



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2003 Wisconsin Act 148 [2003 Senate Bill 223]	Effect of Failure to Wear Helmet on Recovery of Damages (Motorcycles, All-Terrain Vehicles, Snowmobiles)
2003 Acts: www.legis.state.wi.us/2003/data/acts/	Act Memos: www.legis.state.wi.us/lc/act_memo/act_memo.htm

2003 Wisconsin Act 148 addresses the effect of failure to wear protective head gear (helmets) by operators and passengers of motorcycles, all-terrain vehicles (ATVs), and snowmobiles. The Act also addresses the admissibility of use or nonuse of a helmet as evidence in a court proceeding.

Recently, the Wisconsin Supreme Court held that failure of an adult ATV operator to wear a helmet could be considered by a jury as a basis for reducing recovery of damages in a personal injury action arising from operation of the ATV. *Stehlik v. Rhoades*, 2002 WI 73 (June 26, 2002). The court held that if a helmet is available and the plaintiff was negligent in failing to use the helmet, the jury then compares the plaintiff's "helmet negligence" against the total combined negligence of the defendants. This comparison serves to reduce the damages that the plaintiff may recover but does not bar recovery.

Under Act 148, failure of the operator or passenger on a motorcycle, snowmobile, or ATV to use a helmet does not reduce recovery by the person for injuries or damages in any civil action. This provision does not apply when the operator or passenger is required by statute to wear a helmet.

Act 148 also generally provides that evidence of the use or nonuse of a helmet by a motorcycle, snowmobile, or ATV operator or passenger is not admissible in a civil action for property damage or personal injury, unless the person is required to wear a helmet. This limitation on admissibility does not apply to admission of that evidence:

- In a civil action against the manufacturer or producer of the helmet arising out of a deficiency or defect in the design or manufacture of the helmet; or
- In a civil action on the sole issue whether the helmet contributed to the personal injury or property damage incurred by another person.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

Effective Date: Act 148 became effective March 30, 2004. It first applies to actions commenced on March 30, 2004.

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