

COMPARATIVE FAULT SYSTEMS IN ALL 51 JURISDICTIONS

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Matthiesen, Wickert & Lehrer, S.C. has compiled a list of the various laws in every state dealing with whether the state is a *contributory negligence state* (bars recovery with only 1% of fault by the plaintiff) or a *comparative negligence state* (recovery by plaintiff is reduced or prohibited based on the percentage of fault attributed to the plaintiff), and whether the state is a *pure comparative* or *modified comparative state*. This list is useful in evaluating subrogation potential where there may be contributory negligence on the insured's part. Please bear in mind that there are many exceptions within each state with regard to whether the particular fault allocation scheme applied in a state is applicable to a particular cause of action. Some states limit the application of the scheme to negligence claims, and avoid applying it to product liability cases, while other states have effective dates which may come into play and/or have rules which may modify the application of the particular scheme referenced. This list should be used only as a guideline, and questions regarding specific fact situations should be directed to one of our subrogation lawyers.

Comparative fault systems fall into one of three basic types: **contributory**, **pure**, and **modified negligence**. The comparative fault standards for the 51 jurisdictions break down as follows:

Only five (5) states recognize the **pure contributory negligence** rule, which says that a damaged party cannot recover any damages if it is even 1 percent at fault.

JURISDICTION	RULE	AUTHORITY
Alabama	Pure Contributory Negligence	<i>Alabama Power Co. v. Schotz</i> , 215 So.2d 447 (Ala. 1968).
District of Columbia	Pure Contributory Negligence	<i>Wingfield v. People's Drug Store</i> , 379 A.2d 685 (D.C. 1994).
Maryland	Pure Contributory Negligence	<i>Board of County Comm'r of Garrett County v. Bell Atlantic</i> , 695 A.2d 171 (Md. 1997).
North Carolina	Pure Contributory Negligence	<i>Smith v. Fiber Controls Corp.</i> , 268 S.E.2d 504 (N.C. 1980); N.C.G.S.A. § 99B-4(3) (Product Liability).
Virginia	Pure Contributory Negligence	<i>Baskett v. Banks</i> , 45 S.E.2d 173 (Va. 1947).

Thirteen (13) states recognize the **pure comparative fault** rule, which allows a damaged party to recover even if it is 99 percent at fault, although the recovery is reduced by the damaged party's degree of fault.

JURISDICTION	RULE	AUTHORITY
Alaska	Pure Comparative Fault	Alaska Stat. §§ 09.17.060 & 09.17.080
Arizona	Pure Comparative Fault	A.R.S. § 12-2505
California	Pure Comparative Fault	<i>Liv v. Yellow Cab</i> , 119 Cal. Rptr. 858 (1975).
Florida	Pure Comparative Fault	F.S.A. § 768.81(2)

JURISDICTION	RULE	AUTHORITY
Kentucky	Pure Comparative Fault	K.R.S. § 411.182
Louisiana	Pure Comparative Fault	L.S.A.- C.C. Art. 2323
Mississippi	Pure Comparative Fault	M.C.A. § 11-7-15
Missouri	Pure Comparative Fault	<i>Gustafson v. Benda</i> , 661 S.W.2d 11 (Mo. 1983).
New Mexico	Pure Comparative Fault	<i>Scott v. Rizzo</i> , 634 P.2d 1234 (N.M. 1981).
New York	Pure Comparative Fault	N.Y. C.P.L.R. § 1411
Rhode Island	Pure Comparative Fault	R.I.G.L. § 9-20-4
South Dakota	Pure Comparative Fault	S.D.C.L. § 20-9-2 (complete bar of recovery for anything other than slight negligence).
Washington	Pure Comparative Fault	R.C.W.A. §§ 4.22.005-015

There are competing schools of thought in the 33 states that recognize the **modified comparative fault** rule.

Twelve (12) states follow the **50 percent bar** rule, meaning a damaged party cannot recover if it is 50 percent or more at fault, but if it is 49 percent or less at fault, it can recover, although its recovery is reduced by its degree of fault.

JURISDICTION	RULE	AUTHORITY
Arkansas	Modified Comparative Fault – 50 Percent Bar	A.C.A. § 16-64-122
Colorado	Modified Comparative Fault – 50 Percent Bar	C.R.S. § 13-21-111
Georgia	Modified Comparative Fault – 50 Percent Bar	O.C.G.A. § 51-11-7
Idaho	Modified Comparative Fault – 50 Percent Bar	Idaho Code § 6-801
Kansas	Modified Comparative Fault – 50 Percent Bar	K.S.A. § 60-258a(a)
Maine	Modified Comparative Fault – 50 Percent Bar	14 M.R.S.A. § 156
Nebraska	Modified Comparative Fault – 50 Percent Bar	Neb. Rev. Stat. § 25-21, 185.11
North Dakota	Modified Comparative Fault – 50 Percent Bar	N.D.C.C. § 32-03.2-02
Oklahoma	Modified Comparative Fault – 50 Percent Bar	Okla. Stat. Ann. Tit. 23, § 13

