

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 974 (Luz Rivas)
Version: April 6, 2021
Hearing Date: June 29, 2021
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Equestrian safety

DIGEST

This bill requires persons under the age of 18 to wear a helmet, and all persons riding during hours of darkness to wear specified lighting, while riding an equestrian animal on a paved highway.

EXECUTIVE SUMMARY

Riding a horse poses an incredibly high risk of injury, yet California does not impose on horseback riders the same basic safety requirements that it does on persons riding a bicycle. This bill imposes two safety requirements for horseback riders on a paved highway comparable to existing bicycle safety laws: persons under the age of 18 riding a horse must wear a helmet that is properly fitted and fastened and meet the standards of either the American Society for Testing and Materials (ASTM) or the United States Consumer Product Safety Commission; and all persons riding a horse in the hours of darkness must have either reflective or lighting gear, as specified. A violation of either requirement is punishable by a \$25 fine, which will be waived for a rider's first violation; if the rider is a minor, the minor's parent(s) or guardian(s) will be jointly and severally liable for the cost. The bill further provides that failure to comply with either requirement does not, in a civil action, establish negligence as a matter of law or negligence per se for comparative fault purposes, but the failure may still be used to establish contributory negligence without reference to the violation.

This bill is sponsored by the author. There is no known opposition. This bill was passed out of the Senate Transportation Committee with a 16-0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Defines the following relevant terms:
 - a) "Highway" and "street" are both a way or place of whatever nature, publicly maintained and open to the use of the public for purpose of vehicular travel; the terms include each other. (Veh. Code, §§ 360, 590.)
 - b) "Darkness" is any time from half an hour after sunset to half an hour before sunrise and any other time when visibility is insufficient to render clearly discernible any person or vehicle on the highway at a distance of 1,000 feet. (Veh. Code, § 280.)
- 2) Requires a person under 18 years of age to wear a bicycle helmet while operating or riding a bicycle, nonmotorized scooter, or skateboard, or while wearing in-line or roller skates, while on a street, bikeway, or any other public bicycle path or trail. The helmet must be properly fitted and fastened and meet the standards of either the American Society for Testing and Materials (ASTM) or the United States Consumer Product Safety Commission (USCPSC). (Veh. Code, § 21212(a).)
- 3) Provides that a charge for violating the helmet requirement shall be dismissed when the person charge alleges in court, under oath, that it is their first charge for such a violation, unless it is otherwise established that this is not their first violation. (Veh. Code, § 21212(d).)
- 4) Provides that a violation of the helmet requirement is an infraction punishable by a fine of not more than \$25, and that the parent or legal guardian having control or custody of an unemancipated minor who violates the requirement is jointly and severally liable for the fine. (Veh. Code, § 21212(e).)
- 5) Requires that a bicycle operated during darkness upon a highway must be equipped with a white light visible from the front; a red reflector or red light visible from the rear; reflectors on each pedal, shoe, or ankle visible from the front and rear; a white or yellow reflector on each side forward of the center of the bicycle; and a white or red reflector on rear of the center, all as specified. (Veh. Code, § 21201.)
- 6) Provides that a person riding or driving an animal on a highway has all of the rights and is subject to all of the duties applicable to a driver of the vehicle as set forth in divisions 10 and 11 of the Vehicle Code. (Veh. Code, § 21050.)
- 7) Does not require any person riding an animal to wear a helmet.
- 8) Generally provides a rebuttable presumption that a person failed to exercise due care when:

- a) The person violated a statute, ordinance, or regulation of a public entity;
 - b) The violation proximately caused death or injury to a person or property;
 - c) The death or injury resulted from an occurrence of the nature which the statute, ordinance, or regulation was designed to prevent; and
 - d) The person suffering the death or injury to person or property was one of the class of persons for whose protection the statute, ordinance, or regulation was adopted. (Evid. Code, § 669(a).)
- 9) Provides that, in a civil action, the above presumption does not apply where a person failed to wear a seatbelt in a vehicle as required by law, so that a violation of the seatbelt law does not establish negligence as a matter of law or negligence per se for comparative fault purposes; but negligence may be proven as a fact without regard to the violation. (Veh. Code, § 27315.)

This bill:

- 1) Provides that a person under 18 years of age riding an equestrian animal upon a paved highway must wear a properly fitted and fastened helmet that meets the standards of either the ASTM or the USCPSC.
- 2) Provides that a person riding an equestrian animal upon a paved highway during the hours of darkness must either:
 - a) Wear reflective gear or have reflective gear on the equestrian animal that shall be visible from a distance of 500 feet on the rear and the sides when directly in front of lawful upper beams of headlamps on a motor vehicle.
 - b) Have a lamp emitting a white light attached to either the person or the equestrian animal that is visible from a distance of 300 feet in front of and from the sides of the equestrian animal.
- 3) Provides that the above helmet and lighting requirements do not apply when a person is riding an equestrian animal when participating in a parade or festival, or while crossing a paved highway from an unpaved highway.
- 4) Provides that, in a civil action, a violation of the helmet or lighting requirement does not establish negligence as a matter of law or negligence per se for comparative fault purposes, but negligence may be proven as a fact without regard to the violation.
- 5) Provides that a charge for violating the helmet or lighting requirements shall be dismissed when the person charged alleges in court, under oath, that the charge against the person is the first charge against that person for violating either requirement, unless it is otherwise established in court that it is not the first charge.
- 6) Provides that a violation of the helmet or lighting requirements is an infraction punishable by a fine of not more than \$25, and that the parent or legal guardian

having control or custody of an emancipated minor whose conduct violates the requirement shall be jointly and severally liable with the minor for the fine.

COMMENTS

1. Author's comment

According to the author:

On an evening of October 2019, a vehicle struck two individuals riding their horses in the City of Lake View Terrace. This crash killed the two horses it struck, and left the two riders in critical condition. In certain communities, equines, their riders, and vehicle share the road. Vehicle and horse collisions are not uncommon. In Saugus, two riders were transported to the hospital for injuries while the two horses died as a result of the vehicle collision. A rider from Wilton was ejected from their horse and was transported to the hospital after sustaining serious injuries, while the horse had to be euthanized. It can be difficult for drivers to see the equines and riders in the evening. Horse and vehicle collisions are often devastating for the horse and its rider. AB 974 will increase the safety and visibility of our young riders and horses by requiring minors to wear a helmet when riding on a paved highway. In addition, reflective gear or lights must be worn by all riders or be on their equines at sun down. Exemptions to this protective gear rule will be provided during festivals and parades.

2. Background on the risks of horseback riding

Horseback riding can be more dangerous than motorcycling, skiing, football, and rugby.¹ A rider's head can be up to three meters above the ground, and horses can travel at speeds of over 30 miles per hour.² One study of children under 15 found that the median injury severity of injured riders was exceeded only by that of pedestrians being struck by a car.³

Despite the obvious risks of horseback riding, California currently has no laws requiring riders – children or adults – to wear helmets while riding, even though California has laws requiring helmets for persons under 18 riding a bicycle, nonmotorized scooter, or skateboard, or while wearing in-line or roller skates.⁴ The benefits of helmets are clear: the University of Connecticut College of Agriculture, Health and Natural Resources reports that helmets can reduce the likelihood of horse-

¹ Thompson, McGreevy, & McManys, *A Critical Review of Horse-Related Risk: A Research Agenda for Safer Mounts, Riders and Equestrian Cultures*, Animals (Basel) (Jul. 17, 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4598694/> [last visited Jun. 25, 2021].

² *Ibid.*

³ *Ibid.*

⁴ Veh. Code, § 21212(a).

related deaths from head injury by 70-80 percent, and that ASTM/SEI-approved helmets have reduced horse-riding-related head injuries by 30 percent and severe head injuries by 50 percent.⁵ The nature of the helmet is essential: helmets not especially designed and approved for horseback riding, such as bicycle or skateboard helmets, will not provide adequate protection.⁶

The risks of horseback riding are, of course, exacerbated in the dark. People riding horses, like bicyclists, are often required to share the road with vehicles,⁷ and in this state it is not uncommon for horseback riding to take place in areas with poor street lighting. While California has a comprehensive set of requirements for lighting a bicycle after dark,⁸ it currently has no requirements for horseback riding in the hours of darkness.

Certain jurisdictions have already adopted helmet requirements for equestrian riders. New York requires persons under 18 to wear a helmet meeting or exceeding ASTM equestrian standards;⁹ Florida requires ASTM-rated helmets for horseback riders under 16.¹⁰ The City of Norco, California, which calls itself “Horsetown, USA,” also has an ordinance requiring anyone under 18 to wear an ASTM-rated helmet while riding.¹¹

3. This bill makes it an infraction for a rider under 18 not to wear a helmet, or for a rider not to wear specified lighting or reflectors during hours of darkness, when riding on a paved road

This bill is intended to promote equestrian helmet safety by making it an infraction for a person under the age of 18 not to wear a helmet while riding an equestrian animal on a paved road, and for any person not to have specified reflective gear or lights on their person or the animal while riding an equestrian animal on a paved road in the hours of darkness.¹² These requirements are comparable to the existing requirements for persons under 18 riding bicycles and persons riding a bicycle after dark. The charge would be dismissed and the fine waived for a rider’s first violation.

The bill provides that the fine for both infractions is \$25; with all of the state’s mandated additional mandated penalty assessments, however, the full cost would be at least

⁵ University of Connecticut College of Agriculture, Health and Natural Resources, *Riding Helmet Safety*, <https://animalscience.uconn.edu/equine/helmet-safety.php> [last visited Jun. 25, 2021].

⁶ Horse Illustrated, *Equestrian Helmet Top 10 Facts and Myths* (Jun. 10, 2011), <https://www.horseillustrated.com/horse-news-2011-06-10-equestrian-helmet-facts-myths> [last visited Jun. 25, 2021].

⁷ Veh. Code, § 21050.

⁸ *Id.*, § 21201.

⁹ NY CLS Veh. & Tr., § 1265.

¹⁰ Fla. Stats. § 773.06.

¹¹ Norco Municipal Code, Ch. 9.56, § 9.56.030.

¹² The bill refers to “equestrian animals” rather than horses to encompass persons riding donkeys and other similar animals. For the sake of simplicity, this analysis refers to all equestrian animals as horses.

\$197.¹³ In 2018, the California State Auditor, in addition to noting that the cost of California's traffic infractions is one of the highest in the country, reported that the high cost of penalty assessments creates a disproportionate financial burden on low-income Californians.¹⁴ Since then, the Legislature has pulled back on the potential burden of high traffic infraction fees in a few ways. In all jurisdictions, a traffic referee or superior court judge is required to take consider a defendant's ability to pay a fine and, depending on the defendant's showing, may either establish an installment plan for paying the fine or require the defendant to pay only part of the cost.¹⁵ In certain jurisdictions, the Judicial Council and superior courts have implemented a pilot program for an online ability-to-pay determination, through which a defendant may enter certain financial information and receive a reduced fine based on their ability to pay without appearing in person.¹⁶ A pending budget trailer bill would require the Judicial Council to implement the online ability-to-pay tool in all jurisdictions on or before June 30, 2024. Under all the circumstances – the high risk of injury from riding without a helmet, the waiver of a rider's first offense, and a rider's right to obtain a reduction in the fine based on their ability to pay – it does not appear that this bill implements a disproportionate penalty when a minor fails to wear a helmet.

The bill further provides that, if a person who violates the helmet or lighting requirements is an unemancipated minor, the parents or legal guardian having control or custody of the person will be jointly liable for the cost of the fine. This is consistent with the existing statute requiring persons under 18 to wear a helmet while wearing a bicycle, which likewise makes a parent or guardian of an unemancipated minor jointly and severally liable for the ensuing fine,¹⁷ as well as other provisions in the Vehicle Code making a parent or guardian jointly and severally liable for a minor's traffic-related injuries.¹⁸ Given that riders under 18 will often be dependent upon their parent or guardian for compliance with these requirements – e.g., by needing a parent or guardian to purchase the necessary equipment, or by needing a parent or guardian to inform them of the requirement and enforce it – this appears to be a reasonable allocation of liability for the fine.

¹³ See Judicial Council of California, *Uniform Bail and Penalty Schedules* (2021 ed.), at p. 26 (\$25 base fine results in total fee of \$197).

¹⁴ California State Auditor, *Penalty Assessments Funds*, Report No. 2017-126 (Apr. 2018), at pp. 7, 22-23.

¹⁵ Veh. Code, § 42003; Cal. Rules of Court, rule 4.335.

¹⁶ See California Courts, *Online Traffic: Ability to Pay* (2021) <https://www.courts.ca.gov/abilitytopay.htm> [last visited Jun. 25, 2021].

¹⁷ Veh. Code, § 21212(e)(2).

¹⁸ See Veh. Code, §§ 17707-17708; see also, e.g., Civ. Code, § 1714.1 (any act of willful misconduct by a minor that results in injury or death to another, or injury to property of another, is imputed to the minor's parent or guardian for purposes of damages, making parent or guardian jointly or severally liable).

4. This bill provides that violations of the helmet and lighting requirements are not negligence per se for purposes of establishing contributory negligence

In tort law, if a person violates a law and that violation was a substantial factor in causing the damages, the violation generally gives rise to a presumption of negligence (negligence per se).¹⁹ The presumption can be rebutted under certain circumstances, including where, when the violation was committed by a child, the child was as careful as a reasonably careful child of the same age.²⁰ If the presumption of negligence is applied to the plaintiff in a tort suit – i.e., the presumption establishes that the plaintiff violated a law in a way that contributed to the injury alleged to have been caused by the defendant – the defendant would be entitled to an instruction on the plaintiff’s comparative fault.²¹ The plaintiff’s recovery would then be reduced by whatever percentage the jury found was attributable to the plaintiff’s violation rather than the defendant’s negligence.²²

This bill would preempt the possibility of negligence per se in tort cases where the plaintiff failed to comply with the helmet or lighting requirements. As such, a defendant alleged to have injured a plaintiff who was riding a horse on a paved road and was either (1) under 18 and not wearing a helmet, or (2) riding in the hours of darkness without the specified reflectors or lighting, would not be entitled to a presumption of that the plaintiff was negligent. Instead, the bill would allow the defendant to argue that the *fact* of the violation – the failure to wear a helmet, or the failure to wear reflectors or lights in the dark – was negligent, and that the plaintiff’s recovery should be reduced by whatever amount that negligence contributed to the plaintiff’s injury, without reference to the fact that the failure violated the law. In other words, the bill would still give a defendant the opportunity to make a showing of contributory negligence for failure to wear a helmet or lighting, but would not *automatically* provide the presumption of negligence as a matter of law; it would be for the jury decide whether the plaintiff’s failure amounted to negligence that contributed for the injury.

Both the doctrine of negligence per se and the doctrine of contributory negligence reflect policy decisions on how to determine and allocate fault for an injury. The bill’s provision exempting its violations from an automatic presumption of negligence would also reflect a policy decision. California’s bicycle helmet law does not exempt persons who fail to wear a helmet or use the proper lighting at night from the negligence per se presumption,²³ but California’s seat belt law does: as with this bill, the seat belt statute provides that failure to wear a seat belt is not negligence per se for comparative fault

¹⁹ Evid. Code, § 669(a); see CACI No. 418 (2020).

²⁰ Evid. Code, § 669(b); see CACI Nos. 420-421 (2020).

²¹ E.g., *Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1285; CACI No. 405 (2020).

²² *Li v. Yellow Cab Co.* (1975) 13 Cal.3d 804, 808; CACI 406 (2020).

²³ See Veh. Code, § 21212.

purposes, but negligence may be proven as a fact without regard to the violation.²⁴ New York’s equestrian helmet law goes further than this bill and precludes the application of contributory negligence entirely where the plaintiff failed to wear a helmet.²⁵

The provision exempting these violations was added to the bill at the request of the Assembly Transportation Committee, which expressed concern that, if negligence per se applied in tort civil actions where a child had failed to wear a helmet, the child would receive a reduced recovery. The bill now exempts both violations – the helmet requirement and the lighting requirement – from constituting negligence per se, which means that children who were injured as a result of not complying with the lighting requirement would also not be subject to a negligence per se presumption. While the provision applies equally to adults who did not comply with the lighting requirement, the bill does not prevent the application of contributory negligence; a defendant could still establish that the rider, by riding in the dark with no lighting or reflectors, was negligent as a matter of fact. This bill thus appears to strike a reasonable balance between protecting injured children while allowing juries to decide when a rider was negligent for failing to wear a helmet or lighting.

SUPPORT

None known

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 2846 (Luz Rivas, 2020) would have imposed an equestrian helmet requirement substantially similar to the one in this bill. AB 2846 was held in the Assembly Transportation Committee due to COVID-19-related bill limits.

AB 3077 (Caballero, Ch. 502, Stats. 2017) allows a person who violates the helmet requirements of Vehicle Code section 21212 to avoid the infraction fine if the person delivers proof to the issuing agency that they (1) have a helmet that complies with the statute and (2) completed a bicycle safety course.

²⁴ Veh. Code, § 27315(i).

²⁵ NY CLS Veh. & Tr., § 1265(4).

AB 1096 (Chiu, Ch. 568, Stats. 2015) prohibited any person under 16 from operating an electric bicycle and required all persons riding a motorized bicycle to wear a helmet that meets the standards of ASTM or the USCPSC.

AB 28 (Chu, Ch. 549, Stats. 2015) amended the requirements for operating a bicycle in the hours of darkness, to require the rear of the bicycle to be equipped with either a red reflector or a solid or flashing red light with a built-in reflector.

PRIOR VOTES:

Senate Transportation Committee (Ayes 16, Noes 0)

Assembly Floor (Ayes 75, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Transportation Committee (Ayes 15, Noes 0)
