

## 2003 SENATE BILL 223

July 30, 2003 – Introduced by Senators ZIEN, A. LASEE, WELCH, STEPP, DECKER, KANAVAS and LAZICH, cosponsored by Representatives VRAKAS, GARD, SUDER, KREIBICH, M. LEHMAN, HINES, GRONEMUS, MUSSER, WEBER, ALBERS, PETTIS, KERKMAN, KESTELL, OTT, PETROWSKI, VRUWINK and GUNDERSON. Referred to Committee on Judiciary, Corrections and Privacy.

1     **AN ACT** *to create* 895.049 and 901.053 of the statutes; **relating to:** the reduction  
2             and recovery of damages and admissibility of evidence in civil actions related  
3             to use or nonuse of protective headgear by operators and passengers of  
4             motorcycles, all-terrain vehicles, and snowmobiles.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a person who operates or is a passenger on a motorcycle is generally not required to wear protective headgear (a helmet), except that a person who holds an instruction permit or is under 18 years of age and who operates or is a passenger on a Type 1 motorcycle operated on the highway must wear a helmet. In addition, a person may not operate a Type 1 motorcycle carrying a passenger under 18 years of age unless the passenger wears a helmet.

Under current law, a person who operates or is a passenger on a snowmobile is not required to wear a helmet, and a person who operates or is a passenger on an all-terrain vehicle (ATV) is, with an exception, not required to wear a helmet. Under this exception, a person who is under 18 years of age may not, with specified exceptions, operate or be a passenger on an ATV unless the person wears a helmet.

Under current law, if a person is injured or killed as a result of negligence, the person or the person's estate may recover for the injury or death if his or her causal negligence is not greater than the causal negligence of the person from whom he or she is trying to recover, but the amount of damages that the person may recover is reduced in proportion to the person's causal negligence.

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Also under current law, in a civil action for personal injury or property damage resulting from the operation of a motor vehicle, a person's failure to use a safety belt required by law does not affect the determination of causal negligence in the action but may reduce, by not more than 15%, the person's recovery for those injuries or damages caused by the failure to use the safety belt.

In *Stehlik v. Rhoads*, 2002 WI 73 (June 26, 2002), the Supreme Court held that the failure of an adult ATV operator to wear a helmet could be considered by a jury in apportioning negligence, as a basis for reducing recovery of damages, in a personal injury action arising from operation of the ATV.

This bill prohibits the introduction of evidence of the use or nonuse of a helmet by a person, other than a person required to wear a helmet, who operates or is a passenger on a motorcycle, ATV, or snowmobile, on or off a highway, in any civil action for personal injury or property damage. The bill, however, specifically allows the introduction of such evidence in cases against the manufacturer or producer of a motorcycle helmet for any alleged defect of deficiency in the helmet's design or manufacture or in cases solely on the issue of whether a helmet contributed to the personal injury or property damage suffered by another person.

Also under this bill, the failure by a person who operates or is a passenger on a motorcycle, ATV, or snowmobile, on or off a highway, to use a helmet does not reduce recovery for injuries or damages by the person or the person's legal estate in any civil action. The bill does not apply to recovery by any person required to use a helmet.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 895.049 of the statutes is created to read:

2           **895.049 Recovery by a person who fails to use protective headgear**  
3 **while operating certain motor vehicles.** Notwithstanding s. 895.045, failure by  
4 a person who operates or is a passenger on a motorcycle, as defined in s. 340.01 (32),  
5 an all-terrain vehicle, as defined in s. 340.01 (2g), or a snowmobile, as defined in s.  
6 340.01 (58a), on or off a highway, to use protective headgear shall not reduce recovery  
7 for injuries or damages by the person or the person's legal representative in any civil  
8 action. This section does not apply to any person required to wear protective  
9 headgear under s. 23.33 (3g) or 347.485 (1).

10           **SECTION 2.** 901.053 of the statutes is created to read:

