

HOUSE BILL REPORT

HB 2486

As Reported by House Committee On:
Judiciary

Title: An act relating to the failure to wear safety belt assembly.

Brief Description: Revising negligence standards regarding the failure to wear safety belts.

Sponsors: Representatives Lantz, Jarrett, Lovick, Newhouse, Flannigan, Moeller, Carrell, Rockefeller, Upthegrove, Schual-Berke and Tom.

Brief History:

Committee Activity:

Judiciary: 1/20/04, 2/5/04 [DP].

Brief Summary of Bill

- Removes the provision in statute declaring that a person's failure to use a safety belt is not negligence and may not be admitted into evidence to show negligence.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 5 members: Representatives Lantz, Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Lovick and Newhouse.

Minority Report: Do not pass. Signed by 4 members: Representatives Moeller, Vice Chair; Campbell, Flannigan and Kirby.

Staff: Sarah Shirey (786-5793); Trudes Hutcheson (786-7384).

Background:

Any person 16 or older driving or riding in a car is required to wear a seat belt. A person may not drive a car unless any child passenger under 16 is wearing a seat belt or is in an appropriate car seat. Failure to comply with the seat belt laws is a traffic infraction.

With certain exceptions, a violation of a statutory mandate is not per se negligence, but the fact of such a violation may be introduced as evidence of negligence in any civil action. However, the seat belt statute specifically declares that a person's failure to comply with the seat belt requirement does not constitute negligence and states that the failure to wear a seat belt is not admissible as evidence of negligence.

Comparative Fault

Washington recognizes the concept of "comparative fault" in negligence actions. In an action based on "fault," any fault for which the plaintiff is responsible for also known as "contributory fault" will proportionately reduce the defendant's liability for the plaintiff's injuries. "Fault" includes acts or omissions that are negligent or reckless. "Fault" also includes an unreasonable failure to avoid an injury or to mitigate damages.

Ruling on the seat belt statute, Washington courts have held that the term "negligence" incorporates the concept of "contributory fault." *Clark v. Payne*, 61 Wn. App. 189 (1991). Therefore, the statute bars admitting evidence of the plaintiff's failure to wear a seat belt to show either negligence or contributory fault.

Joint & Several Liability

Usually a defendant is responsible for paying only for his or her own percentage of fault in causing the plaintiff's harm. In some cases with multiple defendants, joint and several liability applies when the plaintiff is not at fault for causing his or her own harm. Under joint and several liability, any one defendant can be required to pay all of the plaintiff's damages. If, on the other hand, the plaintiff is found to have some contributory fault, joint and several liability will usually not apply.

Under the seat belt statute, defendants may not bring forth evidence of the plaintiff's failure to wear a seat belt to avoid joint and several liability.

Rules of Evidence

Statutes that are silent on the admissibility of evidence leave admission decisions to the court. Therefore, admissibility of evidence not specified in statute is contingent upon the court's rules of evidence. Generally, in a civil action, the court will admit evidence that is relevant, so long as the evidence is not overly prejudicial, meaning that its probative value is not outweighed by its prejudicial effect.

Summary of Bill:

The provision declaring that non-compliance with the seat belt law is not negligence and may not be admissible to show negligence is removed.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Seat belts are important to highway safety. Wearing seat belts is now mandatory under Washington law. It is inconsistent to say in statute that you must wear a seat belt, but if you do not, evidence of your failure to obey the law is not admissible in court and

does not affect liability. This legislation creates a more seamless implementation of Washington's seat belt law and will help increase seat belt compliance. If a person's failure to wear a seat belt contributed to his or her injuries, then it is important for the jury to hear about that failure. This bill would allow the jury to be better informed and thereby reach a more fair conclusion. The costs of not being able to bring this information before the jury is passed along to all who own car insurance.

Testimony Against: The practical effect of this legislation will be to make seat belt use an issue in every case. Both sides will bring in experts to testify about whether or not a person was wearing a seat belt. This will increase the length and cost of litigation. The use of a seat belt should not be relevant to a case. Rather the focus should be on who caused the accident. This legislation will allow the penalty for negligent drivers to decrease, and the cost to innocent victims to increase. This legislation will not increase seat belt usage, as there is already a 96 percent seat belt compliance rate in Washington.

Persons Testifying: (In support) Jean Leonard, State Farm Insurance; Bob Mack, City of Tacoma; Doug MacDonald, Washington State Department of Transportation; Ron Zirkle, Yakima County Prosecuting Attorney; Tom Brown; and James Macpherson, Washington Defense Trial Lawyers.

(Opposed) Larry Shannon and Frank Ladenburg, Washington State Trial Lawyers Association.

Persons Signed In To Testify But Not Testifying: None.