indicated that the majority of motorcycle related accidents were actually the fault of automobile drivers (66%) and yet there is an incorrect impression (by both the automobile drivers and the investigating police officers) that the Motorcycle rider was somehow responsible due to excessive speed or recklessness. This prevailing incorrect perception of fault and blame on the motorcyclists resulted in a lack of punitive measures being applied against the automobile driver who was actually responsible for the collision.³⁰ On-site accident

²⁸ Ibid FN 14 Hurt Report at pgs 129-30 and Tables 7.9.4. Note that the Hurt Report did not specifically designate the age group as 15-34 years and therefore the writer aggregated the table data to conform to that designation. Therefore, it is close, but not a perfect breakdown of the age groupings. Similarly, females were not factored out of the age grouping and so there are a very few female Riders in the High Risk Young Male group ages 15-34 years and there are also only a very few females in the Female and Mature Male Riders group. The Hurt Report authors stated at page 130 that Riders were prone to overstate their experience for various reasons and concluded: "*For these reasons, the experience in the accident-involved motorcycle is the more realistic measure of street motorcycle riding experience.*"

²⁹ Ibid FN 14 Hurt Report at pgs 419-21

³⁰ Ibid FN 14 Hurt Report at pgs 45 and Table 5.4.3.

analysis show that motorist and eye-witnesses consistently over estimated and over stated to actual speed that the involved motorcycle was travelling by 30%-50% immediately before the accident, which often unreasonably led the involved motorist and law enforcement investigators to unjustifiably blame the motorcyclist for the collision.³¹ Many law enforcement officers untrained and unfamiliarity with motorcycle accident site analysis (vehicle accident reconstruction techniques) were often unaware of the overestimated speed of the motorcyclists and all too often came to the conclusion “*this was just another motorcycle accident*” and no citation or punitive action is directed toward the automobile driver who was actually at fault.

(4) All of the Major Findings in the Hurt Report Appear to still be True Thirty Years Later According to the MAIDS Report³²

MAIDS (**Motorcycle Accidents In Depth Study**) Report was started in September, 1999, over 2000 variables were coded in each of 921 accidents, and exposure data was collected on an additional 923 cases, collected at five locations in France, Germany, Netherlands, Spain and Italy. The investigation was carried out under the auspices of the Association of European Motorcycle Manufacturers (ACEM) with the support of the European Commission. The more salient findings for SBU’s submissions regarding proposed Resolutions HR 41 and HCR 53 include the following:³³

- (i) Approximately 10% of accidents involved Motorcycles (including Motor Scooters) and Mopeds, being rear-ended, and the vast majority approximately 90%, were from front and side collisions (Consistent with Hurt Report findings).
- (ii) Less than five percent of the accidents involved alcohol use by the motorcyclist. (Consistent with Hurt Report findings).
- (iii) Riders over 40 years were significantly underrepresented in the crashes, while High Risk Young Male Riders (18-25 years of age) were significantly overrepresented in the Crash data. (Consistent with Hurt Report findings).
- (iv) In 37% percent of cases, the primary accident contributing factor was a human error on the part of the motorcyclist. In 50% percent of the Crashes, the driver of the other vehicle was deemed to have made the primary error.³⁴ (Consistent with Hurt Report findings which put the number at 66% percent of motorists’ fault).
- (v) In 70% percent of the two-vehicle Crashes, the other driver failed to "perceive" the two-wheeler, causing the authors to classify this as a primary accident cause. The Motorcyclist's failure to see the other vehicle was listed as a secondary accident cause.

³¹ Ibid FN 14 Hurt Report at pgs 24-25.

³² Ibid FN 14 Hurt Report; and also see MAIDS (Motorcycle Accidents In Depth Study) Report, 2000 Field Study 2009 Final V.2.0

³³ Friedman Art December 2004 issue of Motorcycle Cruiser Magazine “MAIDS Motorcycle Accident Study: Lessons From 921 Crashes”. <http://www.motorcyclecruiser.com/maids-motorcycle-accident-study-lessons-921-crashes>.

³⁴ Ibid FN 33 MAIDS.

