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# CONTRIBUTORY NEGLIGENCE/COMPARATIVE FAULT LAWS IN ALL 5O STATES

Matthiesen, Wickert & Lehrer, S.C. has compiled a list of the various laws in every state dealing with whether the state is a *pure 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. Determining who is at fault in a tort action involving negligence, and who must pay what as a result, is at the heart of virtually every insurance claim and every subrogation action. Every state employs one of four basic systems for allocating fault and damages:

1. Pure Contributory Negligence Rule/Defense
2. Pure Comparative Fault System
3. Modified Comparative Fault System
4. Slight/Gross Negligence Comparative Fault System

"Contributory negligence" refers to the negligent conduct of the plaintiff. The comparative fault/negligence systems for the 51 U.S. jurisdictions break down as follows:

## PURE CONTRIBUTORY NEGLIGENCE

"Contributory negligence" is negligent conduct on the part of the plaintiff/injured party which, along with the negligence of the defendant, combines to cause the injury or damage. The doctrine of "pure contributory negligence", which bars recovery if a plaintiff is even slightly at fault in tort cases, originated in English common law and was adopted by U.S. courts in the 19th century. In states which follow the pure contributory negligence model, a damaged party cannot recover any damages if it is even 1% at fault. The pure contributory negligence defense has been criticized for being too harsh on the plaintiff, because even the slightest amount of contributory negligence by the plaintiff which

contributes to an accident bars all recovery no matter how egregiously negligent the defendant might be. Only four (4) states and the District of Columbia recognize the Pure Contributory Negligence Rule, although the District of Columbia applies a Modified Comparative Fault 51% Bar Rule for pedestrians and bicyclists as of 2025.

| JURISDICTION | RULE | AUTHORITY |
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| **Alabama** | Pure Contributory Negligence | If plaintiff is making claim based in negligence, entitlement to receive damages will be defeated by plaintiff's negligence. *John Cowley & Bros., Inc. v. Brown*, 569 So.2d 375 (Ala. 1990); *Ala. Power Co. v. Schotz*, 215 So.2d 447 (Ala. 1968). |
| **District of Columbia** | Pure Contributory Negligence | *Wingfield v. People's Drug Store*, 379 A.2d 685 (D.C. 1994). Note: As of 2016, a modified comparative fault 51% bar applies to pedestrians and bicyclists. Motor Vehicle Collision Recovery Act of 2016. D.C. Register Vol. 63, page 12,592, dated Oct 14, 2016. The Act, officially known as D.C. Act 21- 490, or "The Motor Vehicle Collision Recovery Act of 2016," passed the D.C. Council on October 4, 2016 by a unanimous vote of 13-0. The Act applies to all "non-motorized users" of the road, and in addition to pedestrians and cyclists, applies to skateboards, non-motorized scooters, Segways, tricycles, and "other similar non-powered transportation devices." |
| **Maryland** | Pure Contributory Negligence | If plaintiff contributes to his damages, he will be barred from recovery. *Board of County Comm'r of Garrett County v. Bell Atlantic*, 695 A.2d 171 (Md. 1997). |
| **North Carolina** | Pure Contributory Negligence | Plaintiff may not recover if his negligence proximately caused his injury. *Smith v. Fiber Controls Corp.*, 268 S.E.2d 504 (N.C. 1980); N.C.G.S.A. § 99B-4(3) (Product Liability). |
| **Virginia** | Pure Contributory Negligence | If plaintiff contributes to his damages, he will be barred from all recovery. *Baskett v. Banks*, 45 S.E.2d 173 (Va. 1947). |

## PURE COMPARATIVE FAULT

The term "comparative fault" refers to a system of apportioning damages between negligent parties based on their proportionate shares of fault. Under a comparative fault system, a plaintiff's negligence will not completely bar recovery like states that employ the harsh Pure Contributory Negligence Rule, but it will reduce the amount of damages the plaintiff can recover based on the plaintiff's percentage of fault. The Pure Comparative Fault Rule allows a damaged party to recover even if it is 99% at fault, although the recovery is reduced by the damaged party's degree of fault. The pure comparative fault system has been criticized for allowing a plaintiff who is primarily at fault to recover from a lesser-at-fault defendant some portion of its damages. **Twelve (12) states recognize the Pure Comparative Fault** Rule:

| JURISDICTION | RULE | AUTHORITY |
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| **Alaska** | Pure Comparative Fault | Plaintiff's share of the fault will offset his total damages. Alaska Stat. §§ 09.17.060 and 09.17.080. |

