

State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

833N0448

HOUSE BILL NO. 1190

Introduced by: Representatives Willadsen, Faehn, Gilson, Glenski, Hills, Jerke, Krebs, Peters, Rausch, Rounds, Steele, Street, and Weems and Senators Gray, Abdallah, Albers, Greenfield, McNenny, Nesselhuf, Olson (Ed), and Smidt (Orville)

1 FOR AN ACT ENTITLED, An Act to allow the evidence of the failure to wear a safety belt to
2 mitigate damages under certain circumstances.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-38-4 be amended to read as follows:

5 32-38-4. Failure to comply with the provisions of this chapter does not constitute
6 contributory negligence, comparative negligence, or assumption of the risk. Failure to comply
7 with the provisions of this chapter may not be introduced as evidence in any criminal litigation
8 other than a prosecution under this chapter or in any civil litigation on the issue of injuries ~~or~~
9 ~~on the issue of mitigation of damages.~~ However, failure to comply with the provisions of this
10 chapter may be admitted to mitigate damages, but only under the following circumstances:

11 (1) Any party seeking to introduce evidence of the failure to comply with the provisions
12 of this chapter shall first introduce substantial evidence that the failure to comply
13 with the provisions of this chapter contributed to any injury claimed by the plaintiff;

14 (2) If the evidence supports such a finding, the trier of fact may find the plaintiff's failure



1 to comply with the provisions of this chapter contributed to the plaintiff's claimed
2 injury and may reduce the amount of the plaintiff's recovery by an amount not to
3 exceed five percent of the damages awarded after any reduction for comparative or
4 contributory negligence.