

# STATE OF NEW YORK

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8251

2021-2022 Regular Sessions

## IN ASSEMBLY

August 25, 2021

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

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

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

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

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

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

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

14 5-a. No person, one or more years of age and less than [~~fourteen~~]  
15 eighteen years of age, shall skate or glide on in-line skates or a skate  
16 board unless such person is wearing a helmet meeting standards estab-  
17 lished by the commissioner. For the purposes of this subdivision, wear-  
18 ing a helmet means having a helmet of good fit fastened securely on the  
19 head of such wearer with the helmet straps securely fastened.

20 5-b. No person less than [~~fourteen~~] eighteen years of age shall ride  
21 upon, propel or otherwise operate a two-wheeled vehicle commonly called  
22 a scooter unless such person is wearing a helmet meeting standards  
23 established by the commissioner. As used in this subdivision, wearing a  
24 helmet means having a properly fitting helmet fixed securely on the head  
25 of such wearer with the helmet straps securely fastened.

26 8. (a) A police officer shall only issue a summons for a violation of  
27 subdivision two, five, or five-a of this section by a person less than  
28 [~~fourteen~~] eighteen years of age to the parent or guardian of such  
29 person if the violation by such person occurs in the presence of such  
30 person's parent or guardian and where such parent or guardian is eigh-  
31 teen years of age or more. Such summons shall only be issued to such  
32 parent or guardian, and shall not be issued to the person less than  
33 [~~fourteen~~] eighteen years of age.

34 (b) A police officer shall only issue a summons for a violation of  
35 subdivision five-c of this section by a person less than [~~sixteen~~] eigh-  
36 teen years of age to the parent or guardian of such person if the  
37 violation by such person occurs in the presence of such person's parent  
38 or guardian and where such parent or guardian is eighteen years of age  
39 or more. Such summons shall only be issued to such parent or guardian,  
40 and shall not be issued to the person less than [~~sixteen~~] eighteen years  
41 of age.

42 9. Subdivisions five, five-a, five-b, and six of this section shall  
43 not be applicable to any county, city, town or village that has enacted  
44 a local law or ordinance prior to the effective date of this subdivision  
45 that prohibits a person who is one or more years of age and less than  
46 [~~fourteen~~] eighteen years of age from operating a bicycle or skating or  
47 gliding on in-line skates or a skate board without wearing a bicycle  
48 helmet meeting the standards of the American National Standards Insti-  
49 tute (Ansi Z 90.4 bicycle helmet standards), the Snell Memorial Founda-  
50 tion's Standards for Protective Headgear for use in Bicycling, or the  
51 American Society of Testing and Materials (ASTM) bike helmet standards,  
52 or that prohibits a person operating a bicycle from allowing a person  
53 five or more years of age and less than [~~fourteen~~] eighteen years of age  
54 to ride as a passenger on a bicycle unless such passenger is wearing a  
55 bicycle helmet that meets such standards. The failure of any person to  
56 comply with any such local law or ordinance shall not constitute contri-

1 butory negligence or assumption of risk, and shall not in any way bar,  
2 preclude or foreclose an action for personal injury or wrongful death by  
3 or on behalf of such person, nor in any way diminish or reduce the  
4 damages recoverable in any such action. The legislative body of a coun-  
5 ty, city, town or village may enact a local law or ordinance that  
6 prohibits a person who is [~~fourteen~~ eighteen] or more years of age from  
7 skating or gliding on in-line skates, operating a skate board, or oper-  
8 ating or riding as a passenger on a bicycle without wearing a bicycle  
9 helmet.

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