| JURISDICTION | RULE | AUTHORITY |
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| **Arizona** | Pure Comparative Fault | Plaintiff's awarded damages will be reduced by his share of the fault. A.R.S. § 12-2505. |
| **California** | Pure Comparative Fault | Plaintiff's negligence will offset defendant's liability. *Li v. Yellow Cab*, 119 Cal. Rptr. 858 (Cal. 1975); *Diaz v. Carcamo*, 253 P.3d 535 (Cal. 2011). |
| **Kentucky** | Pure Comparative Fault | Plaintiff's share of fault will reduce defendant's liability. K.R.S. § 411.182. |
| **Louisiana** | Pure Comparative Fault | Except for intentional torts, defendant's liability will be offset by plaintiff's percentage of liability. L.S.A. - C.C. Art. 2323. |
| **Mississippi** | Pure Comparative Fault | Plaintiff's right to damages may be reduced by his own liability, but he will not be barred from recovering. M.C.A. § 11-7-15. |
| **Missouri** | Pure Comparative Fault | If plaintiff is negligent, that will reduce the liability of the defendant. *Gustafson v. Benda*, 661 S.W.2d 11 (Mo. 1983). |
| **New Mexico** | Pure Comparative Fault | Plaintiff's negligence will reduce right to recovery, but it will not bar that right. *Scott v. Rizzo*, 634 P.2d 1234 (N.M. 1981). |
| **New York** | Pure Comparative Fault | Plaintiff's damages will be reduced by their own liability, but not barred completely. N.Y. C.P.L.R. § 1411. |
| **Rhode Island** | Pure Comparative Fault | Plaintiff's negligence may be considered in his right to recovery. R.I.G.L. § 9-20-4. |
| **Washington** | Pure Comparative Fault | Plaintiff's negligence will be allocated their own percentage portion, for which defendants will not be held responsible. R.C.W.A. §§ 4.22.005-015. |

## MODIFIED COMPARATIVE FAULT

Under Modified Comparative Fault System, each party is held responsible for damages in proportion to their own percentage of fault, unless the plaintiff's negligence reaches a certain designated percentage (*e.g.,* 50% or 51%). If the plaintiff's own negligence reaches this percentage bar, then the plaintiff cannot recover any damages. There are competing schools of thought in the 33 states that recognize the Modified Comparative Fault Rule. This system has been questioned because of the complications resulting from multiple at-fault parties and the confusion it causes for juries. **Ten (10) states follow the 50% Bar Rule**, meaning a damaged party cannot recover if it is 50% or more at fault, but if it is 49% or less at fault, it can recover, although its recovery is reduced by its degree of fault.

| JURISDICTION | RULE | AUTHORITY |
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| **Arkansas** | Modified Comparative Fault – 50% Bar | Plaintiff's recovery will be barred if he is found 50% or more at fault. A.C.A. § 16-64-122. |
| **Colorado** | Modified Comparative Fault - 50% Bar | Plaintiff's comparative negligence will offset defendant's liability, and if plaintiff's negligence is equal to or higher than the defendants combined, recovery is barred. C.R.S. § 13-21-111; *Kussman v. Denver*, 706 P.2d 776 (Colo. 1985); *B.G.'s, Inc. v. Gross*, 23 P.3d 691 (Colo. 2001). |
| **Georgia** | Modified Comparative Fault - 50% Bar | Total liability will be reduced by plaintiff's percentage of fault, as long as plaintiff is less than 50% at fault. O.C.G.A. §§ 51-11-7 and 51-12-33. |
| **Idaho** | Modified Comparative Fault - 50% Bar | Plaintiff may not recover if he is 50% or more at fault. Idaho Code § 6-801. |
| **Kansas** | Modified Comparative Fault - 50% Bar | Plaintiff's share of the fault will offset the defendant's liability. K.S.A. § 60-258a(a). |
| **Maine** | Modified Comparative Fault - 50% Bar | Damages attributed to defendants will be reduced by plaintiff's negligence. 14 M.R.S.A. § 156. |
| **Nebraska** | Modified Comparative Fault - 50% Bar | Plaintiff's negligence will proportionately diminish their recovery, and recovery will be barred if 50% or more liable. Neb. Rev. Stat. §§ 25-21 and 185.11. |
| **North Dakota** | Modified Comparative Fault - 50% Bar | If plaintiff is negligent, the degree of fault will reduce his recovery, until it equals the fault of others, then it will be barred. N.D.C.C. § 32-03.2-02. |
| **Tennessee** | Modified Comparative Fault - 50% Bar | Plaintiff's right to damages may be reduced by his own liability, but he will not be barred from recovering. *McIntyre v. Balentine*, 833 S.W.2d 52 (Tenn. 1992). |
| **Utah** | Modified Comparative Fault - 50% Bar | Plaintiff can only recover where the fault of the defendant, or group of defendants, exceeds the fault of the plaintiff. U.C.A. § 78B-5-818(2). |

