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HOUSE BILL 259

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Gail C. Beam

AN ACT

**RELATING TO CHILD SAFETY; ENACTING THE CHILD HELMET SAFETY ACT;
PROVIDING CIVIL PENALTIES; MAKING AN APPROPRIATION.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. SHORT TITLE.--This act may be cited as the
"Child Helmet Safety Act".**

**Section 2. PURPOSE OF ACT.--The purpose of the Child
Helmet Safety Act is to reduce the incidence of death and
disability related to bicycle riding, skating, scooter riding
and skateboarding by requiring that, while riding a bicycle,
skating, riding a scooter or skateboarding on public roadways,
public bicycle paths, public skateboard parks or other public
rights of way, all operators and passengers aged seventeen and
under wear protective helmets.**

Section 3. DEFINITIONS.--As used in the Child Helmet

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1 Safety Act:

2 A. "bicycle" means a human-powered vehicle with two
3 wheels in tandem designed to transport, by the act of pedaling,
4 one or more persons seated on one or more saddle seats on its
5 frame and includes a human-powered vehicle designed to
6 transport by the act of pedaling, which has more than two
7 wheels when the vehicle is used on a public roadway, public
8 bicycle path or other public road or right of way, including a
9 tricycle;

10 B. "operator" means a person aged seventeen and
11 under who travels on a bicycle seated on a saddle seat from
12 which that person is intended to and can pedal the bicycle, or
13 who propels himself by way of using inline skates, roller
14 skates, a skateboard or a scooter;

15 C. "other public right of way" means a right of way
16 other than a public roadway or public bicycle path that is
17 under the jurisdiction and control of the state or a local
18 political subdivision;

19 D. "passenger" means a person aged seventeen and
20 under who travels on a bicycle or scooter in any manner except
21 as an operator;

22 E. "protective helmet" means a piece of headgear
23 that meets or exceeds the impact standard for protective
24 helmets set by the United States consumer product safety
25 commission federal safety standard and those standards

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1 developed by the American national standards institute, the
2 Snell memorial foundation or the American society for testing
3 and materials;

4 F. "public bicycle path" means a right of way under
5 the jurisdiction and control of the state or a local political
6 subdivision for use primarily by bicyclists and pedestrians;

7 G. "public roadway" means a right of way under the
8 jurisdiction and control of the state or a local political
9 subdivision for use primarily by motor vehicular traffic;

10 H. "scooter" means a non-motorized wheeled vehicle,
11 regardless of the number or placement of those wheels, that has
12 handlebars, designed to be stood on by the operator or
13 passenger and used to glide or propel the operator or passenger
14 over the ground;

15 I. "skateboard" means a set of wheels attached to a
16 platform or flat surface, regardless of the number or placement
17 of those wheels, and used to glide or propel the operator over
18 the ground; and

19 J. "skates" means a pair of devices worn on the
20 feet with a set of wheels attached, regardless of the number or
21 placement of those wheels, and used to glide or propel the user
22 over the ground and may be either inline or roller.

23 Section 4. HELMET USE REQUIREMENTS--CIVIL PENALTIES.--

24 A. A person aged seventeen and under who uses, as
25 an operator or passenger, a bicycle, skates, a scooter or a

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1 skateboard on a public roadway, public bicycle path, public
2 skateboard park or other public right of way shall at all times
3 wear a protective helmet fastened securely upon his head with
4 the straps of the helmet.

5 B. A local unit of government may:

6 (1) adopt rules as strict as or more stringent
7 than the requirements of this section; or

8 (2) issue verbal warnings only.

9 C. A person who violates the provisions of this
10 section of the Child Helmet Safety Act and who is at least
11 twelve years old shall:

12 (1) on the first offense, be issued a written
13 warning and be required to view an appropriate safety video;

14 (2) on the second offense and all subsequent
15 offenses:

16 (a) provide proof of purchase of a
17 protective helmet to the appropriate county or municipal office
18 where the violation occurred;

19 (b) perform four hours of community
20 service in exchange for a voucher to receive a free protective
21 helmet from a safe kids organization, if available, or a
22 discounted protective helmet from a local retailer
23 participating in the safe kids program; or

24 (c) be fined twenty-five dollars
25 (\$25.00).

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1 D. The parent or legal guardian of a person who
2 violates the provisions of this section of the Child Helmet
3 Safety Act and who is under twelve years old shall:

4 (1) on the first offense, be issued a written
5 warning and be required to view an appropriate safety video;

6 (2) on the second offense and all subsequent
7 offenses:

8 (a) provide proof of purchase of a
9 protective helmet to the appropriate county or municipal office
10 where the violation occurred;

11 (b) perform four hours of community
12 service in exchange for a voucher to receive a free protective
13 helmet from a safe kids organization, if available, or a
14 discounted protective helmet from a local retailer
15 participating in the safe kids program; or

16 (c) be fined twenty-five dollars
17 (\$25.00).

18 E. If a fine is imposed against a violator by a
19 court of this state pursuant to Subsection C or D of this
20 section, the parent or legal guardian of the violator is liable
21 for payment of the fine.

22 Section 5. EQUIPMENT SALES OR RENTALS. --

23 A. A person regularly engaged in the business of
24 renting bicycles, skates, scooters or skateboards shall require
25 each person aged seventeen and under seeking to rent one or

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1 more of these items to provide his signature either on the
2 rental form or on a separate form indicating the following:

3 (1) receipt of a written explanation of the
4 provisions of the Child Helmet Safety Act and the penalties for
5 violations; and

6 (2) a statement concerning whether a person
7 aged seventeen and under will be an operator or passenger on
8 the bicycle or use skates, a scooter or a skateboard in an area
9 where the use of a protective helmet is required.

10 B. A person regularly engaged in the business of
11 renting bicycles, skates, scooters or skateboards shall provide
12 a protective helmet to a person aged seventeen and under who
13 will be an operator of or passenger on the bicycle, skates,
14 scooter or skateboard in an area requiring a helmet, if the
15 person does not already have a helmet in his possession. A
16 reasonable fee may be charged for the protective helmet rental.

17 C. A person regularly engaged in the business of
18 selling or renting bicycles, skates, scooters or skateboards
19 who complies with the Child Helmet Safety Act shall not be
20 liable in a civil action for damages for physical injuries
21 sustained by or as a result of the customer's failure to wear a
22 protective helmet in violation of the provisions of the Child
23 Helmet Safety Act.

24 D. The owner of a public or private skateboard park
25 shall not be liable in a civil action for damages for physical

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1 injuries sustained by or as a result of the customer's failure
2 to wear a protective helmet in violation of the provisions of
3 the Child Helmet Safety Act.

4 Section 6. NEGLIGENCE. -- Failure to wear a protective
5 helmet shall not be considered evidence of negligence and shall
6 be inadmissible in any civil action.

7 Section 7. APPROPRIATION. --

8 A. Twenty thousand dollars (\$20,000) is
9 appropriated from the general fund to the department of health
10 in fiscal year 2005 for the following purposes:

11 (1) five thousand dollars (\$5,000) to be used
12 to pay for a statewide radio campaign on helmet safety; and

13 (2) fifteen thousand dollars (\$15,000) to be
14 used to help community groups and foundations sponsor events
15 promoting helmet safety and to provide and distribute helmets
16 to low-income families.

17 B. Any unexpended or unencumbered balance remaining
18 of the amounts specified in this section at the end of fiscal
19 year 2005 shall revert to the general fund.

20 Section 8. EFFECTIVE DATE. -- The effective date of the
21 provisions of this act is July 1, 2004.