

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 439

BY SENATORS SWOPE, ROBERTS, AND RUCKER

[Originating in the Committee on the Judiciary;

reported on March 3, 2021]

1 A BILL to amend and reenact §17C-15-49 of the Code of West Virginia, 1931, as amended; and
2 to amend said code by adding thereto a new section, designated §17C-15-49a, all relating
3 generally to operation of vehicles with safety belts; changing the definition of “passenger
4 vehicle” for purposes of safety belt requirement; providing definitions; prohibiting
5 admissibility of nonuse of a safety belt as evidence of negligence of a driver in a civil
6 action, except for claims against the manufacturer or seller of the vehicle and/or any
7 component or system incorporated into the vehicle; prohibiting admissibility of nonuse of
8 a safety belt as evidence of negligence of an adult passenger in a civil action, except for
9 claims against the manufacturer or seller of the vehicle and/or any component or system
10 incorporated into the vehicle; allowing evidence that a child passenger was not wearing a
11 safety belt at the time of collision as evidence of negligence against a driver in a civil
12 action; allowing admissibility of nonuse of a safety belt as evidence of exacerbation or
13 contribution to the damages of a driver in a civil action if supported by expert testimony,
14 unless a driver at fault was driving under the influence; allowing admissibility of nonuse of
15 a safety belt as evidence of exacerbation or contribution to the damages of an adult
16 passenger in a civil action if supported by expert testimony, unless a driver at fault was
17 driving under the influence; prohibiting admissibility of evidence that a child passenger
18 was not wearing a safety belt at the time of collision as evidence of exacerbation or
19 contribution to the damages of a child passenger; providing that evidence of nonuse of a
20 safety belt constitutes an affirmative defense; requiring a court to instruct the jury as to
21 purposes for which evidence of use or nonuse of a safety belt may be considered;
22 providing that a court may, in its discretion and upon motion of a party, bifurcate questions
23 of liability and damages to prevent prejudice or avoid confusion of a jury; providing that
24 these amendments are not intended to abrogate or modify any immunity recognized by
25 law; providing for an effective date; and providing that these amendments do not alter the
26 requirements of mandatory use of child passenger safety devices.

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~~ 15 passengers
6 or 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 in this section does not apply to a duly
12 appointed or contracted rural mail carrier of the United States Postal Service who is actually
13 making mail deliveries or to a passenger or operator with a physically disabling condition whose
14 physical disability would prevent appropriate restraint in the safety belt if the condition is duly
15 certified by a physician who states the nature of the disability as well as the reason the restraint
16 is inappropriate. The Division of Motor Vehicles shall adopt rules, in accordance with ~~the~~
17 ~~provisions of chapter twenty nine a of this code~~ §29A-3-1 et seq. of this code, to establish a
18 method to certify the physical disability and to require use of an alternative restraint system where
19 feasible or to waive the requirement for the use of 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 ~~(e) (d)~~ Notwithstanding any other provision of this code to the contrary, no points may be
35 entered on any driver's record maintained by the Division of Motor Vehicles as a result of a
36 violation of this section.

37 ~~(f) (e)~~ The Governor's Highway Safety Program, in cooperation with the West Virginia
38 State Police and any other state departments or agencies and with county and municipal law-
39 enforcement agencies, shall initiate and conduct an educational program designed to encourage
40 compliance with safety belt usage laws. This program shall be focused on the effectiveness of
41 safety belts, the monetary savings, and the other benefits to the public from usage of safety belts
42 and the requirements and penalties specified in this law.

43 ~~(g) (f)~~ ~~Nothing contained in This section abrogates or alters~~ does not abrogate or alter the
44 provisions of §17C-15-46 of this code relating to the mandatory use of child passenger safety
45 devices.

§17C-15-49a. Admissibility of use or nonuse of safety belts in civil actions.

1 The admissibility of evidence of the failure of an occupant of a passenger vehicle to use a
2 safety belt in any civil action is governed by the following rules:

3 (a) Definitions. — For the purposes of this section:

4 (1) “Adult” means a person who is 18 years of age or older;

5 (2) “Child” means a person who is under 18 years of age;

6 (3) “Claimant” means any person asserting a claim;

7 (4) “Driver” means a person, whether an adult or child, who is operating the passenger
8 vehicle on a public street or highway of this state;

9 (5) “Passenger” means a person in the passenger vehicle other than the driver of the
10 passenger vehicle while it is being operated on a public street or highway of this state; and

11 (6) “Passenger vehicle” means a passenger vehicle as defined in §17C-15-49(a) of this
12 code.

13 (b) Admissibility as evidence of negligence. —

14 (1) Claimant as driver. —

15 (A) When a person making a claim for damages in a civil action was the driver of a
16 passenger vehicle involved in the collision from which the damages suffered by the claimant driver
17 are alleged to have arisen, evidence that the claimant driver of the passenger vehicle was not
18 wearing a safety belt at the time of the collision is not admissible to show his or her negligence.

19 (B) The prohibition on the admissibility of evidence provided by this paragraph does not
20 apply in an action against the manufacturer or seller of the passenger vehicle being driven by the
21 claimant driver and/or a manufacturer or seller of any component or system incorporated into the
22 passenger vehicle.

