

Update on State Ski and Snowboard Helmet Laws

Off and on over the past decade, attempts have been made in various states to mandate ski and snowboard helmet usage through legislation. To date, those efforts have been unsuccessful for a number of reasons, as ski helmet bills have either failed to make it out of committee or stalled after passing just one house of the legislature. Recently such measures have gained renewed support and traction in the wake of actress Natasha Richardson's death at Mont Tremblant in Quebec in 2009, when she died of complications from a head injury she incurred while not wearing a helmet.

The most recent effort to legislate ski and snowboard helmet usage occurred in California. Senate Bill (SB) 880 made its way to the desk of Governor Arnold Schwarzenegger. The governor signed the helmet bill, but he also vetoed a connected bill (AB 1652), ultimately resulting in a de facto veto of the helmet bill. As of press time, it was uncertain whether proponents would pursue a veto override.

The California legislation would have required those aged 17 and under to wear a helmet when they ski or snowboard. The legislation would have applied only to "down-hill" skiing or snowboarding; the bill specifi-

cally stated that it did not extend to Nordic skiing. A violation of this requirement would have resulted in a \$25 fine, and parents or legal guardians "having control or custody of an unemancipated minor" would have been jointly liable for the \$25 fine. The legislation would have been applied this ski season, taking effect on Jan. 1, 2011.

Notably, this legislation would have applied to employees under the age of 18 working at California ski areas who ski or snowboard as part of their jobs. However, there was no obligation under the legislation for the ski area to pay for the cost of the employees' helmets.



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Meanwhile New Jersey's helmet bill, S. 130, has already passed the Senate and is now pending in the Tourism and the Arts Committee of New Jersey's Assembly. In some ways, the bill is similar to California's legislation. Like the California bill, New Jersey's legislation requires anyone under 18 to wear a helmet while skiing and boarding. Like the California bill, the New Jersey legislation places the duty of enforcement on local law enforcement and parents (and not on ski areas). And like in California, there is a potential \$25 fine for a violation.

New Jersey's helmet legislation, however, differs in two key aspects. Most important, New Jersey's bill contains a critical provision that states: "Nothing in this act shall be construed to extend liability to the ski area operator." This explicit provision provides crucial statutory protection for ski areas from lawsuits arising out of this helmet mandate. Future helmet legislation in other states should certainly aim to mirror this language.

Second, New Jersey's helmet mandate expressly requires minors to wear helmets while riding lifts. It should be stressed, though, that it is not the obligation of ski areas to enforce this aspect of the legislation by prohibiting minors from using lifts without a

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1: NSAA Fall Education Seminar; Northstar-at-Tahoe, Calif.

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JANUARY

18–20: NSAA Winter Conference & Tradeshow; Snowbird Ski & Summer Resort, Utah

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8–9: NSAA Winter Conference & Tradeshow; Killington Resort, Vt.

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4–7: NSAA National Convention & Tradeshow; La Costa Resort & Spa, Carlsbad, Calif.

helmet – again, enforcement responsibility is solely on local law enforcement.

One of the most critical issues in any helmet legislation centers around enforcement responsibility. From NSAA's perspective, the association is only willing to support helmet legislation if the responsibility for helmet usage rests with parents, and the responsibility to enforce a requirement rests with local law enforcement. If responsibility to enforce the helmet mandate were left to ski areas, the potential exposure to liability lawsuits would be significant – not to mention the operational challenges it would present. Fortunately, ski resorts and their representatives in both California and New Jersey were successful in securing provisions of the respective helmet bills that place enforcement responsibility on local law enforcement.

"As long as parents are responsible for making sure kids have helmets, and the resorts are not responsible for enforcing the helmet requirement, the ski industry can support a kids' ski helmet bill," said Geraldine Link, director of public policy for NSAA. Indeed, NSAA has stressed that states

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considering helmet legislation model any proposed bills after the existing bicycle helmet legislation already on the books. In both California and New Jersey, the ski helmet bills were modeled in large part after the states' respective bicycle helmet laws. In California, the bicycle helmet laws apply to anyone under 18, and enforcement responsibility is placed not on bicycle shops or bike rental operations, but on local law enforcement and parents. Likewise, in New Jersey, that state's bicycle helmet law requires anyone 16 and under to wear a helmet (the ski helmet bill differs slightly, covering anyone 17 and under) – and like in California, the enforcement responsibility lies with law enforcement and parents. It should also be noted that there is pending ski helmet legislation in New York that, if passed, would require children under 14 to wear ski and snowboard helmets, which is the same age provision within New York's existing bicycle helmet law.

What does this hold for other states? Once passed, ski and snowboard helmet legislation is sure to gain wide media exposure and could ultimately encourage other state legislators (or even provincial governments in Canada) to consider proposing similar legislation.

However, the most recent helmet usage data clearly indicates that skiers and snowboarders already understand the importance of helmets. According to the 2009/10 NSAA National Demographic Study, 57 percent of skiers and snowboarders wore helmets while enjoying the slopes at the time of being interviewed, a 19 percent increase over the 2008/09 season. In comparison, only 25 percent of skiers and snowboarders wore helmets during the 2002/03 season. Data also shows that 87 percent of children 9 years and under wear ski/snowboard helmets; 75 percent of children between 10 and 14 wear ski/snowboard helmets; and 70

percent of adults over the age of 65 wear ski/snowboard helmets. Skiers and snowboarders aged 18 to 24 traditionally have represented the lowest percentage of helmet use among all age groups. This year, 43 percent of all 18- to 24-year-olds interviewed wore helmets, representing a 139 percent increase in usage for this age group since the 2002/03 season, when only 18 percent wore helmets.

It should be stressed that these high helmet usage rates have been achieved through industry and parental efforts – on a completely *voluntary* basis, and without legislative mandates. NSAA remains poised and ready to serve as a resource to any states with ski helmet mandate proposals that may rise in the future.

Further questions or comments can be directed to NSAA Public Policy Director Geraldine Link at glink@nsaa.org or NSAA Director of Risk & Education Dave Byrd at dbyrd@nsaa.org. ■

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