

42-4-237. Safety belt systems - mandatory use - exemptions - penalty.

(1) As used in this section:

(a) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the public highways, including passenger cars, station wagons, vans, taxicabs, ambulances, motor homes, and pickups. The term does not include motorcycles, motorscooters, motorbicycles, motorized bicycles, passenger buses, school buses, and farm tractors and implements of husbandry designed primarily or exclusively for use in agricultural operations.

(b) "Safety belt system" means a system utilizing a lap belt, a shoulder belt, or any other belt or combination of belts installed in a motor vehicle to restrain drivers and passengers, which system conforms to federal motor vehicle safety standards.

(2) Unless exempted pursuant to subsection (3) of this section, every driver of and every front seat passenger in a motor vehicle equipped with a safety belt system shall wear a fastened safety belt while the motor vehicle is being operated on a street or highway in this state.

(3) Except as provided in section 42-2-105.5, the requirement of subsection (2) of this section shall not apply to:

(a) A child required by section 42-4-236 to be restrained by a child restraint system;

(b) A member of an ambulance team, other than the driver, while involved in patient care;

(c) A peace officer as described in section 16-2.5-101, C.R.S., while performing official duties so long as the performance of said duties is in accordance with rules and regulations applicable to said officer which are at least as restrictive as subsection (2) of this section and which only provide exceptions necessary to protect the officer;

(d) A person with a physically or psychologically disabling condition whose physical or psychological disability prevents appropriate restraint by a safety belt system if such person possesses a written statement by a physician certifying the condition, as well as stating the reason why such restraint is inappropriate;

(e) A person driving or riding in a motor vehicle not equipped with a safety belt system due to the fact that federal law does not require such vehicle to be equipped with a safety belt system;

(f) A rural letter carrier of the United States postal service while performing duties as a rural letter carrier; and

(g) A person operating a motor vehicle which does not meet the definition of "commercial vehicle" as that term is defined in section 42-4-235 (1) (a) for commercial or residential delivery or pickup service; except that such person shall be required to wear a fastened safety belt during the time period prior to the first delivery or pickup of the day and during the time period following the last delivery or pickup of the day.

(4) (a) Except as otherwise provided in paragraph (b) of this subsection (4), any person who operates a motor vehicle while such person or any passenger is in violation of the requirement of subsection (2) of this section commits a class B traffic infraction. Penalties collected pursuant to this subsection (4) shall be transmitted to the appropriate authority pursuant to the provisions of section 42-1-217 (1) (e) and (2).

(b) A minor driver under eighteen years of age who violates this section shall be punished in accordance with section 42-2-105.5 (5) (b).

(5) No driver in a motor vehicle shall be cited for a violation of subsection (2) of this section unless such driver was stopped by a law enforcement officer for an alleged violation of articles 1 to 4 of this title other than a violation of this section.

(6) Testimony at a trial for a violation charged pursuant to subsection (4) of this section may include:

(a) Testimony by a law enforcement officer that the officer observed the person charged operating a motor vehicle while said operator or any passenger was in violation of the requirement of subsection (2) of this section; or

(b) Evidence that the driver removed the safety belts or knowingly drove a vehicle from which the safety belts had been removed.

(7) Evidence of failure to comply with the requirement of subsection (2) of this section shall be admissible to mitigate damages with respect to any person who was involved in a motor vehicle accident and who seeks in any subsequent litigation to recover damages for injuries resulting from the accident. Such mitigation shall be limited to awards for pain and suffering and shall not be used for limiting recovery of economic loss and medical payments.

(8) The office of transportation safety in the department of transportation shall continue its program for public information and education concerning the benefits of wearing safety belts and shall include within such program the requirements and penalty of this section.

Source: L. 94: Entire title amended with relocations, p. 2269, § 1, effective January 1, 1995. L. 95: (4) amended, p. 953, § 7, effective May 25. L. 99: IP(3) amended, p. 1382, § 8, effective July 1. L. 2002: IP(3) amended, p. 1034, § 75, effective June 1. L. 2003: (3)(c) amended, p. 1623, § 40, effective August 6. L. 2006: (4) amended, p. 439, § 3, effective July 1.

Editor's note: (1) This section was formerly numbered as 42-4-236 and the former section 42-4-237 was relocated to section 42-4-1411.

(2) Section 5 of chapter 127, Session Laws of Colorado 2006, provides that the act amending subsection (4) applies to infractions committed on or after July 1, 2006.

Cross references: For the legislative declaration contained in the 1999 act amending the introductory portion to subsection (3), see section 1 of chapter 334, Session Laws of Colorado 1999.

ANNOTATION

Law reviews. For article, "Colorado Mandatory Seatbelt Act Revives the Seatbelt Defense", see 16 Colo. Law. 1210 (1987). For article, "1988 Update on Colorado Tort Reform Legislation -- Part II", see 17 Colo. Law. 1949 (1988).

Annotator's note. Since § 42-4-237 is similar to § 42-4-236 as it existed prior to the 1994 amending of title 42 as enacted by SB 94-1, relevant cases construing that provision have been included in the annotations to this section.

The plain language of this section indicates that "safety belt system" refers to all of the safety belts that have been installed in a motor vehicle to restrain drivers and front seat passengers. The language of this section reflects that a motor vehicle may contain any number, type, or combination of belts within its "safety belt system". The term "safety belt system" does not mean the belts at a particular seat. Rather, a "safety belt system" is comprised of the many belts contained within a motor vehicle to restrain drivers and front seat passengers. *Carlson v. Ferris*, 85 P.3d 504 (Colo. 2003).

Because the language of subsection (2) does not include the term "system", the general assembly intended "safety belt" to refer to the belts that have been installed in a particular seat pursuant to federal motor vehicle safety standards. *Carlson v. Ferris*, 85 P.3d 504 (Colo. 2003).

Drivers and front seat passengers of automobiles that have been equipped with a lap and a shoulder belt pursuant to federal motor vehicle safety standards must wear both the lap and the shoulder belt to comply with subsection (2). *Carlson v. Ferris*, 85 P.3d 504 (Colo. 2003).

Driver is required to fasten all safety belts included in a motor vehicle's safety belt system to comply with subsection (2) in order to defeat a claim for failure to mitigate under subsection (7). *Carlson v. Ferris*, 58 P.3d 1055 (Colo. App. 2002), *aff'd*, 85 P.3d 504 (Colo. 2003).

A jury instruction regarding the affirmative defense of failure to wear a seatbelt should be given when it can be inferred with reasonable probability that pain and suffering will occur because of the plaintiff's failure to wear a seatbelt. *Anderson v. Watson*, 929 P.2d 6 (Colo. App. 1996) (supreme court in *Anderson v. Watson*, 953 P.2d 1284 (Colo. 1998), annotated below, disagreed with the reasoning of the court of appeals).

The court of appeals' "inference standard" imposes an additional requirement on the defendant that is not required under this section. *Anderson v. Watson*, 953 P.2d 1284 (Colo. 1998) (disagreeing with the reasoning of the court of appeals in *Anderson v. Watson* annotated above).

Statements regarding how the failure to use a seat belt caused certain injuries may be admitted. Wark v. McClellan, 68 P.3d 574 (Colo. App. 2003).

Evidence sufficient to allow seat belt defense under subsection (7) where husband testified that he was wearing a seat belt and investigating officer testified that the husband had reported that he was not wearing a seat belt at time of accident. Askew v. Gerace, 851 P.2d 199 (Colo. App. 1992) (supreme court in Anderson v. Watson, 953 P.2d 1284 (Colo. 1998), annotated below, disagreed with the reasoning of the court of appeals).

Lack of seat belt use is admissible evidence at trial but only to reduce an award of damages for pain and suffering. Wark v. McClellan, 68 P.3d 574 (Colo. App. 2003).

No medical testimony required to show plaintiff's failure to wear a seat belt contributed to plaintiff's pain and suffering. Askew v. Gerace, 851 P.2d 199 (Colo. App. 1992); Anderson v. Watson, 929 P.2d 6 (Colo. App. 1996) (supreme court in Anderson v. Watson, 953 P.2d 1284 (Colo. 1998), annotated below, disagreed with the reasoning of the court of appeals).

Defendant must prove a prima facie case of seat belt non-use before the appropriate instruction on that defense can go to the jury if the defendant chooses to raise that defense. Anderson v. Watson, 953 P.2d 1284 (Colo. 1998) (disagreeing with the reasoning of the court of appeals in Anderson v. Watson and Askew v. Gerace annotated above).

Failure to wear a seat belt automatically satisfies any obligation on the defendant's part to show a causal relationship to pain and suffering. Anderson v. Watson, 953 P.2d 1284 (Colo. 1998) (disagreeing with the reasoning of the court of appeals in Anderson v. Watson and Askew v. Gerace annotated above).

The seat belt defense applies only to pain and suffering and not to other noneconomic losses. The definition of noneconomic loss in § 13-21-102.5 applies to this section; therefore, pain and suffering is merely one type of noneconomic loss and does not include all types of noneconomic losses. Valdez v. Pringle, ___ P.3d ___ (Colo. App. 2005).

Failure of victim to employ a seatbelt not an intervening cause that would shield or partially shield the defendant from liability for a collision that resulted in a charge of vehicular homicide. People v. Lopez, 97 P.3d 277 (Colo. App. 2004).