**Twenty-three (23) states follow the 51% Bar Rule**, under which a damaged party cannot recover if it is 51% or more at fault but can recover if it is 50% or less at fault, the recovery would be reduced by its degree of fault.

| JURISDICTION | RULE | AUTHORITY |
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| **Connecticut** | Modified Comparative Fault – 51% Bar | If a particular defendant is uncollectable, their portion of damages may be reapportioned among the remaining defendants - in the same portion as their share of the liability. C.G.S.A. § 52-572(h). |

| JURISDICTION | RULE | AUTHORITY |
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| **Delaware** | Modified Comparative Fault – 51% Bar | If defendant's conduct was plain negligence, and plaintiff is more than 50% at fault, plaintiff cannot recover. 1 Del. C. § 8132; *Brittingham v. Layfield*, 962 A.2d 916 (Del. 2008). |
| **Florida** | Modified Comparative Fault – 51% Bar | In a negligence action, any party found to be greater than 50 percent at fault for his or her own harm may not recover any damages. Does not apply to an action arising out of medical negligence pursuant to chapter 766 (medical malpractice). Fla. Stat. Ann. § 768.81. Florida was previously a pure comparative fault state but the law was changed to modified comparative fault on 3/24/23. The change applies to all negligence lawsuits that are filed after the effective date of H.B. 837, which was March 24, 2023. Negligence lawsuits filed prior to that date should still be under the pure comparative negligence standard, but those filed after 3/24/23, will be subject to the new modified comparative negligence standard. Note that there is a Florida trial court decision (non-binding) has determined that § 768.81(6) is procedural in nature and allowed the defendant to amend its Answer and Affirmative Defenses to assert the new comparative fault standard. The Court relied on the 1973 Supreme Court decision in Hoffman v. Jones to determine the law was procedural in nature. In the order, the Court noted section 30 of HB 837 which states "except as otherwise expressly provided in this act, this act shall apply to causes of action filed after the effective date of this act" but held that it was procedural notwithstanding § 30. See https://www.linkedin.com/pulse/retroactive-application-fs-76881-hall-booth-smith-p-c-/. |
| **Hawaii** | Modified Comparative Fault – 51% Bar | As long as plaintiff's fault is not greater than combined defendants' fault, they can recover, minus the pro-rata share of their own fault. Haw. Rev. Stat. § 663-31. |
| **Illinois** | Modified Comparative Fault – 51% Bar | Damages will be reduced pro-rata by amount of plaintiff's negligence. 735 I.L.C.S. § 5/2-1116. |
| **Indiana** | Modified Comparative Fault – 51% Bar<br><br>Pure Contributory Negligence if Government Entity Involved—1% Bar | Plaintiff will be barred from recovery if he is more than 50% at fault - under 50% will reduce pro-rata damages. I.C. § 34-51-2-6.<br><br>Section 34-51-2-2 provides that the Comparative Fault Act does not apply "to tort claims against governmental entities or public employees." Pure contributory negligence applies to any tort claims against government entities or public employees, which means that if the plaintiff is 1% at fault or more, recovery is prohibited. I.C. § 34-51-2-2. |
| **Iowa** | Modified Comparative Fault – 51% Bar | Plaintiff's negligence will offset defendant's liability, but plaintiff cannot recover if he is more than 50% at fault. I.C.A. § 668.3(1)(b). |
| **Massachusetts** | Modified Comparative Fault – 51% Bar | Plaintiff cannot recover if more at fault than defendants; otherwise, plaintiff's negligence will reduce defendant's liability. M.G.L.A. 231 § 85. |

