

## Comparative/Contributory Negligence Nationwide

Certain exceptions may apply, and law is subject to change. Contact White and Williams LLP for additional information.

### ■ ALABAMA

Strict Contributory. To establish contributory negligence, the defendant bears the burden of proving that the plaintiff: 1) had knowledge of the dangerous condition; 2) had an appreciation of the danger under the surrounding circumstances; and 3) failed to exercise reasonable care, by placing himself in the way of danger. Norfolk Southern Ry. Co. v. Johnson, 75 So.3d 624 (Ala. 2011).

### ■ ALASKA

Pure Comparative. Alaska Stat. §§ 09.17.060; 09.17.080.

### ■ ARIZONA

Pure Comparative. Ariz. Rev. Stat. § 12-2505.

### ■ ARKANSAS

Modified Comparative – 49%. Ark. Code Ann. § 16-64-122.

### ■ CALIFORNIA

Pure Comparative. Diaz v. Carcamo, 253 P.3d 535 (Cal. 2011); Li v. Yellow Cab Co. of California, 532 P.2d 1226 (Cal. 1975).

### ■ COLORADO

Modified Comparative – 49%. Colo. Rev. Stat. § 13-21-111.

### ■ CONNECTICUT

Negligence: Modified Comparative – 50%. Conn. Gen. Stat. § 52-572h.  
Products Liability: Pure Comparative. Conn. Gen. Stat. § 52-572o.

### ■ DELAWARE

Modified Comparative – 50%. Del. Code Ann. tit. 10, § 8132.

### ■ DISTRICT OF COLUMBIA

Generally, Strict Contributory. Massengale v. Pitts, 737 A.2d 1029 (D.C. 1999); Wingfield v. People's Drug Store, Inc., 379 A.2d 685 (D.C. 1994). For pedestrians and bicyclists involved in collision with a motor vehicle: Modified Comparative – 50%. D.C. Code § 50-2204.52.

### ■ FLORIDA

Modified Comparative – 50%. Fla. Stat. § 768.81; but see Fla. Stat. § 768.81(6) (re: personal injury or wrongful death from medical negligence).

### ■ GEORGIA

Modified Comparative – 49%. Ga. Code § 51-12-33(g). However, if the plaintiff by ordinary care could have avoided the consequences of the defendant's negligence, he is not entitled to recover. Ga. Code § 51-11-7; Weston v. Dun Transportation & Stringer, Inc., 695 S.E.2d 279 (Ga. