

1 **Senate Bill No. 337**

2 (By Senators Palumbo, Wells, Foster and Klempa)

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4 [Introduced January 28, 2011; referred to the Committee on
5 Transportation and Infrastructure; and then to the Committee on
6 the Judiciary.]
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11 A BILL to amend and reenact §17C-15-49 of the Code of West
12 Virginia, 1931, as amended, relating to making the offense of
13 failure to wear safety belts a primary offense; and modifying
14 fines.

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

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

18 **ARTICLE 15. EQUIPMENT.**

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

22 (a) Effective September 1, ~~one thousand nine hundred ninety-~~
23 ~~three~~ 2011, a person may not operate a passenger vehicle on a
24 public street or highway of this state unless the person, any

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

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

1 requirement for the use of any restraint system.

2 (c) Any person who violates the provisions of this section
3 shall be fined ~~not more than twenty-five~~ \$15. No court costs or
4 other fees ~~shall~~ may be assessed for a violation of this section.
5 ~~Enforcement of this section shall be accomplished only as a~~
6 ~~secondary action when a driver of a passenger vehicle has been~~
7 ~~detained for probable cause of violating another section of this~~
8 ~~code.~~

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

1 all cases, the actual computation of the dollar amount reduction
2 shall be determined by the court.

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

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

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

(NOTE: The purpose of this bill is to change the offense of failure to wear a safety belt 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.)

TRANSPORTATION AND INFRASTRUCTURE COMMITTEE AMENDMENT

On page three, section forty-nine, lines two and three, by striking out the words "No court costs or other fees may" and inserting in lieu thereof the words "Court costs or other fees may not".