STATE OF NEW YORK

8251

2021-2022 Regular Sessions

IN ASSEMBLY

August 25, 2021

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 Assembly, do enact as follows:

Section 1. The section heading, subdivision 4, 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 section 4 and subdivision 8 as amended by section 7 of part XX of chapter 58 of the laws of 2020, subdivision 4 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, and subdivision 5-b as added by chapter 402 of the laws of 2001, are amended 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; operators of class three bicycles with electric assist to wear protective headgear.

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

(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 established 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) 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.

(b) A police officer shall only issue a summons for a violation of subdivision five-c of this section by a person less than [~~sixteen~~] **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 [~~sixteen~~] **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 contri-

butory 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.

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