



**ABATE of New York, Inc.
Legislative Position Paper March 2018**

ABATE of New York, Inc. Gary T Collier

Bills we currently support:

S01670 / Same as A06562

SPONSER: Rich Funke

March 09, 2017

Bill crafted in memory of Honeoye Falls resident Kade O'Brien, killed in 2011 accident, again clears Senate with bipartisan support; Legislation not passed by Assembly in 2016

The New York State Senate this week passed S1670, a bill sponsored by Senator **Rich Funke** to crack down on motorists who endanger motorcyclists, pedestrians and others due to careless driving. The legislation, known as "**Creto-Kade's Law**", is dedicated to the memories of **Kade O'Brien**, who was struck and killed while riding his motorcycle on April 11, 2011 in Pittsford, NY, and **David (Creto) Sherry**, who was struck and killed while riding his motorcycle on July 11, 2014 in Guilderland, NY. The bill passed with bipartisan support.

Creto-Kade's Law would ensure a misdemeanor charge against any driver who disobeys traffic law and causes serious bodily injury or death to another person, while carrying a punishment of 30 days in jail and/or a minimum fine of \$300. The offending driver would also be mandated to complete an accident prevention course through the New York State Department of Motor Vehicles and provide proof of satisfactory completion to the presiding Judge, or face additional sanctions.

The bill has been sent to the Assembly.

###

A06562 Summary: Same as S01670

SPONSER: Thiele

COSPNSR: Lupardo, Stecj, Hunter, Kolb, Murray, Hawley, DiPietro, Stripe, Blankenbush

MLTSPNSR: Barclay, Giglio, McDonough

Provides a minimum penalty of \$300 for a moving violation which results in the serious bodily injury or death of another person.

-----NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A6562

SPONSOR: Thiele (MS)

TITLE OF BILL: An act to amend the vehicle and traffic law, in relation to the penalty for a moving violation which results in the serious bodily injury or death of another person

SUMMARY OF BILL:

This legislation will provide a minimum penalty for persons who commit a moving violation (violation of Title 7 in the Vehicle and Traffic Law), should such violation result in death or serious bodily injury of another.

Section 1: Creates a new paragraph I of Section 1800 of the Vehicle and traffic Law, creating a penalty for a moving violation with a motor vehicle that results in the serious bodily injury or death of another person, to be guilty of a misdemeanor, which shall be punishable by a fine of no less than three hundred dollars, or imprisonment of not more than thirty days, or both such fine and imprisonment, and the completion of a motor vehicle accident prevention course, as defined by article twelve-B of the vehicle and traffic law.

The lines - "shall be guilty of a misdemeanor, which shall be punishable by a fine of no less than three hundred dollars, or imprisonment of not more than thirty days or both such fine and imprisonment" - is similar to the NYC Administrative Code Section 19-190 Right of Way Paragraph B lines 4 and 5. This language will keep the penalty state-wide on par with what the New York City Administrative Code already has on the books.

Section 2: Sets the enactment date.

JUSTIFICATION:

Currently, there is no penalty for committing a moving violation in vehicle and traffic law, that results in the death or serious bodily injury - unless such moving violation is considered Vehicular Manslaughter - the violation of serious vehicle and traffic laws; IE, driving under the influence or driving with a revoked/suspended license.

In these serious scenarios, the result is a felony charge. We have heard from police officers and parents of victims across the state who are dealing with the death of a loved-one as a result of another's driving infractions that do not raise to the level of a Vehicular Manslaughter charge.

Recently in Monroe County, a driver was charged with violating section 1142 of the vehicle and traffic law - failure to yield the right of way - when failing to stop at a yield sign when pulling onto a main road, while striking and killing an oncoming motorcyclist. The driver of the car was only charged with a \$30 fine for failing to yield the right of way. We believe that these less serious offenses should result in larger minimum penalties, should they result in the serious bodily injury or death of another.

Other States currently set minimum and maximum fines, misdemeanor and felony punishments, etc. for moving violations that causes serious impairment of a body function or death of another person for multiple scenarios - IE. Misconduct with a motor vehicle, criminal negligence in the operation of a motor vehicle, negligent homicide with a motor vehicle, different degrees of vehicular manslaughter, etc.

