

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 542**

BY SENATORS FERNS, CARMICHAEL AND GAUNCH

[Introduced February 6, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §17C-15-49 of the Code of West Virginia, 1931, as amended,  
 2 relating to admissibility of certain evidence in a civil action for damages; and allowing the  
 3 admission of the use or nonuse of a safety belt on the issues of negligence, contributory  
 4 negligence, comparative negligence and failure to mitigate damages.

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

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

**ARTICLE 15. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.**

**§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 eighteen 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~~ fifteen  
 6 passengers or less, including the driver, except that the term does not include a motorcycle, a  
 7 trailer, or any motor vehicle which is not required on the date of the enactment of this section  
 8 under a federal motor vehicle safety standard to be equipped with a belt system. The provisions  
 9 of this section apply to all passenger vehicles manufactured after January 1, 1967, and being  
 10 1968 models and newer.

11 (b) The required use of safety belts as provided herein does not apply to a duly appointed  
 12 or contracted rural mail carrier of the United States Postal Service who is actually making mail  
 13 deliveries or to a passenger or operator with a physically disabling condition whose physical  
 14 disability would prevent appropriate restraint in the safety belt if the condition is duly certified by  
 15 a physician who states the nature of the disability as well as the reason the restraint is  
 16 inappropriate. The Division of Motor Vehicles shall adopt rules, in accordance with the provisions

17 of chapter twenty-nine-a of this code, to establish a method to certify the physical disability and  
18 to require use of an alternative restraint system where feasible or to waive the requirement for the  
19 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) (1) The Legislature hereby declares that the purpose of this subsection is to allow, in  
23 any civil action for damages, the admission of evidence of a motor vehicle occupant's use or  
24 nonuse of a safety belt to assess that occupant's percentage of fault or mitigation of damages,  
25 and to abrogate any common-law rule that no violation of the duty of reasonable care may be  
26 construed from a passenger vehicle occupant's failure to wear a safety belt. The Legislature  
27 further declares that the decisions of the Supreme Court of Appeals of West Virginia in *Wright v.*  
28 *Hanley*, Case No. 18609 (W. Va. Dec. 5, 1989), *Miller v. Jeffrey*, Case No. 30254 (W. Va. Oct.  
29 25, 2002), *Estep v. Mike Ferrell Ford Lincoln-Mercury, Inc.*, Case No. 33810 (W. Va. Dec. 10,  
30 2008), and any other decisions of the Supreme Court of West Virginia inconsistent with this  
31 legislation, are contrary to the Legislature's intent and shall be deemed overruled by the  
32 enactment of this provision.

33 ~~(d) A violation of this section is not admissible as evidence of negligence or contributory~~  
34 ~~negligence or comparative negligence in any civil action or proceeding for damages, and is not~~  
35 ~~admissible in mitigation of damages: *Provided*, That the court may, upon motion of the defendant,~~  
36 ~~conduct an in camera hearing to determine whether an injured party's failure to wear a safety belt~~  
37 ~~was a proximate cause of the injuries complained of. Upon a finding by the court, the court may~~  
38 ~~then, in a jury trial, by special interrogatory to the jury, determine: (1) That the injured party failed~~  
39 ~~to wear a safety belt; and (2) that the failure to wear the safety belt constituted a failure to mitigate~~  
40 ~~damages. The trier of fact may reduce the injured party's recovery for medical damages by an~~  
41 ~~amount not to exceed five percent thereof. In the event the plaintiff stipulates to the reduction of~~  
42 ~~five percent of medical damages, the court shall make the calculations and the issue of mitigation~~

43 ~~of damages for failure to wear a safety belt may not be presented to the jury. In all cases, the~~  
44 ~~actual computation of the dollar amount reduction shall be determined by the court.~~

45 (2) The use or nonuse of a safety belt by any driver or passenger is admissible in any civil  
46 action or proceeding for damages as evidence of negligence, contributory negligence,  
47 comparative negligence or failure to mitigate damages.

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

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

57 (g) Nothing contained in this section abrogates or alters the provisions of section forty-six  
58 of this article relating to the mandatory use of child passenger safety device.

NOTE: The purpose of this bill is to allow admission of evidence in a civil action of the use or nonuse of a safety belt on the issues of negligence, contributory negligence, comparative negligence and failure to mitigate damages.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.