- (vi) Drivers of other vehicles who were licensed to ride motorcycles were less likely to overlook a Motorcyclist, a finding which mirrors previous studies. This finding emerged from the MAIDS Study, but was not fully developed in the Hurt Report findings, suggesting that motorists involved in crashes with Motorcycles (or Mopeds) who also had Motorcycle Licenses were a full 50% less likely to be at fault compared to motorists without Motorcycle Licenses themselves. In fact, the motorist with a valid Motorcycle License was six times more likely to perceive the presence of a Motorcycle than a motorist without a valid Motorcycle License. This suggests it is possible to train motorists to better see (perceive) the presence of Motorcycles. This is a very significant revelation, since it suggests that motorists trained to ride motorcycles are much more likely to perceive and anticipate the presence of a Motorcycle at the scene of Crash and take some form of action to avoid the collision (i.e. give the Motorcycle the right-of-way, brake, or utilize some form collision avoidance technique in the automobile). This suggests that efforts to further educate the motoring public to be more vigilant about perceiving and avoiding collisions with Motorcycles (and Mopeds), would potentially reduce the number of multi-vehicle Motorcycle Accidents by up to 50%.³⁵ Since the vast majority of collisions involving Motorcycles (and Moped) with automobiles occur on city streets at intersections (70%) and they are at speeds of thirty miles an hour or less, where Helmets are most effective at reducing serious injuries (including TBI) and fatalities to riders, public advertising campaigns to enhance motorist awareness of Motorcycles and Mopeds presence would likely both: (a) eliminated much of the underlying cause of the problem; and (b) would lessen the situations where Helmets are most effective; but would complement the Riders' choice to use Helmets, without adversely affecting the right of choice to those Adult Riders who choose not to wear Helmets.
- (vii) There did not appear to be any significant representation associated with the type of motorcycle involved in the collisions in the MAIDS Study, while the Hurt Study found larger "cruiser style" Motorcycles were significantly underrepresented in Crashes.
- (viii) Riders who received formal training in a specialized motorcycle rider training course (MSEC/MSTC) were significantly underrepresented in the collisions as were experienced riders. This distinction is important since in Europe most jurisdictions have a multi-phase licensing program with compulsory training and a series of testing involving written exams, range exercises and an on-road test. Although that is encourage in Hawai'i (see FN 23 re Motorcycle Safety Foundation ("MSF") "Basic Rider Course" offered through the Leeward Community College) it is not mandatory requirement for a Hawai'i Category #1 (Moped) or #2 (Motorcycle) license/endorsement like in the European jurisdictions.³⁶
- (ix) "There were relatively few cases in which excess speed was an issue related to accident causation." According to the MAIDS Study conclusions, speed was only related to 18%

³⁵ <http://www.bikesafer.com/maids.html> "The European Maids study, 2005."

³⁶ Ibid FN 33.

of all accidents and “excess speed” was not a statistically significant factor in causing accidents. (Consistent with Hurt Report findings).³⁷

- (x) Traffic control violations (such as rolling a stop sign or traffic light) were made by the motorcyclists in 8 percent of the crashes and by motorists in 18 percent. In other words the other vehicle was twice as likely to have committed a traffic offence leading to the collision than a Motorcycle.³⁸
- (xi) Weather causally contributed to 7.5% of crashes, modifications (i.e. performance modifications) to the Motorcycle only contributed to 1.6% and safety defects (i.e. poor tires or brakes) only contributed to 3.6% of Crashes involving Motorcycles and Mopeds.³⁹ Safety Inspections do ensure Motorcycles and Mopeds are safe, but defects and modifications are relatively minor factors in explaining the incidence of Motorcycle and Moped Crashes according to the MAIDS Report findings. It is primarily “human/driver error” on the part of both the Riders and motorists that cause Motorcycle Accidents. (Consistent with Hurt Report findings).
- (xii) Sixty (60%) percent of the collisions were with another motor vehicle (Consistent with Hurt Report findings which found 75% multi-vehicle Motorcycle Accidents)⁴⁰
- (xiii) As in the Hurt Study the MAIDS author concluded "Helmets were found to be an effective protective device to reduce the severity of head injuries." However, it was pointed out that just over 90 percent of the crashers (“**Crasher**” is a term MAIDS Report uses to describe a Motorcycle, Motor Scooter or Moped Rider involved in a crash and will be used interchangeably with “Rider” when referring to the Rider being involved in a Crash) wore Helmets, but about nine (9%)percent of those Helmets came off in the Crash because they weren't fastened or fit properly or because they were damaged in the fall. So, actually almost every rider was wearing a Helmet, but approximately 9% were render ineffective in the crash.
- (xiv) In 13% percent of the crashes, the accident-involved Riders chose a poor or incorrect collision-avoidance strategy. In a third of the crashes one party or the other "failed to account for visual obstructions and engaged in faulty traffic strategies." Again, this confirms what previous studies (i.e. like the Hurt Study) have shown: Riders need to position themselves so that potentially conflicting traffic can see them, and they should dress conspicuously to make themselves stand out visually.⁴¹

³⁷ Ibid FN 33 MAIDS.

³⁸ Ibid FN 33 MAIDS.

³⁹ Ibid FN 33 MAIDS.

⁴⁰ See Hurt Report 55 Point Summary at point #2. *Motorcycle Accident Cause Factors and Identification of Countermeasures*, Volume 1: Technical Report, Hurt, H.H., Ouellet, J.V. and Thom, D.R., Traffic Safety Center, University of Southern California, Los Angeles, California 90007, Contract No. DOT HS-5-01160, January 1981 (Final Report) Vol I Summary.

⁴¹ Ibid FN 33 MAIDS.

3. SBU Submissions Part III

SBU submits that as an alternative to simple Mandatory Helmet Legislation where it is applicable to all Riders as per the two proposed Resolutions HR 41 and HCR 53, the law makers need to consider the statistics and report findings to develop a “Responsible” “Comprehensive” and “Integrated” Policy Making Approach for dealing with Motorcycle (and Moped) accident related injuries (including serious injuries, TBI and fatalities). To begin with the report findings provide important policy guidelines. SBU submits that everyone knows that wearing a Helmet can reduce some kinds of injuries in some kinds of situations, the reports confirm this. However, that is not enough justification for implementing Mandatory Helmet Laws in the view of SBU, its members, the 50,000 members of the Hawai’i Motorcycle community, or even the “Public Generally” given the constitutionality of abrogating those rights. The legal question is whether it is “reasonable” and the “least drastic or burdensome means” to reduce or eliminate serious injuries (including TBI) and fatalities from Motorcycle Accidents. SBU submits Mandatory Helmet Laws are incapable of achieving the elimination or even a significant reduction in number of serious injuries (including TBI) or fatalities⁴². Helmet use is an important factor in the commitment to increase “safe motorcycling attitudes” and that must be recognized, but it must be incorporated into a general policy framework not by suggesting Mandatory Helmet Legislation be held out as a panacea the way Helmet Law Advocates do. SBU starts with the statistics.

SBU submits the forgoing reports and their conclusions suggest the following:

- (i) Severe injuries (including injuries to the face, neck, head and TBI) as well as fatalities can be reduced by the use of Helmets, depending on the nature and type of Helmet as well as whether it remains on the “Crashers” head and the speed the crasher is traveling when the accident occurs. In low speed crashes below thirty (30) mph, Helmets are effective in reducing injuries to the face, neck, head and TBI) as well as fatalities, especially if the Crasher’s body does not sustain trauma by contact with another object (i.e. another vehicle, median, power pole, traffic sign, etc.).
- (ii) The effectiveness of Helmets in reducing serious injury (including TBI) and fatalities is generally inversely related to speed and the Crasher’s sustaining blunt trauma injuries or intrusion injuries to their head and bodies by contact with another object (i.e. another vehicle, median, power pole, traffic sign, etc), in the Crash.
- (iii) Speed was a minor not a major factor in explaining the underlying causes of Motorcycle Accidents, although it certainly is a major factor for reducing the effectiveness of Helmets to reduce or protect Riders against severe injuries (including injuries to the face, neck, head and TBI) as well as fatalities.

⁴² (see Parts III above) Helmet Law Advocates not pointed to a recent trend in a significant increase in Head Injuries or fatalities to Motorcyclists. Similarly, some recent Helmet Law Advocate have attempted to argue that Hawai’i has a significantly higher incidence of Motorcycle fatalities due to the absence of Mandatory Helmet Laws for Adult Rider, but in fact when normalized for the increased time Hawai’i Motorcyclist ride during the year (i.e. 12 months compared to 4-6 months in most of the middle and Northern states), the IPCP-HIDOH Study op. cit. FN 11, alleging Hawai’i 8 fatalities per 100,000 population is actually below the US average of 5 fatalities per 100,000. The Hawai’i fatality when normalized is 4 fatalities per 100,000 population so the allegation that Hawai’i has an above average fatality rate is just not accurate.

- (iv) Weather conditions, defects in equipment of Motorcycles and Mopeds, even performance modifications, play a comparatively minor role in explaining the underlying causes of crashes involving Motorcycles and Mopeds.
- (v) The overwhelming statistically significant factors in eliminating crashes involving Motorcycles and Mopeds both single vehicle accidents and multi-vehicle accidents are:
 - a. The Riders formal training (i.e. specialized motorcycle rider training course (MSEC/MSTC) including courses like the Motorcycle Safety Foundation (“MSF”) “Basic Rider Course” offered through the Leeward Community College), which the Hurt Report finding suggests could reduce a Rider’s involvement in a crash by up to 95%.
 - b. The Rider’s experience which the Hurt Report finding suggested can reduce the probability of up to approximately 60% for a Rider with two years riding experience and 96% for a Rider with over four years riding experience. The Hurt Study found that 92% of all Crashers had no motorcycles training and that 57.4% of Riders involved in accidents had less than six (6) months experience, 86.4% had less than two (2) years’ experience, and 96.8% of all Motorcyclists involved in accidents had less than four years’ experience.
 - c. Finally the MAIDS Study indicated that a motorists with a valid motorcycle license was six times more likely to perceive the presence of a Motorcycle or Moped in their immediate vicinity 50% less likely to be involved in a collision with a Motorcycle or Moped as a motorist with valid motorcycle license.
- (vi) Riders who complete specialized motorcycle rider training course (MSEC/MSTC) such as the Motorcycle Safety Foundation (“MSF”) “Basic Rider Course” offered through the Leeward Community College), have a very high incidence of Helmet use. The Hurt Report findings indicated Riders who had formal motorcycle training had a 68.3% incidence of Helmet use although they were only involved in 5.1% of the Motorcycle Accidents.⁴³ This suggests that not only does the MSEC/MSTC make the Riders more competent, skilled and able to identify and avoid potential accident situations, but they have a much higher likelihood of wearing a Helmet as well. It seems clear that the focus should be on making it mandatory to complete a specialized motorcycle rider training course (MSEC/MSTC) for any Rider seeking to obtain a Motorcycle category #2 or Moped category #1 endorsement, and make the Helmet choice optional. Instead of the other way around as proposed under two proposed Resolutions HR 41 and HCR 53,, where the Helmet Law is mandatory and the MSEC/MSTC is optional for Hawai’i category #1 (Moped) and category #2 (Motorcycle) operators’ licenses/endorsements.
- (vii) That High Risk Young Male Riders (15-34 age group) are shown to comprise 82% of all accident victims with a median age of 24.8 years according to the Hurt Report findings,

