

1 **H. B. 2062**

2  
3 (By Delegate Fleischauer)

4 [Introduced January 12, 2011; referred to the  
5 Committee on Roads and Transportation then the  
6 Judiciary.]  
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10 A BILL to amend and reenact §17C-15-49 of the Code of West  
11 Virginia, 1931, as amended, relating to making the offense of  
12 failure to wear safety belts a primary offense.

13 *Be it enacted by the Legislature of West Virginia:*

14 That §17C-15-49 of the Code of West Virginia, 1931, as  
15 amended, be amended and reenacted to read as follows:

16 **ARTICLE 15. EQUIPMENT.**

17 **§17C-15-49. Operation of vehicles with safety belts; exception;**  
18 **penalty; civil actions; educational program by West**  
19 **Virginia State Police.**

20 (a) ~~Effective the first day of September, one thousand nine~~  
21 ~~hundred ninety-three~~ A person may not operate a passenger vehicle  
22 on a public street or highway of this state unless the person, any  
23 passenger in the back seat under eighteen years of age, and any  
24 passenger in the front seat of ~~such~~ the passenger vehicle is

1 restrained by a safety belt meeting applicable federal motor  
2 vehicle safety standards. For the purposes of this section, the  
3 term "passenger vehicle" means a motor vehicle which is designed  
4 for transporting ten passengers or less, including the driver,  
5 except that ~~such~~ the term does not include a motorcycle, a trailer,  
6 or any motor vehicle which is not required on the date of the  
7 enactment of this section under a federal motor vehicle safety  
8 standard to be equipped with a belt system. The provisions of this  
9 section ~~shall~~ apply to all passenger vehicles manufactured after  
10 January 1, 1967, and being 1968 models and newer.

11 (b) The required use of safety belts as provided herein does  
12 not apply to a duly appointed or contracted rural mail carrier of  
13 the United States Postal Service who is actually making mail  
14 deliveries or to a passenger or operator with a physically  
15 disabling condition whose physical disability would prevent  
16 appropriate restraint in ~~such~~ the safety belt if the condition is  
17 duly certified by a physician who ~~shall state~~ states the nature of  
18 the disability as well as the reason ~~such~~ the restraint is  
19 inappropriate. The Division of Motor Vehicles shall adopt rules,  
20 in accordance with the provisions of chapter twenty-nine-a of this  
21 code, to establish a method to certify the physical disability and  
22 to require use of an alternative restraint system where feasible or  
23 to waive the requirement for the use of any restraint system.

24 (c) Any person who violates the provisions of this section

1 shall be fined ~~not more than~~ \$25. No court costs or other fees  
2 ~~shall~~ may be assessed for a violation of this section. ~~Enforcement~~  
3 ~~of this section shall be accomplished only as a secondary action~~  
4 ~~when a driver of a passenger vehicle has been detained for probable~~  
5 ~~cause of violating another section of this code.~~

6 (d) A violation of this section is not admissible as evidence  
7 of negligence or contributory negligence or comparative negligence  
8 in any civil action or proceeding for damages, and ~~shall~~ is not be  
9 admissible in mitigation of damages: *Provided*, That the court may,  
10 upon motion of the defendant, conduct an in camera hearing to  
11 determine whether an injured party's failure to wear a safety belt  
12 was a proximate cause of the injuries complained of. Upon ~~such~~ a  
13 finding by the court, the court may then, in a jury trial, by  
14 special interrogatory to the jury, determine: (1) That the injured  
15 party failed to wear a safety belt; and (2) that the failure to  
16 wear the safety belt constituted a failure to mitigate damages.  
17 The trier of fact may reduce the injured party's recovery for  
18 medical damages by an amount not to exceed five percent thereof.  
19 In the event the plaintiff stipulates to the reduction of five  
20 percent of medical damages, the court shall make the calculations  
21 and the issue of mitigation of damages for failure to wear a safety  
22 belt ~~shall~~ may not be presented to the jury. In all cases, the  
23 actual computation of the dollar amount reduction shall be  
24 determined by the court.

1 (e) Notwithstanding any other provision of this code to the  
2 contrary, no points may be entered on any driver's record  
3 maintained by the Division of Motor Vehicles as a result of a  
4 violation of this section.

5 (f) ~~Commencing the first day of July, one thousand nine~~  
6 ~~hundred ninety-three~~ The Governor's Highway Safety Program, in  
7 cooperation with the ~~division of public safety~~ West Virginia State  
8 Police and any other state departments or agencies and with county  
9 and municipal law-enforcement agencies, shall initiate and conduct  
10 an educational program designed to encourage compliance with safety  
11 belt usage laws. This program shall be focused on the  
12 effectiveness of safety belts, the monetary savings and the other  
13 benefits to the public from usage of safety belts and the  
14 requirements and penalties specified in this law.

15 (g) Nothing contained in this section ~~shall be construed to~~  
16 ~~abrogate or alter~~ abrogates or alters the provisions of section  
17 forty-six of this article relating to the mandatory use of child  
18 passenger safety devices.

NOTE: The purpose of this bill is to change the offense of failure to wear safety belts to a primary offense.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.