

ENGROSSED

## Senate Bill No. 337

(By Senators Palumbo, Wells, Foster and Klempa)

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[Introduced January 28, 2011; referred to  
the Committee on Transportation and Infrastructure;  
and then to the Committee on the Judiciary.]

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A BILL to amend and reenact §17C-15-49 of the Code of West Virginia, 1931, as amended, relating to making the offense of failure to wear safety belts a primary offense; and modifying fines.

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

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

**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) Effective September 1, ~~one thousand nine hundred~~  
2 ~~ninety-three~~ 2011, a person may not operate a passenger  
3 vehicle on a public street or highway of this state unless the  
4 person, any passenger in the back seat under eighteen years  
5 of age and any passenger in the front seat of ~~such the~~  
6 passenger vehicle is restrained by a safety belt meeting  
7 applicable federal motor vehicle safety standards. For the  
8 purposes of this section, the term “passenger vehicle” means  
9 a motor vehicle which is designed for transporting ten  
10 passengers or less, including the driver, except that ~~such the~~  
11 term does not include a motorcycle, a trailer or any motor  
12 vehicle which is not required on the date of the enactment of  
13 this section under a federal motor vehicle safety standard to  
14 be equipped with a belt system. The provisions of this section  
15 ~~shall~~ apply to all passenger vehicles manufactured after  
16 January 1, 1967, and being 1968 models and newer.

17 (b) The required use of safety belts as provided ~~herein in~~  
18 this section does not apply to a duly appointed or contracted  
19 rural mail carrier of the United States Postal Service who is  
20 actually making mail deliveries or to a passenger or operator  
21 with a physically disabling condition whose physical  
22 disability would prevent appropriate restraint in ~~such the~~

23 safety belt if the condition is duly certified by a physician  
24 who ~~shall state~~ states the nature of the disability as well as  
25 the reason ~~such~~ the restraint is inappropriate. The Division  
26 of Motor Vehicles shall ~~adopt~~ propose rules for legislative  
27 approval, in accordance with the provisions of chapter  
28 twenty-nine-a of this code, to establish a method to certify  
29 the physical disability and to require use of an alternative  
30 restraint system where feasible or to waive the requirement  
31 for the use of any restraint system.

32 (c) Any person who violates the provisions of this section  
33 shall be fined ~~not more than twenty-five~~ \$15. ~~No court costs~~  
34 ~~or other fees shall~~ Court costs or other fees may not be  
35 assessed for a violation of this section. ~~Enforcement of this~~  
36 ~~section shall be accomplished only as a secondary action~~  
37 ~~when a driver of a passenger vehicle has been detained for~~  
38 ~~probable cause of violating another section of this code.~~

39 (d) A violation of this section is not admissible as evidence  
40 of negligence or contributory negligence or comparative  
41 negligence in any civil action or proceeding for damages and  
42 ~~shall~~ is not be admissible in mitigation of damages: *Provided,*  
43 That the court may, upon motion of the defendant, conduct  
44 an in camera hearing to determine whether an injured

45 party's failure to wear a safety belt was a proximate cause of  
46 the injuries complained of. Upon ~~such~~ a finding by the court,  
47 the court may then, in a jury trial, by special interrogatory to  
48 the jury, determine: (1) That the injured party failed to wear  
49 a safety belt; and (2) that the failure to wear the safety belt  
50 constituted a failure to mitigate damages. The trier of fact  
51 may reduce the injured party's recovery for medical damages  
52 by an amount not to exceed five percent ~~thereof~~ of the  
53 medical damages. In the event the plaintiff stipulates to the  
54 reduction of five percent of medical damages, the court shall  
55 make the calculations and the issue of mitigation of damages  
56 for failure to wear a safety belt ~~shall~~ may not be presented to  
57 the jury. In all cases, the actual computation of the dollar  
58 amount reduction shall be determined by the court.

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

63 (f) ~~Commencing the first day of July, one thousand nine~~  
64 ~~hundred ninety-three~~ The Governor's Highway Safety  
65 Program, in cooperation with the ~~division of public safety~~  
66 West Virginia State Police and any other state departments

67 or agencies and with county and municipal law-enforcement  
68 agencies, shall initiate and conduct an educational program  
69 designed to encourage compliance with safety belt usage  
70 laws. This program shall be focused on the effectiveness of  
71 safety belts, the monetary savings and the other benefits to  
72 the public from usage of safety belts and the requirements  
73 and penalties specified in this law.

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