⁴³ Ibid FN 14 Hurt Report pages 250-53. “The trained motorcycle riders (although they are scarce) showed very high rates of helmet use and the comparison with untrained riders was very significant”. Table 9.3.18 indicated 68.3% Riders with formal MTPs training were helmeted although they were only involved in 5.1% of the accidents.

therefore focusing Mandatory Helmet Laws on Female Riders and experienced Male Riders older than this age group makes little logical sense, if the policy goal is reducing server injuries (including TBI) and fatalities from Motorcycle Accidents. However, if the goal is to “put a Helmet on every Rider” regardless of the consequences then law makers will disregard these statistics, studies and the legal implications of infringing on Hawai’i Motorcyclists constitutional privacy rights to freedom of choice. The vast majority of Adult Riders with over 4 years riding experience have a very low probability of becoming involved in an accident according to the Hurt Report, which drops to approximately 4%. This suggests that they could be “grandfathered into to the mandatory license requirements” with virtually no adverse impact injury and fatality trends.

- (viii) At present in Hawai’i the law requires Motorcycle Insurance carriers grant owners of Motorcycle Insurance policies a discount of fifteen (15%) percent MECIP Deduction, see discussion below. If it was made mandatory for new licensees by law, the same incentive would not be necessary, instead it could be used to incentivize existing riders to take an **Advanced Motorcycle Safety Training Course** (“Advanced MSTC”), which would further enhance their motorcycle skills generally and especially “collision avoidance skills”. As already pointed out, the Mandatory Motorcycle Safety Education Course should become a core requirement for qualification of either a Category #1 (Moped License) or a Category #2 (Motorcycle License), which studies have shown will increase Helmet use by graduates voluntarily. The MECIP would then be granted only if Riders take an Advanced MSTC, but of those that do, it would likely further contribute to increased Helmet use voluntarily, and certainly result in less overall Motorcycle Accidents among Advanced MSTC graduates.
- (ix) **Motorcycle Traffic-Safety School** (“MTSS”) was an effective alternative to payment of a fine or suspension for a citation. The requirement to attend a MTSS with multiple traffic citations (i.e. three or more in any one 12 month period) or multiple accidents (i.e. three or more at-fault in any one 12 month period), exposes these Riders to critical information, training, and experience relating to Motorcycle Skills development that can greatly reduce the likelihood of these accident candidates will subsequently be involved in a subsequent accident. They would be required to satisfactorily complete (at their expense) a specialized motorcycle rider training course (MSEC/MSTC whether it is the “beginner course” or an “advanced skills course”) as part of completing the MTSS
- (x) The very same type of incentives legislated to increase Hawai’i Motorcycle riders to take the MSEC--“**Beginner Motorcycle Rider Course: Riding and Street Skills**” by creating a Motorcycle Education Course Insurance Premium Deduction (MECIP-Deduction) could be used to incentivize the use of Helmets by Motorcycle and Moped Riders by amending HRS Section §431:10G-201(c) to include a further discount of fifteen (15%) percent for any Rider who voluntarily decides to wear a Helmet. The insurance policy holder could declare their intent to wear a Helmet in their insurance policy application. The declaration could be notarized and thereby have the force and consequences of a legal oath. The Policy Holder would declare that during the term of the insurance they will always wear a Helmet while riding any Motorcycle (including a Motor Scooter) or a Moped, which is covered by the policy of insurance (i.e. the “Insured Motorcycle” or “Insured Motor Scooter” or “Insured Moped”). The declaration could

further provide that the declarant will not, at any time, permit any other person to ride the Insured Motorcycle or Insured Motor Scooter or Insured Moped as either an operator or passenger during the term of the insurance policy (in these submissions it is called a “**Safety Helmet Premium Deduction**” or “**SHPD**”).⁴⁴ This Safety Helmet Premium Deduction has none of the constitutional issues related to the problems associated with proposed Bills S.B. 178 and 179. It is voluntary, and contractually enforceable at law. It achieves Helmet use voluntarily, but the result has the force of law and would void the Insured’s Insurance coverage if breached; so the Insured has a strong incentive to abide by the terms of SHPD conditions.

- (xi) HRS §286-81(a) and (b) recognizes a citizen’s constitutional right to privacy and the enjoyment of property and not to be unreasonably deprived of those rights except by due process of law under Article 5 of the US Constitution. The complimentary protections afforded under Article 1 Sections 2 and 4 of the Hawai’i Constitution gives rise to inherent and inalienable privacy rights, which can only be restricted or infringed upon by the state’s police powers (as a “*primary purpose*”) in the legitimate protection of the public interest and not to protect an individual from themselves pursuing legitimate activities that do not harm others such as riding a motorcycle without a Helmet. Both Hawai’i Supreme Court in the *Lee* and *Cotton* recognized the existence of these privacy rights (i.e. the right to liberty and the pursuit of happiness by not wear a Helmet while riding a Motorcycle, as long as it did not cause harm to other citizens), **could only** be infringed upon and curtailed, by Mandatory Helmet Legislation, where it was demonstrable that mandatory helmet legislation was a reasonably necessary and the “least drastic or burdensome means” to reduce or eliminate the “social costs” associated with serious injuries (including TBI) and fatalities resulting from Motorcycle Accidents. Items (i) through (x) above show that there are many other more viable, cost effective and efficient was to achieve this goal. Therefore two proposed Resolutions HR 41 and HCR 53, fail this legal test for “Constitutional Validity”

4. **Motorcycle Education Course Insurance Premium Deduction (“MECIP Deduction”)**

HRS Subsection §431:10G-201(c), which provides a fifteen (15%) percent Motorcycle Education Course Insurance Premium Deduction (“**MECIP Deduction**”) in regard to Motorcycle (including Motor Scooter) insurance premium rates:

“(c) After June 7, 1989, each insurer of a motorcycle or motor scooter shall provide a fifteen per cent reduction off premium charges each insurer assesses for each new and renewal policy for liability coverage issued pursuant to this article if the applicant has successfully completed a motorcycle education course approved by the department of transportation.”