| JURISDICTION | RULE | AUTHORITY |
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| **Michigan** | Modified Comparative Fault – 51% Bar | Plaintiff's recovery may be reduced by percentage of loss attributable to him, and at 51% fault, plaintiff's economic damages are reduced and non-economic damages are barred. M.C.L.A. § 600.2959. |
| **Minnesota** | Modified Comparative Fault – 51% Bar | Defendant's liability will be reduced in proportion to plaintiff's fault, as long as plaintiff's fault is less than defendant's fault. If plaintiff is 50% at fault, and there are multiple defendants, each less than 50% liable, plaintiff is barred from recovery. M.S.A. § 604.01(1). |
| **Montana** | Modified Comparative Fault – 51% Bar | Plaintiff's negligence, if less than total defendant's portion of fault, will reduce his recovery. Mont. Stat. § 27-1-702. |
| **Nevada** | Modified Comparative Fault – 51% Bar | If plaintiff's negligence is less than combined negligence of the defendant's fault, he can only recover damages not attributable to his own fault. N.R.S. § 41-141. |
| **New Hampshire** | Modified Comparative Fault – 51% Bar | Plaintiff's recovery will be barred if his fault is greater than defendant's fault, and if not, his damages can still be reduced by his portion of negligence. N.H. Rev. Stat. Ann. § 507:7(d). |
| **New Jersey** | Modified Comparative Fault – 51% Bar | If plaintiff's negligence is not greater than that of the defendant, plaintiff can recover but will find his damages proportionately reduced. N.J.S.A. § 2A:15-5.1. |
| **Ohio** | Modified Comparative Fault – 51% Bar | If plaintiff's liability exceeds that of the defendant, he may be barred from recovery. Ohio Rev. Code Ann. § 2315.33. |
| **Oklahoma** | Modified Comparative Fault – 51% Bar | Plaintiff cannot recover if it is 51% or more at fault. If 50% or less at fault, it can recover, although its recovery is reduced by its degree of fault. If plaintiff is 10% at fault, plaintiff gets 90% recovery. Okla. Stat. Ann. Tit. 23 § 13. |
| **Oregon** | Modified Comparative Fault – 51% Bar | With his own negligence, plaintiff's recovery will not be barred, but it may diminish his right to damages. Or. Rev. Stat. Ann. § 31.600. |
| **Pennsylvania** | Modified Comparative Fault – 51% Bar | Plaintiff's negligence will diminish, but not bar, his recovery, unless he was more negligence than defendants. 42 P.S. § 7102. |
| **South Carolina** | Modified Comparative Fault – 51% Bar | Plaintiff's negligence cannot exceed that of the defendant(s). *Ross v. Paddy,* 340 S.C. 428, 532 S.E.2d 612 (Ct. App. 2000). |
| **Texas** | Modified Comparative Fault – 51% Bar | Plaintiff may find his damages reduced by his portion of fault. Tex. Civ. Prac. & Rem. Code Ann. §§ 33.001-33.017. |

| JURISDICTION | RULE | AUTHORITY |
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| **Vermont** | Modified Comparative Fault – 51% Bar | Plaintiff can only recover the amount of damages not attributable to his own negligence. Vt. Stat. Ann. Tit. 12, § 1036. |
| **West Virginia** | Modified Comparative Fault – 51% Bar | Any fault chargeable to the plaintiff shall not bar recovery by the plaintiff *unless the plaintiff's fault is greater than the combined fault of all other persons responsible for the total amount of damages, if any, to be awarded. If the plaintiff's fault is less than the combined fault of all other persons, the plaintiff's recovery shall be reduced in proportion to the plaintiff's degree of fault.* W. Va. Code § 55-7-13a to § 55-7-13d (effective 5/15/15).<br>Note that this is a new law effective May 25, 2015—the date of its enactment. W. Va. Code § 55-7-13d. For causes of action accruing before May 25, 2015, West Virginia's old joint and several liability system controls – the 50% bar rule. |
| **Wisconsin** | Modified Comparative Fault – 51% Bar | Damages will be reduced by plaintiff's fault, and barred completely where plaintiff is more negligent than defendant. Wis. Stat. § 895.045(1). |
| **Wyoming** | Modified Comparative Fault – 51% Bar | Plaintiff's own negligence will never bar recovery completely, but may limit their recovery in proportion to their liability. Wyo. Stat. § 1-1-109(b). |

## SLIGHT/GROSS NEGIGENCE COMPARATIVE FAULT

A less frequently used comparative fault system involves using a "slight/gross" negligence system. Under this system, the fault of the plaintiff and the defendant is only compared if the plaintiff's negligence is "slight" and the defendant's negligence is "gross." Otherwise, the plaintiff is barred from recovery. "Slight/gross" comparative fault has been viewed as a compromise between the traditional contributory negligence defense and the more common comparative fault alternatives. This system has been criticized due to the inherent difficulties in defining a precise standard for "slight" and "gross" negligence. The **Slight/Gross Negligence Comparative Fault Rule** is a "modified" pure comparative fault system and is currently used only in South Dakota.

| JURISDICTION | RULE | AUTHORITY |
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| **South Dakota** | Slight/Gross Negligence Comparative | Plaintiff barred from any recovery for anything other than slight negligence. S.D.C.L. § 20-9-2. |

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 nothing.

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 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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