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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

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COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 89

(By Senator OLIVERIO, ET AL)



PASSED MARCH 9, 1996

In Effect NINETY DAYS FROM Passage

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COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 89

(SENATORS OLIVERIO, MINEAR, CHAFIN AND MANCHIN,
original sponsors)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-a, relating to creating a child bicycle safety act; setting forth a short title; establishing legislative findings and purpose; defining terms; requiring helmets to meet certain specifications; requiring use of a helmet by children under the age of fifteen riding on public roads; requiring labeling to certify conformance with safety standards on helmets sold; failure to wear helmet not admissible in civil actions; providing for penalties including a fine and community service for a violation; waiver for first offense; financial affidavit to

be filed as evidence of inability to pay for a helmet; permitting municipalities to enact ordinances; and bicycle safety program.

Be it enacted by the Legislature of West Virginia:

That chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eleven-a, to read as follows:

ARTICLE 11A. CHILD BICYCLE SAFETY ACT.

§17C-11A-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "Child Bicycle Safety Act".

§17C-11A-2. Legislative findings and purpose.

- 1 (a) The Legislature hereby finds and declares that:

- 2 (1) Disability and death of children resulting from
- 3 injuries sustained in bicycling accidents are a serious
- 4 threat to the public health, welfare and safety of the
- 5 people of this state, and the prevention of such disability
- 6 and death is a goal of such people;

- 7 (2) Head injuries are the leading cause of disability and
- 8 death from bicycling accidents; and

- 9 (3) The risk of head injury from bicycling accidents is
- 10 significantly reduced for bicyclists who wear proper
- 11 protective bicycle helmets; yet helmets are worn by
- 12 fewer than five percent of child bicyclists nationwide.

- 13 (b) The purpose of this article is to reduce the inci-
- 14 dence of disability and death resulting from injuries
- 15 incurred in bicycling accidents by requiring that while
- 16 riding on a bicycle on public roads, public bicycle paths
- 17 and other public rights-of-way of this state, all bicycle
- 18 operators and passengers under fifteen years of age wear
- 19 approved protective bicycle helmets.

§17C-11A-3. Definitions.

- 1 As used in this article:

2 (a) "Bicycle" means a human-powered vehicle with
3 wheels designed to transport, by the action of pedaling,
4 one or more persons seated on one or more saddle seats
5 on its frame. Such term also includes a human-powered
6 vehicle, and any attachment to such vehicle designed to
7 transport by pedaling when the vehicle is used on a
8 public roadway, public bicycle path or other public
9 right-of-way, but does not include a tricycle.

10 (b) "Tricycle" means a three-wheeled human-powered
11 vehicle designed for use as a toy by a single child under
12 the age of six years, the seat of which is no more than
13 two feet from ground level.

14 (c) "Public roadway" means a right-of-way under the
15 jurisdiction and control of this state or a local political
16 subdivision thereof for use primarily by motor vehicles.

17 (d) "Public bicycle path" means a right-of-way under
18 the jurisdiction and control of this state or a local
19 political subdivision thereof for use primarily by bicycles
20 and pedestrians.

21 (e) "Other public right-of-way" means any right-of-
22 way other than a public roadway or public bicycle path
23 that is under the jurisdiction and control of this state or
24 a local political subdivision thereof and is designed for
25 use and used by vehicular or pedestrian traffic.

26 (f) "Protective bicycle helmet" means a piece of
27 headgear which meets or exceeds the impact standards
28 for protective bicycle helmets set by the American
29 national standards institute (ANSI) or the snell memorial
30 foundation's standards for protective headgear or
31 American society for testing and materials (ASTM) for
32 use in bicycling.

33 (g) "Passenger" means any person who travels on a
34 bicycle in any manner except as an operator.

35 (h) "Operator" means a person who travels on a bicycle
36 seated on a saddle seat from which that person is in-
37 tended to and can pedal the bicycle.

§17C-11A-4. Requirements for helmet use.

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1 (a) It is unlawful for any person under fifteen years of
2 age to operate or be a passenger on a bicycle or any
3 attachment to a bicycle used on a public roadway, public
4 bicycle path or other public right-of-way unless at all
5 times when the person is so engaged he or she wears a
6 protective bicycle helmet of good fit, fastened securely
7 upon the head with the straps of the helmet.