Clearly there is considerable scope for encouraging Motorcycle Riders of all levels of experience to take at least one Motorcycle Training Program Course (MTP) such as the: (i) the MSEC-“**Beginner**

⁴⁴ The policy would specify the terms and conditions of coverage and the applicability of the Safety Helmet Premium Deduction (SHPD) in detail including the condition that the Safety Helmet must meet DOT specifications. See also US Department of Transportation “*Does Your Helmet Pass the Test? A Safety Guide*” at website: (<http://www.bikersrights.com/nhtsa/brochure.html>)

Motorcycle Rider Course: Riding and Street Skills”; or (ii) the more advanced MSTC **“Experienced Rider Course.”** Both of which are offered by the Motorcycle Safety Foundation (MSF) and approved by the HDOT. The language in Subsection §431:10G-201(c) is mandatory in that the insurer “shall” provide a fifteen (15%) premium deduction on the Hawaii MC/MS Insurance Policy. Depending on a Motorcyclists liability policy the \$200 course tuition may be saved in a matter of a two or three years.⁴⁵ The Motorcycle and Motor Scooters education fund (the **“M&MSE Fund”**) should be used to help fund the cost of the mandatory MSEP-Beginner Course required to be completed by all Category (1) Driver’s License applicants. All new all Motorcyclists (and Motor Scooter) Riders taking a MSEP-Beginner Course as part of their Category (2) Driver’s License program mandatory requirements, should have the cost of the MSEP-Beginner Course fully or partially subsidized from the M&MSE Fund. In order to achieve this an actuary can calculate the required contribution per policy from the Insurance Carriers to the M&MSE Fund (i.e. instead of \$2.00 it could be \$15.00-\$25.00). This would inevitably be passed on to the Riders in higher insurance premiums. However, it would make the MSEP-Beginner Course even more affordable for lower income and financially challenged Motorcycle Riders. The statistical evidence suggests that all forms of Motorcycle accident fatalities and serious injuries (including TBI), would be reduced significantly by increasing the Motorcycle (and Motor Scooter) communities’ participation in formal Motorcycle Skills Training Courses and Programs (MTPs for short). The costs associated with fully or partially subsidizing the MSEP-Beginner Course would be trivial to the savings in Social Costs by the dramatic reduction in fatal and non-fatal injuries (including TBI) prevented by the mandatory Category (2) Driver’s License program incorporating a mandatory MSEP-Beginner Course (the **“Category (2) Driver’s License Mandatory MSEP-Beginner Course Requirement”**). The two most direct benefits of the Category (2) Driver’s License Mandatory MSEP-Beginner Course Requirement based on the study statistics are (i) better trained Riders have less accidents and (ii) they are more likely to wear Helmets when they ride.

Section §286-139 Preferred insurance rate, provides that:

“Insurers may provide preferential insurance rates to those persons who have favorable records to their credit.”

Section §286-139 may result in still further saving for formally trained Motorcycle Rider’s on their annual insurance premiums, since they have less accidents statistically and that reduced risk should be passed onto them by the Insurance Carriers in the form of lower insurance rates.

5. **SBU Recommendations - SBU Presents a Number of Recommendations (the “SBU Recommendations”), Which Achieve Reduced Accidents, Reduced Accident related Injuries (including TBI) and Fatalities, while Increasing Helmet Use without Implementing New Mandatory Helmet Laws That Needlessly Abrogate or Curtail Adult Rider’s Constitutional Rights to Privacy and Freedom of Choice.**

⁴⁵ For example a 2003 full sized Harley Davidson Motorcycle fully insured by a national insurance carrier registered in Hawaii with \$300,000 (3rd Party) Liability Coverage; the Motorcycle Safety Foundation (MSF) Deduction for 2012 is \$110 annually. In two years, the MTC/MSF course costing \$200 paid for itself. With lower coverage amounts (i.e. \$20,000/40,000 the MSF deduction is reduced proportionally.

