

**DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
OFFICE OF GENERAL COUNSEL**

June 21, 2000

TO: Colonel Charles C. Hall, Director
Florida Highway Patrol

VIA: JON WHITNEY
General Counsel

FROM: JUDSON M. CHAPMAN
Assistant General Counsel

SUBJECT: CS/HB 1911
Exemption for Motorcycle Headgear
DOCKET NO.: FHP-00-30

QUESTION PRESENTED

Whether the amendment to s. 316.211, Florida Statutes, permitting persons over 21 to operate or ride on a motorcycle without protective headgear if they are covered by \$10,000.00 medical benefits insurance should be enforced as a primary or secondary violation by the Florida Highway Patrol and other law enforcement agencies?

CONCLUSION

Based on the enforcement analogy to s. 316.646, Florida Statutes, which requires proof of insurance by motorists, the better practice is to consider the motorcycle headgear exemption of 316.211 to be a secondary enforcement issue. However, a trooper or other law enforcement officer may stop a motorcycle operator or passenger riding without a helmet based on reasonable suspicion the operator or rider is under 21. A law enforcement officer should not stop someone riding a motorcycle without a helmet only to check his or her age.

DISCUSSION

Section 6 of CS/HB 611, effective July 1, 2000, amended s. 316.211(3), Florida Statutes, as follows:

316.211 Equipment for motorcycle and moped riders.--
(3)(b) Notwithstanding subsection (1), a person over 21 years of age may operate or ride upon a motorcycle without wearing protective headgear securely fastened upon his or her head if such person is covered by an insurance policy providing for at least \$10,000 in medical benefits for injuries incurred as a result of a crash while operating or riding on a motorcycle.

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Although the amendment does not prohibit primary enforcement, the better practice would be to treat the insurance requirement for motorcyclists the same as that for motor vehicle operators under s. 316.646, Florida Statutes. Under that provision, a motorist who is required to maintain personal injury protection security must have proof of insurance card in their possession while operating the vehicle. Violations of that section have been through secondary, not primary, enforcement as a result of stops such as those during an approved checkpoint, other citable offenses or motor vehicle crashes. In similar fashion, the acquisition and proof of insurance by a motorcycle operator or rider under amended s. 316.211 for operation without a helmet, should be treated as a secondary enforcement action and not as a primary violation. See also State v. Perkins, 25 Fla. L. Weekly 5321, which held that a traffic stop solely to check whether the driver license was suspended was unlawful and the post stop observation of the defendant behind the wheel had to be suppressed. However, a trooper or other officer may make a stop under s. 316.211 for an unprotected motorcycle operator or rider where there is reasonable suspicion to believe either or both are under 21.

A related issue to this amendment is the meaning of, "a person over 21 years of age." The reasonable construction of that language is that a person is over 21 upon the attainment of their 21st birthday. Generally, statutes affecting persons "under 21" operate up to the 21st birthday; see Goeden v. CM III, Inc., 2000 WL 561657 (Fla. 3d DCA 2000). Therefore, a person who has attained their 21st birthday qualifies for the helmet exemption, subject to the proper insurance coverage.

Another question that arises from this amendment is what type and proof of medical benefits coverage is permitted. The amendment states, "\$10,000.00 in medical benefits for injuries incurred," without further legislative direction. Therefore, it will be up to the individual officer to determine whether the operator or rider provide adequate proof of coverage. The operator and rider should display to the officer a health insurance card (or actual policy or declarations page) from a HMO or Blue Cross/Blue Shield or some other recognized health insurance provider. The card must show current insurance. In addition, "motorcycle" PIP coverage for the motorcycle being operated will suffice, if available. However, PIP coverage under a passenger vehicle policy would be insufficient for either the operator or passenger on the motorcycle.

Please refer to the above docket number when submitting future inquiries concerning this matter.

JMC/sm

cc: Fred O. Dickinson
Joe McCaskill
Candy Crawford
Sherry Slepín
Sandra Lambert
Tom Joyce
FHP Executive Staff
FHP Attorneys