

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 457

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO SAFETY RESTRAINT EVIDENCE; AMENDING CHAPTER 16, TITLE 6, IDAHO
2 CODE, BY THE ADDITION OF A NEW SECTION 6-1608, IDAHO CODE, TO ESTAB-
3 LISH PROVISIONS RELATING TO EVIDENCE OF THE FAILURE TO WEAR A SAFETY
4 RESTRAINT; AND AMENDING SECTION 49-673, IDAHO CODE, TO REMOVE LAN-
5 GUAGE PROVIDING THAT THE FAILURE TO USE A SAFETY RESTRAINT SHALL NOT BE
6 CONSIDERED UNDER ANY CIRCUMSTANCES AS EVIDENCE OF CONTRIBUTORY OR COM-
7 PARATIVE NEGLIGENCE, NOR SHALL SUCH FAILURE BE ADMISSIBLE AS EVIDENCE
8 IN ANY CIVIL ACTION WITH REGARD TO NEGLIGENCE AND TO MAKE TECHNICAL COR-
9 RECTIONS.
10

11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. That Chapter 16, Title 6, Idaho Code, be, and the same is
13 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
14 ignated as Section 6-1608, Idaho Code, and to read as follows:

15 6-1608. LIMITATION ON EVIDENCE OF FAILURE TO WEAR A SAFETY RE-
16 STRAINT. (1) In any action where the defendant seeks to introduce evidence of
17 the failure of the plaintiff to wear a safety restraint as required by sec-
18 tion 49-673, Idaho Code, the defendant shall prove, by clear and convincing
19 evidence, that the plaintiff's failure to wear a safety restraint was a con-
20 tributing cause of the particular injury or damage sustained by the plain-
21 tiff. Such evidence may not be used to determine comparative fault for pur-
22 poses of section 6-801, Idaho Code, but only for apportionment of damages.

23 (2) In all civil actions in which the affirmative defense of failure to
24 wear a safety restraint is permitted, no pleading shall be filed contain-
25 ing such affirmative defense. However, a party may, pursuant to a pretrial
26 motion and after a hearing before the court, amend the pleadings to include
27 an affirmative defense that the failure to wear a safety restraint was a
28 contributing cause of the particular injury or damage sustained by the
29 plaintiff. The court shall allow the motion to amend the pleadings if, after
30 weighing the evidence presented, the court concludes that the moving party
31 has established at such hearing a reasonable likelihood of proving facts at
32 trial sufficient to support a finding of damages apportionment caused by
33 the failure to wear a safety restraint. Such an affirmative defense added
34 pursuant to this section shall not be barred by lapse of time under the ap-
35 plicable limitation on the time in which an action may be brought or claim
36 asserted, if the time prescribed or limited had not expired when the original
37 pleading was filed.

38 (3) Evidence of the failure to wear a safety restraint as required by
39 section 49-673, Idaho Code, shall not be admissible in the context of a claim
40 under a policy of uninsured motorist and underinsured motorist coverage for
41 automobile insurance.

1 (4) Evidence of the failure to wear a safety restraint as required by
 2 section 49-673, Idaho Code, shall not be admissible in an action for recov-
 3 ery of damages for and on behalf of a minor who is not old enough to qualify
 4 for driver's training; however, evidence of the failure to wear a safety re-
 5 straint as required by section 49-673, Idaho Code, may be offered in cases in
 6 accordance with subsections (1) and (2) of this section where the parent of
 7 the minor bringing an action for the wrongful death of the minor has failed to
 8 comply with section 49-673, Idaho Code.

9 SECTION 2. That Section 49-673, Idaho Code, be, and the same is hereby
 10 amended to read as follows:

11 49-673. SAFETY RESTRAINT USE. (1) Except as provided in section
 12 49-672, Idaho Code, and subsection (2) of this section, each occupant of a
 13 motor vehicle ~~which that~~ has a gross vehicle weight of not more than eight
 14 thousand (8,000) pounds, and ~~which that~~ was manufactured with safety re-
 15 straints in compliance with federal motor vehicle safety standard no. 208,
 16 shall have a safety restraint properly fastened about his body at all times
 17 when the vehicle is in motion.

18 (2) The provisions of this section shall not apply to:

19 (a) An occupant of a motor vehicle who possesses a written statement
 20 from a licensed physician that he is unable for medical reasons to wear a
 21 safety restraint;

22 (b) Occupants of motorcycles, implements of husbandry and emergency
 23 vehicles;

24 (c) Occupants of seats of a motor vehicle in which all safety restraints
 25 are then properly in use by other occupants of that vehicle; or

26 (d) Mail carriers.

27 (3) (a) A citation may be issued to:

28 (i) Any occupant of the motor vehicle aged eighteen (18) years
 29 or older who fails to wear a safety restraint as required in this
 30 section; and

31 (ii) The operator of the motor vehicle if the operator is aged
 32 eighteen (18) years or older and any occupant under eighteen (18)
 33 years of age who fails to wear a safety restraint as required in
 34 this section. For purposes of this paragraph (a) (ii), it shall
 35 be deemed a single violation regardless of the number of occupants
 36 not properly restrained.

37 (b) A person issued a citation pursuant to this subsection shall be sub-
 38 ject to a fine of ten dollars (\$10.00), with five dollars (\$5.00) of such
 39 fine to be apportioned to the catastrophic health care cost fund, as set
 40 forth in section 57-813, Idaho Code. A conviction under this subsec-
 41 tion shall not result in violation point counts as prescribed in section
 42 49-326, Idaho Code, nor shall such a conviction be deemed to be a moving
 43 traffic violation for the purpose of establishing rates of motor vehi-
 44 cle insurance charged by a casualty insurer.

45 (4) A citation may be issued to the operator of the motor vehicle if the
 46 operator is under eighteen (18) years of age and the operator or any other
 47 occupant who is under eighteen (18) years of age fails to wear a safety re-
 48 straint as required in this section. For purposes of this subsection, it
 49 shall be deemed a single violation regardless of the number of occupants not

1 properly restrained. A person issued a citation pursuant to this subsection
2 shall be subject to a fine of ten dollars (\$10.00), five dollars (\$5.00) of
3 such fine to be apportioned to the catastrophic health care cost fund as set
4 forth in section 57-813, Idaho Code, plus court costs. A conviction under
5 this subsection shall not result in violation point counts as prescribed in
6 section 49-326, Idaho Code. In addition, a conviction under this subsection
7 shall not be deemed to be a moving traffic violation for the purpose of estab-
8 lishing rates of motor vehicle insurance charged by a casualty insurer.

9 (5) Enforcement of this section by law enforcement officers may be ac-
10 complished only as a secondary action when the operator of the motor vehicle
11 has been detained for a suspected violation of another law.

12 (6) The department shall initiate and conduct an educational program,
13 to the extent sufficient private donations or federal funds for this spe-
14 cific purpose are available to the department, to encourage compliance with
15 the provisions of this section and to publicize the effectiveness of use of
16 safety restraints and other restraint devices in reducing risk of harm to oc-
17 cupants of motor vehicles.

18 (7) The department shall evaluate the effectiveness of the provisions
19 of this section and shall include a report of its findings in its annual eval-
20 uation report on the Idaho highway safety plan which it submits to the na-
21 tional highway traffic safety administration and federal highway adminis-
22 tration pursuant to 23 U.S.C. section 402.

23 ~~(8) The failure to use a safety restraint shall not be considered under~~
24 ~~any circumstances as evidence of contributory or comparative negligence,~~
25 ~~nor shall such failure be admissible as evidence in any civil action with~~
26 ~~regard to negligence.~~