- (A) The Mandatory Motorcycle Safety Education Course should become a core requirement for qualification of either a Category #1 (Moped License) or a Category #2 (Motorcycle License), which studies have shown will increase Helmet use by graduates voluntarily.
- (B) The vast majority of Adult Riders with over 4 years riding experience have a very low probability of becoming involved in an accident according to the Hurt Report, which drops to approximately 4%. This suggests that riders with existing Motorcycle Category 2) Licenses could be “grandfathered into to the mandatory license requirements” with virtually no adverse impact injury and fatality trends.
- (C) At present in Hawai’i the law requires Motorcycle Insurance carriers grant owners of Motorcycle Insurance policies a discount of fifteen (15%) percent for Riders who complete a Motorcycle Safety Education Course (i.e. the “Motorcycle Education Course Insurance Premium Deduction” or the “MECIP Deduction). If the MSEC--**“Beginner Motorcycle Rider Course: Riding and Street Skills”** was made mandatory for new licensees, the same incentive would not be necessary. Instead it could be used to incentivize existing Riders to take an **Advanced Motorcycle Safety Training Course** (“Advanced MSTC”), which would further enhance their motorcycle skills generally and especially “collision avoidance skills”. The MECIP would then be granted only if Riders take an Advanced MSTC.
- (D) The very same type of incentives legislated to increase Hawai’i Motorcycle Riders to take the MSEC--**“Beginner Motorcycle Rider Course: Riding and Street Skills”** by creating a Motorcycle Education Course Insurance Premium Deduction (MECIP-Deduction) could be used to incentivize the use of Helmets by Motorcycle and Moped Riders by amending HRS Section §431:10G-201(c) to include a further discount of fifteen (15%) percent for any Rider who voluntarily decides to wear a Helmet..
- (E) **Motorcycle Traffic-Safety School** (“MTSS”) is an effective alternative to payment of a fine or suspension for a citation. The requirement to attend a MTSS with multiple traffic citations (i.e. three or more in any one 12 month period) or multiple accidents (i.e. three or more at-fault in any one 12 month period), exposes these Riders to critical information, training, and experience relating to Motorcycle Skills development that can greatly reduce the likelihood of these accident candidates will subsequently be involved in a subsequent accident. They would be required to satisfactorily complete (at their expense) a specialized motorcycle rider training course (MSEC/MSTC whether it is the “beginner course” or an “advanced skills course”) at their expense as part of satisfactorily completing the MTSS.
- (F) Leave the Helmet choice optional for Adult Riders, they have a constitution right to privacy and freedom of choice to wear a Helmet as long as it does not harm others, according to the Hawai’i Supreme Court.

SECTION II

Objects that Resolution HR 41 and HCR 53 are Aimed at:

1. Reducing the injuries, especially serious injuries (including TBI) and fatalities resulting from Motorcyclists (including Motor Scooter Riders) and Moped Riders, sustain in crashes either single vehicle or with other motor vehicles.
2. The two proposed Resolutions HR 41 and HCR 53 need to focus on the High Risk Young Male Riders up to 25 years of age, who largely form the group of 15-34 year old male users of Motorcycles and Moped which some studies suggest could account for as much as 61% of all serious and fatal accidents involving Motorcycles and Mopeds in Hawaii.

SBU's Points of Objection:

SBU takes the position that while the goals of two proposed Resolutions HR 41 and HCR 53 are laudable, and every responsible stakeholder in the Hawai'i motorcycle community would support both the objectives described above. The two proposed Resolutions HR 41 and HCR 53, as mandatory Helmet Legislation are both Discriminatory and Infringe upon Adult Riders Constitutional Privacy Rights. Therefore, they are very likely unconstitutional. In any case these resolutions are of marginal benefit in achieving these objectives. SBU recommends that the law makers take on the "hard task" of implementing a "Responsible" "Comprehensive" and "Integrated" Policy Approach instead of a simplistic "Narrowly Focused" Mandatory Helmet Laws to confront these complex and challenging problems.

SBU Recommends That Its Members Oppose the two proposed Resolutions HR 41 and HCR 53 On Three Fundamental Grounds:

- 1. Mandatory Helmet Law Already Exist for Motorcycle Operators and Passengers Under Eighteen (18) Years of Age;**
- 2. The Freedom of Choice for Adult Riders As to their Selection of Riding Apparel and Helmets is a Constitutional Privacy Right pursuant to their right to life, liberty and the pursuant of Happiness;**
- 3. The Goal of Reducing Serious Injuries (including TBI) and Fatalities sustained in Motorcycle Accidents Is More Reasonably Achieved with "Responsible" "Comprehensive" and "Integrated" Policy Instead of a "Narrowly Focused" Mandatory Helmet Law.**

SBU Recommendations.

(A) The Mandatory Motorcycle Safety Education Course should become a core requirement for qualification of either a Category #1 (Moped License) or a Category #2 (Motorcycle License)

(B) The vast majority of Adult Riders Licensees could be "grandfathered into to the mandatory license requirements" with virtually no adverse impact injury and fatality trends.

(C) At present in Hawai'i the law requires Motorcycle Insurance carriers grant owners of Motorcycle Insurance policies a discount of fifteen (15%) percent for Riders who complete a Motorcycle Safety Education Course (i.e. the "Motorcycle Education Course Insurance Premium Deduction" or the "MECIP Deduction" for short). If the MSEC-"Beginner Motorcycle Rider Course: Riding and Street Skills" was made mandatory for new licensees, the same incentive would not be necessary, since the course would be

mandatory. Instead the MECIP Deduction could be used to incentivize existing Riders to take an Advanced Motorcycle Safety Training Course (“Advanced MSTC”), which would further enhance their motorcycle skills generally and especially “collision avoidance skills”. The MECIP would then be granted only if Riders take an Advanced MSTC.

