S T A T E O F N E W Y O R K

359

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. MAGNARELLI, BENJAMIN, DINOWITZ, GREENE, PHEFFER -- Multi-Sponsored by -- M. of A. BRENNAN, CLARK, GOTTFRIED, ROBINSON -- read once and referred to the Committee on Tourism, Arts and Sports Development

AN ACT to amend the vehicle and traffic law, in relation to required protective headgear for operators of bicycles, skateboards, in-line skates and scooters under eighteen years of age

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The section heading, paragraphs (a) and (b) of subdivision 5, and subdivisions 5-a, 5-b, 8 and 9 of section 1238 of the vehicle and traffic law, the section heading as amended by chapter 267 of the laws of 1993, paragraphs (a) and (b) of subdivision 5 as amended by chapter 457 of the laws of 1999, subdivisions 5-a and 9 as amended by chapter 703 of the laws of 2004, subdivision 5-b as added by chapter 402 of the laws of 2001, and subdivision 8 as amended by chapter 694 of the laws of 1995, are amended and a new subdivision 11 is added to read as follows:

Passengers on bicycles under one year of age prohibited; passengers and operators under [fourteen] EIGHTEEN years of age to wear protective headgear.

(a) No person operating a bicycle shall allow a person five or more years of age and less than [fourteen] EIGHTEEN years of age to ride as a passenger on a bicycle unless such passenger is wearing a helmet meeting standards established by the commissioner.

(b) No person, one or more years of age and less than [fourteen] EIGHTEEN years of age, shall operate a bicycle unless such person is wearing a helmet meeting standards established by the commissioner.

5-a. No person, one or more years of age and less than [fourteen] EIGHTEEN years of age, shall skate or glide on in-line skates or a skate board unless such person is wearing a helmet meeting standards estab-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD00512-01-9

lished by the commissioner. For the purposes of this subdivision, wearing a helmet means having a helmet of good fit fastened securely on the head of such wearer with the helmet straps securely fastened.

5-b. No person less than [fourteen] EIGHTEEN years of age shall ride upon, propel or otherwise operate a two-wheeled vehicle commonly called a scooter unless such person is wearing a helmet meeting standards established by the commissioner. As used in this subdivision, wearing a helmet means having a properly fitting helmet fixed securely on the head of such wearer with the helmet straps securely fastened.

8. A police officer shall only issue a summons for a violation of subdivision two, five, or five-a of this section by a person less than [fourteen] EIGHTEEN years of age to the parent or guardian of such person if the violation by such person occurs in the presence of such person's parent or guardian and where such parent or guardian is eighteen years of age or more. Such summons shall only be issued to such parent or guardian, and shall not be issued to the person less than [fourteen] EIGHTEEN years of age.

9. Subdivisions five, five-a, five-b, and six of this section shall not be applicable to any county, city, town or village that has enacted a local law or ordinance prior to the effective date of this subdivision that prohibits a person who is one or more years of age and less than [fourteen] EIGHTEEN years of age from operating a bicycle or skating or gliding on in-line skates or a skate board without wearing a bicycle helmet meeting the standards of the American National Standards Institute (Ansi Z 90.4 bicycle helmet standards), the Snell Memorial Foundation's Standards for Protective Headgear for use in Bicycling, or the American Society of Testing and Materials (ASTM) bike helmet standards, or that prohibits a person operating a bicycle from allowing a person five or more years of age and less than [fourteen] EIGHTEEN years of age to ride as a passenger on a bicycle unless such passenger is wearing a bicycle helmet that meets such standards. The failure of any person to comply with any such local law or ordinance shall not constitute contributory negligence or assumption of risk, and shall not in any way bar, preclude or foreclose an action for personal injury or wrongful death by or on behalf of such person, nor in any way diminish or reduce the damages recoverable in any such action. The legislative body of a county, city, town or village may enact a local law or ordinance that prohibits a person who is [fourteen] EIGHTEEN or more years of age from skating or gliding on in-line skates, operating a skate board, or operating or riding as a passenger on a bicycle without wearing a bicycle helmet.

11. THE COURT SHALL WAIVE ANY CIVIL FINE FOR WHICH A PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION WOULD BE LIABLE IF SUCH PERSON:

(A) SUPPLIES THE COURT WITH PROOF THAT BETWEEN THE DATE OF THE VIOLATION AND THE APPEARANCE DATE FOR SUCH VIOLATION SUCH PERSON PURCHASED A HELMET; OR

(B) IF THE COURT FINDS THAT DUE TO REASONS OF ECONOMIC HARDSHIP SUCH PERSON WAS UNABLE TO PURCHASE A HELMET.

S 2. This act shall take effect immediately.