

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 218

---

AN ACT to amend the Indiana Code concerning motor vehicles.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 9-19-10-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. ~~(a) Failure to comply with section 1, 2 3, or 4 of this chapter does not constitute fault under IC 34-51-2 and does not limit the liability of an insurer:~~

~~(b) Except as provided in subsection (c);~~ **(a) Evidence of: the**

**(1) failure to comply with section 1, 2 3, or 4 of this chapter may not be admitted in a civil action to mitigate reduce damages for injury to a person who is at least fifteen (15) years of age at the time of the accident; and**

**(2) ~~(c) Evidence of a~~ failure to comply with this chapter may be admitted in a civil action as to mitigation of damages in a product liability action involving a motor vehicle restraint or supplemental restraint system.**

**(b) The defendant in ~~such~~ an action described in subsection (a)(1) has the burden of proving:**

**(1) noncompliance with section 2 of this chapter; and**

**(2) that compliance with section 2 of this chapter would have reduced injuries; and**

**(3) the extent of the reduction.**

**(c) The defendant in an action described in subsection (a)(2) has the burden of proving:**



C  
O  
P  
Y

- (1) noncompliance with this chapter;
  - (2) that compliance with this chapter would have reduced injuries; and
  - (3) the extent of the reduction.
- (d) In order to meet the burden of proof described in subsection (b), the defendant shall introduce expert testimony to:
- (1) prove that compliance would have reduced injuries; and
  - (2) prove the extent of the reduction in damages.
- (e) A defendant may establish a plaintiff's noncompliance with section 2 of this chapter with:
- (1) evidence from:
    - (A) an eyewitness;
    - (B) an expert witness; or
  - (2) an admission from the plaintiff.
- (f) If a defendant asserts that a plaintiff failed to comply with section 2 of this chapter, the defendant must plead as an affirmative defense that the plaintiff failed to comply with section 2 of this chapter in a responsive pleading in the manner required by the Indiana Rules of Trial Procedure.
- (g) If a court admits evidence that a plaintiff failed to comply with section 2 of this chapter and evidence had been submitted to the court that a driver who is a defendant was intoxicated (as defined in IC 9-13-2-86) at the time the accident occurred, the court shall admit evidence of the driver's intoxication.
- (h) If a court admits evidence that a plaintiff failed to comply with section 2 of this chapter and evidence has been submitted to the court that a defendant caused or contributed to the accident in violation of an Indiana law, the court shall admit evidence of the defendant's violation of Indiana law.
- (i) Damages described in subsection (a)(1) may not be reduced more than four percent (4%) for failing to comply with section 2 of this chapter. This subsection does not apply to damages described in subsection (a)(2).
- (j) Neither the failure to comply with section 2 of this chapter nor a reduction of damages under this section for the failure to comply with section 2 of this chapter constitutes fault under IC 34-51-2.
- (k) If a court admits evidence of a plaintiff's failure to comply with section 2 of this chapter:
- (1) the court shall instruct the jury that the maximum amount that damages may be reduced is four percent (4%);
  - (2) the court shall require the jury to determine the

**C**  
**O**  
**P**  
**Y**



percentage that the plaintiff's damages are reduced separate from the determination of fault, if any, that the jury attributes to the plaintiff under IC 34-51-2; and  
**(3) the court shall instruct the jury to determine its verdict in accordance with IC 34-51-2-7 and IC 34-51-2-8.**

SECTION 2. IC 34-51-2-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.5. In an action to determine liability in which a court admits evidence of a plaintiff's failure to comply with IC 9-19-10-2, the court shall instruct the jury to determine its verdict in accordance with sections 7 and 8 of this chapter.**

SECTION 3. IC 34-51-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 11.** The court shall furnish to the jury forms of verdicts that require only the disclosure of:

- (1) the percentage of fault charged against each party and nonparty; ~~and~~
- (2) the amount of the verdict against each defendant; **and**
- (3) the percentage that a plaintiff's damages are reduced if evidence was submitted to a jury to prove that the plaintiff failed to comply with IC 9-19-10-2.**

If the evidence in the action is sufficient to support the charging of fault to a nonparty, the form of verdict also shall require a disclosure of the name of the nonparty and the percentage of fault charged to the nonparty.

SECTION 4. [EFFECTIVE JULY 1, 2005] **IC 9-19-10-7, as amended by this act, applies only to causes of action arising after June 30, 2005.**

**C  
O  
P  
Y**



---

President of the Senate

---

President Pro Tempore

---

Speaker of the House of Representatives

Approved: \_\_\_\_\_

---

Governor of the State of Indiana

**C**  
**O**  
**P**  
**Y**