(D) The very same type of incentives legislated to incentivize Hawai’i Motorcycle Riders to take the MSEC--“Beginner Motorcycle Rider Course: Riding and Street Skills” by creating the “Safety Helmet Premium Deduction” or “SHPD”), which could be used to incentivize the use of Helmets by Motorcycle and Moped Riders by amending HRS Section §431:10G-201(c) to include a further discount of fifteen (15%) percent for any Rider who voluntarily commits to wearing a Helmet.

(E) Motorcycle Traffic-Safety School (“MTSS”) is an effective alternative to payment of a fine or suspension for a citation. The requirement to attend a MTSS with multiple traffic citations (i.e. three or more in any one 12 month period) or multiple accidents (i.e. three or more at-fault in any one 12 month period), exposes these Riders to critical information, training, and experience relating to Motorcycle Skills development that can greatly reduce the likelihood of the Riders will be involved in a subsequent accident. They would be required to satisfactorily complete (at their expense) a specialized motorcycle rider training course (MSEC/MSTC whether it is the “beginner course” or an “advanced skills course”) at their expense as part of satisfactorily completing all of the MTSS requirements.

(F) Leave the Helmet choice optional for Adult Riders, they have a constitution right to privacy and freedom of choice to wear a Helmet as long as it does not harm others, according to the Hawai’i Supreme Court, recognize and respect their rights.

All of which is respectfully submitted:

On Behalf of Street Bikers United Hawaii (SBU)

Bruce Paige

Bruce Paige
SBU State Director

HR-41

Submitted on: 3/20/2018 7:11:56 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jacqueline Foster	Street Bikers United	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 8:28:51 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Wong	Street Bikers United, Honolulu Harleys Owners Group	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 9:27:52 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Willie larry jr	Indian Motorcycle Rider's Group	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 10:52:15 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Matsuoka	sbuhi	Oppose	No

Comments:

HR-41

Submitted on: 3/19/2018 10:30:58 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

HR-41

Submitted on: 3/19/2018 6:34:41 PM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
roy whitney	Individual	Oppose	No

Comments:

I am opposed to this recommendation.

HR-41

Submitted on: 3/19/2018 7:34:04 PM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
DAVID JENKINS	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/19/2018 10:25:24 PM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Dinneen	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 1:08:48 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Don Bailey	Individual	Oppose	No

Comments:

While i ride with a helamet every time i feel that since this issue doesn't place any unjust burdens on the state that the choice should still be the riders. Please keep Hawaii a place where we can be free to choose.

HR-41

Submitted on: 3/20/2018 4:36:52 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jasmine Paige	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 7:27:19 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Len Fergusen	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 7:34:23 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeffrey Miller	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 7:49:15 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeff Vaughan	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 7:53:39 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
James R Sowa	Individual	Oppose	No

Comments:

unconstitutional as a violation of Hawaii Rider's Constitutional Privacy Rights pursuant to their rights to life, liberty and the pursuit of Happiness under Article 1, Section 2, of the Hawaii State Constitution and (iii) incapable of effectively achieving its objectives of substantially reducing head injuries and fatalities (except in a very narrow and limited set of circumstances), therefore if the Legislature are serious about reducing head injuries and fatalities to motorcyclists they will implement SBU's recommendations for comprehensive incentivized measure to implement safe driving and helmet based insurance premium deductions and respect Hawaii motorcyclist's constitutional rights.

HR-41

Submitted on: 3/20/2018 8:13:48 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
jon	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 8:37:02 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Perry	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 8:37:41 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Brant Perry	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 9:27:11 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ron Rod	Individual	Oppose	No

Comments:

As a motorcyclist in Hawaii for over 40 years I adamantly oppose this bill on the grounds that it does not take into consideration the extremely important fact that an improperly fitted helmet can significantly contribute to serious and even fatal injuries. Without significant training and understanding by law enforcement, vendors and riders many will simply meet the letter of the law instead of the intent of the law and unknowingly put themselves or others in grave danger of serious injury or death. How will the public react when they learn that Legislators voted in support of this bill without appropriately considering the effects on the public and how we would all feel if someone got hurt or killed because of our decision.

It is infinitely better to AVOID the crash than it is to PREPARE for the crash. Time,energy and money should be focused on education, awareness and skill development to AVOID crashes in the first place.

Please vote NO on HR41.

Mahalo

Ronald E. Rod

808-551-7667

HR-41

Submitted on: 3/20/2018 9:30:34 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Harry Greene	Individual	Oppose	No

Comments:

This is an unnecessary and unenforceable law. Poor families can't be fined for their lack of ability to buy helmets for kids. If they can buy them they do. Also this has a groundless safety benefit. If you want riders of motorcycles and bicycles to be safer they need to be separated from SUVs, distracted drivers and large commercial vehicles. Forcing them to buy a helmet and then go and compete for space amongst these vehicles shows how poorly understood this issue is. Let's build bike lanes. Let's let motorcycles use the shoulder of the freeway when traffic is heavy. Let's make a smart law not a nanny-style legislation. This is nanny-style legislation run amok.

HR-41

Submitted on: 3/20/2018 9:32:05 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gordon Goo	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 9:37:34 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Linda Rivera	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 9:52:47 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ricardo Locquiao	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 11:21:08 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Warren F Wegesend Jr,	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 11:51:31 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ramon Miranda	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 12:11:04 PM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Keith Fujimura	Individual	Oppose	No

Comments:

I am strongly opposed to any "law" requiring a motorcycle rider/passenger to wear a helmet. Being a combat veteran who served to keep the USA "the land of the free," I believe government is overstepping its bounds. I believe in laws that protect the public. Does wearing a helmet hurt other people? I have seen instances where riders wearing helmets do not hear a "first response" vehicle behind them and delay their giving way.

Government should not infringe on an individual's freedom/rights.

Additionally, the resolution displayed show "signatures," with no typed names below them. I would like to see the names spelled out so people who sponsor these idiotic bills can be easily identified--know your enemies!

HR-41

Submitted on: 3/20/2018 12:41:05 PM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Malana Paige	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 1:03:45 PM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Isaac Kaopua	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 3:07:08 PM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Warren Scheidel	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 3:38:11 PM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Emil Gomez	Individual	Oppose	Yes

Comments:

OPPOSED TO HR 41 - helmets are only rated up to 13 mph

Analysis showed that motorcycle riders wearing helmets suffer from fewer head injuries, it failed to elaborate on what that really means. Helmet use had little significance in saving lives given that an accident had occurred.

What does that mean? It means that those who do crash are rarely saved by their helmets. Their head injuries are less severe, but they die anyway. In accidents where the rider died, it made no difference if the rider wore a helmet or not. That's not exactly a rock solid argument in favor of helmet wearing.

The truth is that speeding and alcohol use are the biggest cause of motorcycle crashes. Those taking part in these risky behaviors are less likely to wear helmets in the first place. Helmet wearers tend to have fewer crashes and less severe head injuries because they take fewer risks. This accounts for the reduced number of fatalities among helmet wearers.

Neck Injuries Probably More Likely

In light of the shaky evidence in favor of helmets, we must look at the evidence against them. Although motorcycle helmets protect the head, they tend to do so at the expense of the neck. The Hurt Report concluded that neck injuries were lessened by helmet use. How is it that Dr. Goldstein came to the opposite conclusion? Why does he say that helmets can lead to moderate or even severe neck injuries for the rider wearing the helmet? The reason for the discrepancy is not clear.

Riders report that the weight, shape and composition of the helmet all put undue force on the neck. The physics of the helmet itself can cause neck fractures during a crash. This makes Dr. Goldstein's findings more in line with the real world experiences of many riders.

Accident Speed is Important

The speed of the helmet striking the ground makes a difference in the occurrence of neck injury. Statistics show that a helmet has to be moving at least 17 mph in order to

cause a significant injury. Since most motorcycle accidents happen at just over 20 mph, there is a good chance that the helmet can cause neck damage in most accidents. Thicker helmets can cause more severe neck damage than thinner helmets because they are heavier and bounce back harder than the lighter helmets. Add to that the fact that even the **best helmets are only rated up to 13 mph** and a serious question becomes apparent. Is a helmet strong enough protection to make up for the increased risk of neck injury?

The real danger is from risky behaviors like speeding and alcohol use, rider inexperience causes most motorcycle accidents. Riding safety instructors drill it into riders' heads: Motorcycle riding is dangerous. Not only could it kill you, it probably will. Only when riders understand the severity of the danger will they be as alert and defensive as they should in their riding practices.

Dr. John Adams at London University did a study that showed a strange increase of fatalities in states that enacted helmet laws. He theorizes that helmeted riders took bigger risks because the helmets made them feel safer. They believed they were protected by the helmet. Sadly, that would only true in low-speed collisions. Until rider education succeeds in making every motorcyclist terrified of dying on the road, motorcycle deaths will continue to be common.

Helmet Makers Worsen the Risk

In his paper, [Public safety legislation and the risk compensation hypothesis: the example of motorcycle helmet legislation](#), Dr. Adams noted the extensive propaganda surrounding motorcycle helmet sales. Ads encourage riders to feel safer when wearing a helmet. The problem is that people tend to be less cautious when they feel safe, leaving them more vulnerable to danger. Motorcycle riders should never feel safe. Riding is a dangerous activity that requires a consistently high level of attention and apprehension.

Helmet Laws Don't Work

Dr. Adams' paper had some more interesting statistics to offer. The report revealed one anticipated outcome: when states repealed motorcycle helmet laws, fatalities rose. Unexpectedly, however, fatalities rose by an even greater degree in states where helmet laws remained intact. It's not clear why those fatalities rose so much. However, it is clear that a lack of helmet legislation made riding a motorcycle less dangerous.

It's Up to You

Barring a helmet law, helmet use is a personal choice. Statistics show that if you are a responsible rider, you probably are wearing a helmet. Whether that helmet will save your life is anyone's guess. Whether it will instead cause a debilitating neck injury

cannot be known. Whether you choose to ride with a helmet or without, be sure to take a safety course first, don't speed and don't drink while riding. Those actions will clearly keep you safer...the helmet?

HR-41

Submitted on: 3/20/2018 3:41:04 PM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Braanna Kunz	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 3:51:35 PM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Terri Watkins	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 3:52:26 PM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Terrill Watkins	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 4:21:33 PM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tish Rothwell	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 4:28:24 PM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan Kuba	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/20/2018 5:53:18 PM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
edison	Individual	Oppose	No

Comments:

HR-41

Submitted on: 3/21/2018 7:41:14 AM

Testimony for TRN on 3/21/2018 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
J M. Chung	Individual	Oppose	No

Comments: