

Senate Bill No. 337

(By Senators Palumbo, Wells, Foster and Klempa)

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

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~~ may be assessed for a violation of this
35 section. ~~Enforcement of this section shall be accomplished~~
36 ~~only as a secondary action when a driver of a passenger~~
37 ~~vehicle has been detained for probable cause of violating~~
38 ~~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.

(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 thirty-three and thirty-four, 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”.