

4329

2011-2012 Regular Sessions

I N A S S E M B L Y

February 3, 2011

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

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The section heading, paragraphs (a) and (b) of subdivision
2 5, and subdivisions 5-a, 5-b, 8 and 9 of section 1238 of the vehicle and
3 traffic law, the section heading as amended by chapter 267 of the laws
4 of 1993, paragraphs (a) and (b) of subdivision 5 as amended by chapter
5 457 of the laws of 1999, subdivisions 5-a and 9 as amended by chapter
6 703 of the laws of 2004, subdivision 5-b as added by chapter 402 of the
7 laws of 2001, and subdivision 8 as amended by chapter 694 of the laws of
8 1995, are amended and a new subdivision 11 is added to read as follows:
9 Passengers on bicycles under one year of age prohibited; passengers
10 and operators under [fourteen] EIGHTEEN years of age to wear protective
11 headgear.
12 (a) No person operating a bicycle shall allow a person five or more
13 years of age and less than [fourteen] EIGHTEEN years of age to ride as a
14 passenger on a bicycle unless such passenger is wearing a helmet meeting
15 standards established by the commissioner.
16 (b) No person, one or more years of age and less than [fourteen] EIGH-
17 TEEN years of age, shall operate a bicycle unless such person is wearing
18 a helmet meeting standards established by the commissioner.
19 5-a. No person, one or more years of age and less than [fourteen]
20 EIGHTEEN years of age, shall skate or glide on in-line skates or a skate
21 board unless such person is wearing a helmet meeting standards estab-
22 lished by the commissioner. For the purposes of this subdivision, wear-

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

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1 ing a helmet means having a helmet of good fit fastened securely on the
2 head of such wearer with the helmet straps securely fastened.

3 5-b. No person less than [fourteen] EIGHTEEN years of age shall ride
4 upon, propel or otherwise operate a two-wheeled vehicle commonly called
5 a scooter unless such person is wearing a helmet meeting standards
6 established by the commissioner. As used in this subdivision, wearing a
7 helmet means having a properly fitting helmet fixed securely on the head
8 of such wearer with the helmet straps securely fastened.

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

17 9. Subdivisions five, five-a, five-b, and six of this section shall
18 not be applicable to any county, city, town or village that has enacted
19 a local law or ordinance prior to the effective date of this subdivision
20 that prohibits a person who is one or more years of age and less than
21 [fourteen] EIGHTEEN years of age from operating a bicycle or skating or
22 gliding on in-line skates or a skate board without wearing a bicycle
23 helmet meeting the standards of the American National Standards Insti-
24 tute (Ansi Z 90.4 bicycle helmet standards), the Snell Memorial Founda-
25 tion's Standards for Protective Headgear for use in Bicycling, or the
26 American Society of Testing and Materials (ASTM) bike helmet standards,
27 or that prohibits a person operating a bicycle from allowing a person
28 five or more years of age and less than [fourteen] EIGHTEEN years of age
29 to ride as a passenger on a bicycle unless such passenger is wearing a
30 bicycle helmet that meets such standards. The failure of any person to
31 comply with any such local law or ordinance shall not constitute contri-
32 butory negligence or assumption of risk, and shall not in any way bar,
33 preclude or foreclose an action for personal injury or wrongful death by
34 or on behalf of such person, nor in any way diminish or reduce the
35 damages recoverable in any such action. The legislative body of a coun-
36 ty, city, town or village may enact a local law or ordinance that
37 prohibits a person who is [fourteen] EIGHTEEN or more years of age from
38 skating or gliding on in-line skates, operating a skate board, or oper-
39 ating or riding as a passenger on a bicycle without wearing a bicycle
40 helmet.

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

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

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

48 S 2. This act shall take effect immediately.