

# STATE OF NEW YORK

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1348

2021-2022 Regular Sessions

## IN ASSEMBLY

January 8, 2021

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Introduced by M. of A. MAGNARELLI, DINOWITZ, PAULIN -- Multi-Sponsored  
by -- M. of A. GOTTFRIED -- read once and referred to the Committee  
on Transportation

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, subdivision 4, paragraphs (a) and (b)  
2 of subdivision 5, and subdivisions 5-a, 5-b, 6, paragraph (a) of subdivi-  
3 sion 8 and subdivision 9 of section 1238 of the vehicle and traffic  
4 law, the section heading, subdivision 6 and paragraph (a) of subdivision  
5 8 as amended by sections 4, 6, and 7 of part XX of chapter 58 of the  
6 laws of 2020, respectively, subdivision 4 as amended by chapter 267 of  
7 the laws of 1993, paragraphs (a) and (b) of subdivision 5 as amended by  
8 chapter 457 of the laws of 1999, subdivision 5-a and subdivision 9 as  
9 amended by chapter 703 of the laws of 2004, subdivision 5-b as added by  
10 chapter 402 of the laws of 2001, are amended to read as follows:

11 Passengers on bicycles under one year of age prohibited; passengers  
12 and operators under [~~fourteen~~ eighteen] years of age to wear protective  
13 headgear; operators of class three bicycles with electric assist to wear  
14 protective headgear.

15 4. The court shall waive any fine for which a person who violates the  
16 provisions of paragraph (a) of subdivision two of this section would be  
17 liable if such person supplies the court with proof that between the  
18 date of violation and the appearance date for such violation such person  
19 purchased or rented a helmet, which meets the requirements of paragraph  
20 (a) of subdivision two of this section. Further, the court shall waive  
21 any fine for which a person who violates the provisions of paragraph (b)  
22 of subdivision two of this section would be liable if such person  
23 supplies the court with proof that between the date of violation and the

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

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1 appearance date for such violation such person purchased or rented a  
2 seat which meets the requirements of paragraph (b) of subdivision two of  
3 this section. The court [~~may~~] shall waive any fine for which a person  
4 who violates the provisions of subdivision two of this section would be  
5 liable if the court finds that due to reasons of economic hardship such  
6 person was unable to purchase a helmet or seat. Such waiver of fine  
7 shall not apply to a second or subsequent conviction under paragraph (a)  
8 or (b) of subdivision two of this section.

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

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

16 5-a. No person, one or more years of age and less than [~~fourteen~~]  
17 eighteen years of age, shall skate or glide on in-line skates or a skate  
18 board unless such person is wearing a helmet meeting standards estab-  
19 lished by the commissioner. For the purposes of this subdivision, wear-  
20 ing a helmet means having a helmet of good fit fastened securely on the  
21 head of such wearer with the helmet straps securely fastened.

22 5-b. No person less than [~~fourteen~~] eighteen years of age shall ride  
23 upon, propel or otherwise operate a two-wheeled vehicle commonly called  
24 a scooter unless such person is wearing a helmet meeting standards  
25 established by the commissioner. As used in this subdivision, wearing a  
26 helmet means having a properly fitting helmet fixed securely on the head  
27 of such wearer with the helmet straps securely fastened.

28 6. (a) Any person who violates the provisions of subdivision five,  
29 five-a, five-b or five-c of this section shall pay a civil fine not to  
30 exceed fifty dollars.

31 (b) The court shall waive any fine for which a person who violates the  
32 provisions of subdivision five, five-a, five-b or subdivision five-c of  
33 this section would be liable if such person supplies the court with  
34 proof that between the date of violation and the appearance date for  
35 such violation such person purchased or rented a helmet.

36 (c) The court [~~may~~] shall waive any fine for which a person who  
37 violates the provisions of subdivision five, five-a, five-b, or five-c  
38 of this section would be liable if the court finds that due to reasons  
39 of economic hardship such person was unable to purchase a helmet or due  
40 to such economic hardship such person was unable to obtain a helmet from  
41 the statewide in-line skate and bicycle helmet distribution program, as  
42 established in section two hundred six of the public health law, or a  
43 local distribution program. Such waiver of a fine shall not apply to a  
44 second or subsequent violation of subdivision five-c of this section.

45 (a) A police officer shall only issue a summons for a violation of  
46 subdivision two, five, or five-a of this section by a person less than  
47 [~~fourteen~~] eighteen years of age to the parent or guardian of such  
48 person if the violation by such person occurs in the presence of such  
49 person's parent or guardian and where such parent or guardian is eigh-  
50 teen years of age or more. Such summons shall only be issued to such  
51 parent or guardian, and shall not be issued to the person less than  
52 [~~fourteen~~] eighteen years of age.

53 9. Subdivisions five, five-a, five-b, and six of this section shall  
54 not be applicable to any county, city, town or village that has enacted  
55 a local law or ordinance prior to the effective date of this subdivision  
56 that prohibits a person who is one or more years of age and less than

1 [~~fourteen~~] eighteen years of age from operating a bicycle or skating or  
2 gliding on in-line skates or a skate board without wearing a bicycle  
3 helmet meeting the standards of the American National Standards Insti-  
4 tute (Ansi Z 90.4 bicycle helmet standards), the Snell Memorial Founda-  
5 tion's Standards for Protective Headgear for use in Bicycling, or the  
6 American Society of Testing and Materials (ASTM) bike helmet standards,  
7 or that prohibits a person operating a bicycle from allowing a person  
8 five or more years of age and less than [~~fourteen~~] eighteen years of age  
9 to ride as a passenger on a bicycle unless such passenger is wearing a  
10 bicycle helmet that meets such standards. The failure of any person to  
11 comply with any such local law or ordinance shall not constitute contri-  
12 butory negligence or assumption of risk, and shall not in any way bar,  
13 preclude or foreclose an action for personal injury or wrongful death by  
14 or on behalf of such person, nor in any way diminish or reduce the  
15 damages recoverable in any such action. The legislative body of a coun-  
16 ty, city, town or village may enact a local law or ordinance that  
17 prohibits a person who is [~~fourteen~~] eighteen or more years of age from  
18 skating or gliding on in-line skates, operating a skate board, or oper-  
19 ating or riding as a passenger on a bicycle without wearing a bicycle  
20 helmet.

21 § 2. This act shall take effect on the one hundred eightieth day after  
22 it shall have become a law.