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**Senate Bill No. 139**

(By Senators Palumbo and Foster)

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[Introduced January 11, 2012; 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.**

(a) Effective September 1, ~~one thousand nine hundred ninety-three~~ 2012, a person may not operate a passenger vehicle on a

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

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

1 a method to certify the physical disability and to require use of  
2 an alternative restraint system where feasible or to waive the  
3 requirement for the use of any restraint system.

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

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

1 reduction of five percent of medical damages, the court shall make  
2 the calculations and the issue of mitigation of damages for failure  
3 to wear a safety belt ~~shall~~ may not be presented to the jury. In  
4 all cases, the actual computation of the dollar amount reduction  
5 shall be determined by the court.

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

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

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

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(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.)