8 (b) It is unlawful for any parent or legal guardian of a
9 person under fifteen years of age to knowingly permit
10 such person to operate or be a passenger on a bicycle or
11 on any attachment to a bicycle used on a public roadway,
12 public bicycle path or other public right-of-way unless
13 at all times when the person is so engaged he or she
14 wears a protective bicycle helmet of good fit, fastened
15 securely upon the head with the straps of the helmet.

§17C-11A-5. Sale of bicycle helmets.

1 Any helmet sold or offered for sale for use by operators
2 and passengers of bicycles shall be conspicuously labeled
3 in accordance with the standard described in subsection
4 (f), section three of this article, which shall constitute the
5 manufacturer's certification that the helmet conforms to
6 the applicable safety standards.

§17C-11A-6. Civil actions.

1 A violation of section four of this article is not admissi-
2 ble as evidence of negligence or contributory negligence
3 or comparative negligence in any civil action or proceed-
4 ing for damages, and shall not be admissible in mitiga-
5 tion of damages.

§17C-11A-7. Penalties.

1 (a) Notwithstanding the provisions of section one,
2 article eighteen of this chapter, any parent or legal
3 guardian violating any requirement set forth in section
4 four of this article shall be fined ten dollars or be re-
5 quired to perform two hours in community service
6 related to a child injury prevention program which
7 includes injury prevention education or both fined and
8 required to perform such community service. Notwith-
9 standing the provisions of section one, article eleven,

10 chapter eight of this code, no court costs may be assessed
11 to any person violating the requirements of section four
12 of this article.

13 (b) In the case of a first violation of section four of this
14 article, the court may waive the fine upon receipt of
15 satisfactory proof that the person has a helmet or within
16 a reasonable time from the date of the violation, pur-
17 chased or otherwise obtained, a protective bicycle
18 helmet.

19 (c) It is an absolute defense to a charge for a violation
20 of this article that a parent or legal guardian is unable to
21 pay for the protective bicycle helmet. Inability to pay
22 may be demonstrated by the filing of a financial affidavit
23 in accordance with the provisions of subsection (c),
24 section one, article two, chapter fifty-nine of this code.
25 Any person who demonstrates inability to pay shall be
26 referred to the governor's highway safety program for
27 assistance in obtaining the appropriate helmet or hel-
28 mets.

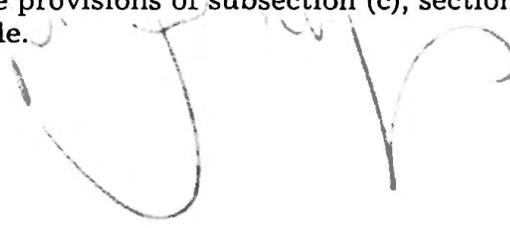
§17C-11A-8. Ordinances.

1 Nothing in this article shall limit the right of any
2 municipality to enact an ordinance on the use of bicycle
3 helmets.

§17C-11A-9. Bicycle safety program.

1 (a) Commencing on the first day of July, one thousand
2 nine hundred ninety-six, the governor's highway safety
3 program shall initiate and conduct an educational and
4 public awareness program designed to encourage people
5 to comply with the requirements of this article.

6 (b) The governor's highway safety program shall make
7 application for grants or any other funding to subsidize
8 the costs of purchasing helmets for people who qualify
9 under the provisions of subsection (c), section seven of
10 this article.



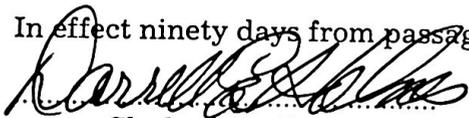
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee


Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

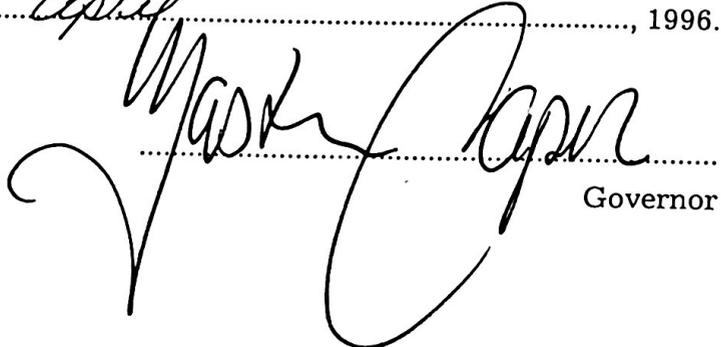

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 1st
day of April, 1996.


Governor

PRESENTED TO THE

GOVERNOR

Date

3/22/10

Time

2:46pm