

Moved by Davis

Seconded by Hagedorn

IN THE SENATE  
SENATE AMENDMENT TO H.B. NO. 457

AMENDMENT TO SECTION 1

1  
2 On page 1 of the printed bill, delete lines 15 through 41; and on page 2,  
3 delete lines 1 through 8, and insert:

4 "6-1608. LIMITATION ON EVIDENCE OF FAILURE TO WEAR A SAFETY RESTRAINT.  
5 (1) In any action where the respondent seeks to introduce evidence of the  
6 failure of the claimant to wear a safety restraint as required by section  
7 49-673, Idaho Code, the respondent shall prove, by clear and convincing  
8 evidence, that the claimant's failure to wear a safety restraint was a  
9 contributing cause of the particular injury or damage sustained by the  
10 claimant. Such evidence may not be used to determine comparative fault for  
11 purposes of section 6-801, Idaho Code, but only for apportionment of dam-  
12 ages.

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

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

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