



# Idaho Statutes

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## TITLE 6 ACTIONS IN PARTICULAR CASES CHAPTER 16

### PERIODIC PAYMENT OF JUDGMENTS – LIMITATION ON CERTAIN TORT DAMAGES AND LIABILITIES

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

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

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

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

History: