

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 542**

BY SENATORS FERNS, CARMICHAEL AND GAUNCH

[Originating in the Committee on the Judiciary;

reported on February 24, 2016]



1 A BILL to amend and reenact §17C-15-49 of the Code of West Virginia, 1931, as amended,  
2 relating generally to admissibility of certain evidence in a civil action for damages; allowing  
3 the admission of the nonuse of an adult motor vehicle occupant's safety belt in violation  
4 of law on the issue of failure to mitigate damages; subjecting that evidentiary issue to West  
5 Virginia Rules of Evidence; prohibiting admission of evidence of failure to wear safety belt  
6 for comparative negligence purposes; providing for admission of evidence related to  
7 failure to wear safety belt for issue of mitigation of damages under certain circumstances;  
8 requiring expert evidence showing failure to wear safety belt in violation of this section be  
9 relevant to injuries or damages of plaintiff; permitting trier of fact to reduce amount of  
10 plaintiff's recovery attributable to failure to wear safety belt after reductions for comparative  
11 negligence; limiting percentage of reduction of medical expenses for an adult vehicle  
12 occupant's failure to wear safety belt to fifty percent; and clarifying that nothing is intended  
13 to limit a manufacturer from introducing evidence of an adult vehicle occupant's failure to  
14 wear safety belt to defend the design, manufacture or crashworthiness of a product in any  
15 action claiming damages under a product liability theory.

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

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

**ARTICLE 15. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.**

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

1 (a) A person may not operate a passenger vehicle on a public street or highway of this  
2 state unless the person, any passenger in the back seat under eighteen years of age and any  
3 passenger in the front seat of the passenger vehicle is restrained by a safety belt meeting  
4 applicable federal motor vehicle safety standards. For the purposes of this section, the term  
5 "passenger vehicle" means a motor vehicle which is designed for transporting ~~ten~~ fifteen

6 passengers or less, including the driver, except that the term does not include a motorcycle, a  
7 trailer or any motor vehicle which is not required on the date of the enactment of this section under  
8 a federal Motor Vehicle Safety Standard to be equipped with a belt system. The provisions of this  
9 section apply to all passenger vehicles manufactured after January 1, 1967, and being 1968  
10 models and newer.

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

20 (c) Any person who violates the provisions of this section shall be fined \$25. No court  
21 costs or other fees may be assessed for a violation of this section.

22 (d) (1) The Legislature hereby declares that the purpose of this subsection is to allow, in  
23 any civil action for damages, subject to the West Virginia Rules of Evidence, the admission of  
24 evidence of an adult motor vehicle occupant's nonuse of a safety belt in violation of this section  
25 with regard to the plaintiff's mitigation of damages.

26 ~~(d) A violation of this section is not admissible as evidence of negligence or contributory~~  
27 ~~negligence or comparative negligence in any civil action or proceeding for damages, and is not~~  
28 ~~admissible in mitigation of damages: *Provided*, That the court may, upon motion of the defendant,~~  
29 ~~conduct an in camera hearing to determine whether an injured party's failure to wear a safety belt~~  
30 ~~was a proximate cause of the injuries complained of. Upon a finding by the court, the court may~~  
31 ~~then, in a jury trial, by special interrogatory to the jury, determine: (1) That the injured party failed~~

32 ~~to wear a safety belt; and (2) that the failure to wear the safety belt constituted a failure to mitigate~~  
33 ~~damages. The trier of fact may reduce the injured party's recovery for medical damages by an~~  
34 ~~amount not to exceed five percent thereof. In the event the plaintiff stipulates to the reduction of~~  
35 ~~five percent of medical damages, the court shall make the calculations and the issue of mitigation~~  
36 ~~of damages for failure to wear a safety belt may not be presented to the jury. In all cases, the~~  
37 ~~actual computation of the dollar amount reduction shall be determined by the court.~~

38 (2) In any action to recover damages arising out of the ownership, common maintenance  
39 or operation of a motor vehicle, the failure to wear a safety belt in violation of this section shall not  
40 be considered evidence of comparative negligence. Failure to wear a safety belt in violation of  
41 this section may be admitted with respect to the adult vehicle occupant's mitigation of damages,  
42 or failure thereof, but only under the following circumstances:

43 (A) Parties seeking to introduce evidence of the failure to wear a safety belt in violation of  
44 this section must first introduce expert evidence showing that a failure to wear a safety belt is  
45 relevant to the injuries or the damages claimed by plaintiff;

46 (B) If the evidence supports such a finding, the trier of fact may find that the failure to  
47 wear a safety belt in violation of this section contributed to injuries or damages, and may reduce  
48 the amount of the plaintiff's recovery of medical expenses by an amount found by the trier of fact  
49 to be attributable to the failure to wear a safety belt, but in no instance may the reduction be more  
50 than fifty percent of the medical expenses, after any reductions for comparative negligence;

51 (3) In any action claiming damages under a product liability theory, claim or cause of  
52 action, this subsection is not intended to limit the manufacturer from introducing evidence of an  
53 adult vehicle occupant's failure to wear a safety belt in violation of this section to defend the  
54 design, manufacture or crashworthiness of the product that is the subject of the action.

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

58           (f) The Governor's Highway Safety Program, in cooperation with the West Virginia State  
59 Police and any other state departments or agencies and with county and municipal law-  
60 enforcement agencies, shall initiate and conduct an educational program designed to encourage  
61 compliance with safety belt usage laws. This program shall be focused on the effectiveness of  
62 safety belts, the monetary savings and the other benefits to the public from usage of safety belts  
63 and the requirements and penalties specified in this law.

64           (g) Nothing contained in this section abrogates or alters the provisions of section forty-six  
65 of this article relating to the mandatory use of child passenger safety device.