Our neighbors in Connecticut have different layers of laws relating to manslaughter with a motor vehicle. The most relatable offense that CT has on the books, which relates to this proposal, is Negligent Homicide with a Motor Vehicle (CGS Section 14-222a) - which states: Any person who, in consequence of the negligent operation of a commercial motor vehicle, causes the death of another person shall be fined not more than two thousand five hundred dollars or imprisoned not more than six months, or both.

In Pennsylvania, unintentionally killings such as committing a moving violation would be categorized as Involuntary manslaughter. In PA, Involuntary manslaughter is a first degree misdemeanor, with potential punishment of a term of imprisonment for up to five years - and if the defendant committed involuntary manslaughters as the parent, caregiver, or custodian of a child under the age of twelve, state law increases the criminal charge to a second degree felony.

This legislation simply looks to create a misdemeanor with a minimum financial penalty while requiring the completion of an accident prevention course for the violators of vehicle and traffic law whose actions result in the death or serious bodily injury of another - similar to our neighboring states.

PRIOR LEGISLATIVE HISTORY:

S.6748A/A.9291A of 2016; Passed Senate

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

This act shall take effect 60 days after enactment.

ABATE NY fully support this bill and urge our members to contact your Assembly member and share your concerns over the failure to get movement on this bill. The Justification included in the Assembly Bill is compelling argument for support.

A 481/S 4506 – Lupardo/Sanders :Updated (Status 01/05/2018)

Legislative History: A9974: 2011-12; A3594: 2013-14; A3147:2015-16

(Actions - A: 01/03/18 referred to governmental operations; S: 01/03/18 referred to finance)

The key portion of the bill requires law enforcement (LE) agencies to add a statement during training that condemns profiling motorcyclists. Specifically, it would train officers to make traffic stops, searches or even arrests based on the legitimate suspicion of criminal activities, and NOT simply because a person rides a motorcycle or dresses like a motorcyclist.

There are no votes for this bill in this legislative session.

ABATE: We are asking legislators to sign on to this bill. Statements during training would be a great step forward in changing the climate in NY of LE bias against motorcycles. Currently, the number of cyclists who refuse to ride to, or even through, NY because of the profiling issues (and motorcycle-only roadblocks) is having a devastating effect on tourism.

A218 / S 6055 - Lupardo/

COSPNSR - DenDekker

Provides that motorcyclists over the age of twenty-one be allowed to choose whether or not to wear a helmet when operating or riding a motorcycle.

Legislative History: A3699: 2007-08; A4541: 2009-10; A5364: 2011-12; A6316: 2013-14
A3241;2015-16

(Actions - A: 01/03/18 referred to transportation; S: 01/03/18 referred to transportation)

ABATE: We are asking legislators to sign on to this bill. It is our position that a rider that has demonstrated skill level to obtain a NY State DMV Motorcycle Operators License should have the right to decide.

We support adoption of **A43/S7549** Authorizing the commissioner of transportation to conduct a comprehensive study of the efficacy of motorcycle helmets

Bills we currently oppose:

A 1031 – Gantt (No Assembly Cosponsors or Senate “SAME AS” bill, as of 3/27/2018)

Requires motorcycle users to wear helmets that meet the federal motor vehicle safety standards and which have been impact-tested by...

01/10/2017 referred to transportation

01/03/2018 referred to transportation

A 998 – Gantt (No Assembly Cosponsors or Senate “SAME AS” bill, as of 3/27/2018)

Increases the fine for operating a motorcycle with a muffler that produces excessive or unusual noise from one hundred dollars to seven hundred dollars.

01/10/2017 referred to transportation

01/03/2018 referred to transportation

S 530 – Young (No Senate Cosponsors or Assembly “SAME AS” bill, as of (3/27/2018)

Prohibits the operation of a motorcycle with any child under the age of 6 thereon, unless the child is seated in a sidecar.

In Senet Transportation Committee

01/10/2017 referred to transportation

01/03/2018 referred to transportation

ABATE believes that the size of the child and his or her ability to sit safely on a motorcycle are much more rational and safe factors to determine when a child can ride. Children grow at much different rates. This law could falsely lead a parent of a child, over the age of 6 but who is too small, to believe it is safe to take the child on the bike.