

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2088**

BY DELEGATES ANDERSON AND WESTFALL

[Originating in the Committee on the Judiciary;

February 20, 2020.]



1 A BILL to amend and reenact §17C-15-49 of the Code of West Virginia, 1931, as amended,  
2 relating to admissibility of certain evidence in a civil action for damages; and allowing the  
3 admission of the use or nonuse of a safety belt on the issues of negligence, contributory  
4 negligence, comparative negligence and failure to mitigate damages; requiring a causal  
5 relationship between the use or nonuse of a safety belt and the alleged injuries or death;  
6 providing that evidence of use or nonuse of a safety belt may be admitted in specified  
7 circumstances related to a claim involving ejection from the vehicle, a product liability  
8 claim, injuries causing death, and, where medical expenses exceed \$50,000; providing  
9 disclosure requirements for medical expense evidence; establishing the defenses related  
10 to use or nonuse of a safety belt be raised timely, with designated specificity and in  
11 accordance with trial rules of procedure; requiring expert testimony in certain  
12 circumstances; providing for a hearing related to evidence; and establishing that any  
13 finding by the court is limited to the admissibility of evidence.

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

**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 18 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~~ 15 passengers  
6 or less, including the driver, except that the term does not include a motorcycle, a trailer, or any  
7 motor vehicle which is not required on the date of the enactment of this section under a federal  
8 motor vehicle safety standard to be equipped with a belt system. The provisions of this section

9 apply to all passenger vehicles manufactured after January 1, 1967, and being 1968 models and  
10 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 29A of this code, to establish a method to certify the physical disability and to require  
18 use of an alternative restraint system where feasible or to waive the requirement for the use of  
19 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) A violation of this section is not admissible as evidence of negligence or  
23 contributory negligence or comparative negligence in any civil action or proceeding for damages,  
24 and is not admissible in mitigation of damages: *Provided*, That the court may, upon motion of the  
25 defendant, conduct an in camera hearing to determine whether an injured party's failure to wear  
26 a safety belt was a proximate cause of the injuries complained of. Upon a finding by the court, the  
27 court may then, in a jury trial, by special interrogatory to the jury, determine: (1) That the injured  
28 party failed to wear a safety belt; and (2) that the failure to wear the safety belt constituted a failure  
29 to mitigate damages. The trier of fact may reduce the injured party's recovery for medical  
30 damages by an amount not to exceed five percent thereof. In the event the plaintiff stipulates to  
31 the reduction of five percent of medical damages, the court shall make the calculations and the  
32 issue of mitigation of damages for failure to wear a safety belt may not be presented to the jury.  
33 In all cases, the actual computation of the dollar amount reduction shall be determined by the  
34 court evidence of the violation may be admitted in a civil action as to the causal relationship

35 between the violation and the injuries or death alleged if any of the following conditions have been  
36 satisfied:

37 (A) the Plaintiff, or in the case of an occupant's death, the Plaintiff's decedent, was ejected  
38 from the passenger vehicle which was equipped with a safety belt meeting the applicable federal  
39 motor vehicle standards for the seat in which the occupant was seated immediately prior to being  
40 ejected;

41 (B) the Plaintiff filed a product liability claim alleging that a defect in the overall  
42 crashworthiness of the passenger vehicle exists;

43 (C) the occupant's alleged injuries resulted in death; or

44 (D) the medical expenses for which the Plaintiff seeks recovery exceed \$50,000.00:

45 Provided however, That if the Plaintiff has failed to disclose that the medical expenses Plaintiff  
46 incurred exceeds \$50,000.00, before the discovery deadline established by the Court, Plaintiff  
47 shall be barred from introducing evidence of medical expenses in excess of that amount.

48 (2) A Defendant alleging a violation of this section shall raise this defense in its answer  
49 or timely amendment thereto in accordance with the rules of civil procedure.

50 (3) Each Defendant seeking to offer evidence alleging a violation of this section has the  
51 burden of proving all of the following:

52 (A) a violation of this subsection (a) of this section;

53 (B) use of the available seatbelt would have reduced the alleged injuries or, if applicable,  
54 prevented the death;

55 (C) the extent of the reduction of injuries.

56 (4) Except with respect to an ejection under §17C-15-49(d)(1)(A), Defendant's burden of  
57 proof regarding §17C-15-49(d)(3)(B) and §17C-15-49(d)(3)(C) must be supported by expert  
58 testimony, subject to a finding by the court that the testing and methodology supporting such  
59 expert testimony satisfies the threshold requirements of Rule 702 of the West Virginia Rules of  
60 Evidence.

61           (5) Upon request of any party, the trial judge shall conduct a hearing out of the presence  
62 of the jury as to the admissibility of such evidence in accordance with the provisions of this section  
63 and the rules of evidence.

64           (6) The finding of the trial judge shall not constitute a finding of fact but shall be limited to  
65 the issue of the admissibility of the evidence.

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

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

75           (g) Nothing contained in this section abrogates or alters the provisions of §17C-15-46 of  
76 this code relating to the mandatory use of child passenger safety device.

NOTE: The purpose of this bill is to allow, in certain situations, admission of evidence in a civil action of the use or nonuse of a safety belt on the issues of negligence, contributory negligence, comparative negligence and failure to mitigate damages.

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