

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 3029**

BY DELEGATES WESTFALL AND QUEEN

[Introduced March 09, 2021; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §17C-15-49 of the Code of West Virginia, as amended, relating to  
2 modifying when the failure to use a seatbelt may be used as a defense in certain civil  
3 actions; providing definitions; clarifying claimants based upon whether the individual is a  
4 driver, adult passenger, or child passenger; providing for jury instructions and bifurcation;  
5 providing for immunities, and providing an effective date.

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

## **ARTICLE 15. EQUIPMENT**

### **§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 passengers or  
6 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) A violation of this section is not admissible as evidence of negligence or contributory  
23 negligence or comparative negligence in any civil action or proceeding for damages, and is not  
24 admissible in mitigation of damages: *Provided*, That the court may, upon motion of the defendant,  
25 conduct an in camera hearing to determine whether an injured party's failure to wear a safety belt  
26 was a proximate cause of the injuries complained of. Upon a finding by the court, the court may  
27 then, in a jury trial, by special interrogatory to the jury, determine: (1) That the injured party failed  
28 to wear a safety belt; and (2) that the failure to wear the safety belt constituted a failure to mitigate  
29 damages. The trier of fact may reduce the injured party's recovery for medical damages by an  
30 amount not to exceed five percent thereof. In the event the plaintiff stipulates to the reduction of  
31 five percent of medical damages, the court shall make the calculations and the issue of mitigation  
32 of damages for failure to wear a safety belt may not be presented to the jury. In all cases, the  
33 actual computation of the dollar amount reduction shall be determined by the court~~

34 (d) The admissibility of evidence of a violation of this section in a civil action is governed  
35 by the following rules:

36 (1) Definitions. – For purposes of this subsection, the following terms shall have the  
37 following meanings:

38 (A) "Adult" means a person who is at 18 years of age or older;

39 (B) "Child" means a person who is has not attained the age of 18 years of age;

40 (C) "Claimant" means any person asserting a claim;

41 (D) "Driver" means a person, whether an adult or child, who is operating the motor vehicle

42 on a public street or highway of this state; and,

43 (E) "Passenger" means a person in the motor vehicle other than the driver of the motor  
44 vehicle while it is being operated on a public street or highway of this state.

45 (2) Admissibility as evidence of negligence.

46 (A) Claimant as driver.

47 (i) When a person making a claim for damages in a civil action was the driver of a vehicle  
48 involved in the collision from which the damages suffered by the claimant driver are alleged to  
49 have arisen, evidence that the claimant driver of the vehicle was not wearing a safety belt at the  
50 time of the collision in violation of this section is not admissible to show his or her negligence.

51 (ii) The prohibition on the admissibility of such evidence provided by this subdivision shall  
52 not apply with respect to an action against the manufacturer of the motor vehicle being driven by  
53 the claimant driver.

54 (B) Claimant as adult passenger.

55 (i) When a person making a claim for damages in a civil action was an adult passenger in  
56 a vehicle involved in the collision from which the damages suffered by that claimant adult  
57 passenger are alleged to have arisen, evidence that said claimant adult passenger was not  
58 wearing a safety belt at the time of the collision in violation of this section is not admissible to  
59 show his or her negligence.

60 (ii) The prohibition on the admissibility of such evidence provided by this subdivision shall  
61 not apply with respect to an action against the manufacturer of the motor vehicle being driven by  
62 the adult claimant passenger.

63 (C) Claimant as child passenger.

64 (i) When a person making a claim for damages in a civil action was a child passenger, or  
65 when the person making a claim for damages in a civil action is making the claim on behalf of a

66 child who was a passenger, in a vehicle involved in the collision from which the damages suffered  
67 by that claimant child passenger are alleged to have arisen, evidence that said claimant child  
68 passenger was not wearing a safety belt at the time of the collision in violation of this section is  
69 not admissible to show any negligence of the claimant child passenger. Such evidence may,  
70 however, subject to the West Virginia Rules of Evidence, be admissible to show any negligence  
71 of the driver of the vehicle in which the claimant child was a passenger.

72 (3) Admissibility as evidence of exacerbation of or contribution to a claimant's damages.

73 (A) Claimant as driver.

74 When a person making a claim for damages in a civil action was the driver of a vehicle  
75 involved in the collision from which the damages suffered by the claimant driver are alleged to  
76 have arisen, evidence that the claimant driver of the vehicle was not wearing a safety belt at the  
77 time of the collision in violation of this section may be admissible to show that his or her failure to  
78 wear a safety belt as required by this section exacerbated or contributed to the claimant driver's  
79 damages.

80 (B) Claimant as adult passenger.

81 When a person making a claim for damages in a civil action was an adult passenger in a  
82 vehicle involved in the collision from which the damages suffered by that claimant adult passenger  
83 are alleged to have arisen, evidence that said claimant adult passenger was not wearing a safety  
84 belt at the time of the collision in violation of this section may be admissible to show that his or  
85 her failure to wear a safety belt as required by this section exacerbated or contributed to that adult  
86 claimant passenger's damages.

87 (C) Claimant as child passenger.

88 When a person making a claim for damages in a civil action was child passenger at the  
89 time of the accident, or when the person making a claim for damages in a civil action is making

90 the claim on behalf of a child who was a passenger, in a vehicle involved in the collision from  
91 which the damages suffered by that child passenger are alleged to have arisen, evidence that  
92 said child passenger was not wearing a safety belt at the time of the collision in violation of this  
93 section is not admissible to show that the child's failure to wear a safety belt as required by this  
94 section exacerbated or contributed to the claimant and child's damages.

95 (4) Subject to subsection (d)(5) of this section, a claimant's failure to wear a safety belt as  
96 required by this section shall constitute an affirmative defense.

97 (5) Court to instruct jury.

98 In a civil action for damages in which the court has determined that evidence that a person  
99 was not wearing a safety belt at the time of the collision in violation of this section shall be admitted  
100 for any purpose, it shall be the duty of the trial court to instruct the jury as to the purposes for  
101 which the jury may consider, and may not consider, the evidence.

102 (6) Court's discretion as to bifurcation.

103 In the discretion of the trial court, if the court determines that it is necessary to prevent  
104 prejudice or avoid confusion of the jury, the court may, upon request of a party, bifurcate the trial  
105 so that the questions of liability are tried first and the question of damages is presented separately  
106 thereafter. If the court, in its discretion, grants bifurcation, the court should consider whether it is  
107 possible to bifurcate these issues within a single trial, so that all of the issues to be tried in the  
108 case are tried together in a single trial with the same jury, but with the presentation of the evidence  
109 on the separate issues and the deliberations of the same jury ordered in such a way so as to  
110 achieve bifurcation within a single trial.

111 (7) Immunities not abrogated.

112 It is not the intention of the West Virginia Legislature in the reenactment of this section in  
113 the year 2021 to abrogate or modify any immunities recognized by the law.

114           (8) Effective date of changes in the law.  
115           The changes to this section made during the regular session of the West Virginia  
116 Legislature in the year 2021 shall apply to collisions and claims occurring after the effective date  
117 of the changes. For any claim or cause of action arising before the effective date of the changes  
118 to this section made during the regular session of the West Virginia Legislature in the year 2021,  
119 the changes to this section made during the regular session of the West Virginia Legislature in  
120 the year 2021 shall not apply.

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

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

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

NOTE: The purpose of this bill is to modify when the failure to use a seatbelt may be used as a defense in certain civil actions, to provide definitions, to list and clarify claimants based upon whether they are a driver, adult passenger, or child passenger, to provide for jury instructions and bifurcation, to provide for immunities, and to give an effective date.

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