WEST VIRGINIA CODE: §17C-15-49a

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

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

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

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

(2) "Child" means a person who is under 18 years of age;

(3) "Claimant" means any person asserting a claim;

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

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

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

(b) *Admissibility as evidence of negligence*. —

(1) *Claimant as driver*. —

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

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

(2) *Claimant as adult passenger*. —

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

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

(3) *Claimant as child passenger.* —

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

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

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

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

(3) *Claimant as child passenger.* — When a person making a claim for damages in a civil action was child passenger at the time of the accident, or when the person making a claim for damages in a civil action is making the claim on behalf of a child who was a passenger, in a passenger vehicle involved in the collision from which the damages suffered by that claimant child passenger are alleged to have arisen, evidence that the claimant child passenger was not wearing a safety belt at the time of the collision is not admissible to show

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that the claimant child passenger's failure to wear a safety belt exacerbated or contributed to the claimant child passenger's damages.

(4) The admissibility of evidence provided by paragraphs (1) and (2) of this subdivision does not apply if any driver with fault was driving in an "impaired state" as defined by §17C-5-2 of this code, or if the driver is found to have concurrently violated §61-5-17(h), §61-5-17(i), or §61-5-17(j) of this code.

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

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

(f) *Court's discretion as to bifurcation*. — In the discretion of the court, if the court determines that it is necessary to prevent prejudice or avoid confusion of the jury, the court may, upon request of a party, bifurcate the trial so that the questions of liability are tried first and the question of damages is presented separately thereafter. If the court, in its discretion, grants bifurcation, the court should consider whether it is possible to bifurcate these issues within a single trial, so that all of the issues to be tried in the case are tried together in a single trial with the same jury, but with the presentation of the evidence on the separate issues and the deliberations of the same jury ordered in such a way so as to achieve separation of the issues within a single trial.

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

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

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

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