

4329

2011-2012 Regular Sessions

I N   A S S E M B L Y

February 3, 2011

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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.