23 (2) Claimant as adult passenger. —

24 (A) When a person making a claim for damages in a civil action was an adult passenger
25 in a passenger vehicle involved in the collision from which the damages suffered by that claimant

26 adult passenger are alleged to have arisen, evidence that the claimant adult passenger was not
27 wearing a safety belt at the time of the collision is not admissible to show his or her negligence.

28 (B) The prohibition on the admissibility of evidence provided by this paragraph does not
29 apply in an action against the manufacturer or seller of the passenger vehicle in which the claimant
30 adult passenger was a passenger and/or a manufacturer or seller of any component or system
31 incorporated into the passenger vehicle.

32 (3) Claimant as child passenger. —

33 When a person making a claim for damages in a civil action was a child passenger, or
34 when the person making a claim for damages in a civil action is making the claim on behalf of a
35 child who was a passenger, in a passenger vehicle involved in the collision from which the
36 damages suffered by that claimant child passenger are alleged to have arisen, evidence that said
37 claimant child passenger was not wearing a safety belt at the time of the collision is not admissible
38 to show any negligence of the claimant child passenger: *Provided*, That the evidence may be
39 admissible, subject to the West Virginia Rules of Evidence, to show negligence of the driver of
40 the passenger vehicle in which the claimant child was a passenger.

41 (c) Admissibility as evidence of exacerbation of or contribution to a claimant's damages. —

42 (1) Claimant as driver. — When a person making a claim for damages in a civil action was
43 the driver of a passenger vehicle involved in the collision from which the damages suffered by the
44 claimant driver are alleged to have arisen, evidence that the claimant driver of the passenger
45 vehicle was not wearing a safety belt at the time of the collision may be admissible to show that
46 his or her failure to wear a safety belt exacerbated or contributed to the claimant driver's damages:
47 *Provided*, That the defendant's burden of proof as set forth in subdivision (d) of this subsection
48 must be supported by expert testimony, subject to a finding by the court that the expert testimony
49 satisfies the threshold requirements of Rule 702 of the West Virginia Rules of Evidence.

50 (2) Claimant as adult passenger. — When a person making a claim for damages in a civil
51 action was an adult passenger in a passenger vehicle involved in the collision from which the

52 damages suffered by that claimant adult passenger are alleged to have arisen, evidence that the
53 claimant adult passenger was not wearing a safety belt at the time of the collision may be
54 admissible to show that his or her failure to wear a safety belt exacerbated or contributed to that
55 claimant adult passenger's damages: *Provided*, That the defendant's burden of proof as set forth
56 in subdivision (d) of this subsection must be supported by expert testimony, subject to a finding
57 by the court that the expert testimony satisfies the threshold requirements of Rule 702 of the West
58 Virginia Rules of Evidence.

59 (3) *Claimant as child passenger.* — When a person making a claim for damages in a civil
60 action was child passenger at the time of the accident, or when the person making a claim for
61 damages in a civil action is making the claim on behalf of a child who was a passenger, in a
62 passenger vehicle involved in the collision from which the damages suffered by that claimant child
63 passenger are alleged to have arisen, evidence that the claimant child passenger was not wearing
64 a safety belt at the time of the collision is not admissible to show that the claimant child
65 passenger's failure to wear a safety belt exacerbated or contributed to the claimant child
66 passenger's damages.

67 (4) The admissibility of evidence provided by paragraphs (1) and (2) of this subdivision
68 does not apply if any driver with fault was driving in an "impaired state" as defined by §17C-5-2 of
69 this code.

70 (d) Subject to subdivision (e) of this subsection, a claimant's failure to wear a safety belt
71 shall constitute an affirmative defense.

72 (e) *Court to instruct jury.* — In a civil action for damages in which the court has determined
73 that evidence that a person was not wearing a safety belt at the time of the collision is to be
74 admitted, the court shall instruct the jury as to the purposes for which the jury may consider, and
75 may not consider, the evidence.

76 (f) *Court's discretion as to bifurcation.* — In the discretion of the court, if the court
77 determines that it is necessary to prevent prejudice or avoid confusion of the jury, the court may,

78 upon request of a party, bifurcate the trial so that the questions of liability are tried first and the
79 question of damages is presented separately thereafter. If the court, in its discretion, grants
80 bifurcation, the court should consider whether it is possible to bifurcate these issues within a single
81 trial, so that all of the issues to be tried in the case are tried together in a single trial with the same
82 jury, but with the presentation of the evidence on the separate issues and the deliberations of the
83 same jury ordered in such a way so as to achieve separation of the issues within a single trial.

84 (g) Immunities not abrogated. — It is the intent of the Legislature that the amendments
85 made during the regular session of the Legislature, 2021, to this section and §17C-15-49 of this
86 code do not abrogate or modify any immunities recognized by the law.

87 (h) Effective date. — This section and the amendments made during the regular session
88 of the Legislature, 2021, to §17C-15-49 of this code applies to collisions occurring on or after the
89 effective date of those amendments and this section.

90 (i) This section does not abrogate or alter the provisions of §17C-15-46 of this code relating
91 to the mandatory use of child passenger safety devices.