JURISDICTION	RULE	AUTHORITY
Tennessee	Modified Comparative Fault – 50 Percent Bar	<i>McIntyre v. Balentine</i> , 833 S.W.2d 52 (Tenn. 1992).
Utah	Modified Comparative Fault – 50 Percent Bar	U.C.A. §§ 78-27-37 & 78-27-38
West Virginia	Modified Comparative Fault – 50 Percent Bar	<i>Bradley v. Appalachian Power Co.</i> , 256 S.E.2d 879 (W. Va. 1979).

Twenty-one (21) states follow the **51 percent bar** rule, under which a damaged party cannot recover if it is 51 percent or more at fault, but can recover if it is 50 percent or less at fault, the recovery would be reduced by its degree of fault.

JURISDICTION	RULE	AUTHORITY
Connecticut	Modified Comparative Fault – 51 Percent Bar	C.G.S.A. § 52-572(h)
Delaware	Modified Comparative Fault – 51 Percent Bar	1 Del. C. § 8132
Hawaii	Modified Comparative Fault – 51 Percent Bar	Haw. Rev. Stat. § 663-31
Illinois	Modified Comparative Fault – 51 Percent Bar	735 I.L.C.S. § 5/2-1116
Indiana	Modified Comparative Fault – 51 Percent Bar	I.C. § 34-51-2-6
Iowa	Modified Comparative Fault – 51 Percent Bar	I.C.A. § 668.3(1)(b)
Massachusetts	Modified Comparative Fault – 51 Percent Bar	M.G.L.A. 231 § 85
Michigan	Modified Comparative Fault – 51 Percent Bar	M.C.L.A. § 600.2959 (at 51% fault, plaintiff's economic damages reduced and non-economic damages are barred).
Minnesota	Modified Comparative Fault – 51 Percent Bar	M.S.A. § 604.01(1)
Montana	Modified Comparative Fault – 51 Percent Bar	Mont. Stat. § 27-1-702
Nevada	Modified Comparative Fault – 51 Percent Bar	N.R.S. § 41-141
New Hampshire	Modified Comparative Fault – 51 Percent Bar	N.H. Rev. Stat. Ann. § 507:7(d)
New Jersey	Modified Comparative Fault – 51 Percent Bar	N.J.S.A. § 2A:15-5.1

JURISDICTION	RULE	AUTHORITY
Ohio	Modified Comparative Fault – 51 Percent Bar	Ohio Rev. Code Ann. § 2315.33
Oregon	Modified Comparative Fault – 51 Percent Bar	O.R.S. § 18.470
Pennsylvania	Modified Comparative Fault – 51 Percent Bar	42 P.S. § 7102
South Carolina	Modified Comparative Fault – 51 Percent Bar	<i>Nelson v. Concrete Supply</i> , 399 S.E.2d 783 (S.C. 1991).
Texas	Modified Comparative Fault – 51 Percent Bar	Tex. Civ. Prac. & Rem. Code Ann. §§ 33.001-33.017.
Vermont	Modified Comparative Fault – 51 Percent Bar	Vt. Stat. Ann. Tit. 12, § 1036
Wisconsin	Modified Comparative Fault – 51 Percent Bar	Wis. Stat. § 895.045(1)
Wyoming	Modified Comparative Fault – 51 Percent Bar	Wyo. Stat. § 1-1-109(b)

In a **contributory negligence** jurisdiction, if the jury finds Betty was the least bit negligent and contributed to the accident, then Betty would recover nothing. Therefore, even if Betty is only 5% at fault and John is 95% at fault, Betty recovers \$0.

In a **comparative negligence** jurisdiction, if a jury finds that Betty is 5% at fault and John is 95% at fault, Betty would still be able to recover, but her \$10,000 in damages would be reduced by her 5% of fault, so Betty would recover only \$9,500.

Comparative negligence differs among states. For example, if Betty is found to be 50% at fault, and John 50% at fault, some comparative negligence states would still allow Betty to recover \$5,000 (50% of her damages), while other states would prevent her from recovering at all because she is equally at fault with the other driver.

Still other states draw the line at 51%, following the principle that a plaintiff who is MORE negligent than a defendant should not be able to recover anything. For example, in Wisconsin, Betty would recover \$5,000 if she is 50% negligent, but if she is 51% negligent, she would recover nothing.

If you have any questions regarding contributory negligence or comparative fault systems, please contact Gary Wickert at gwickert@mwl-law.com.

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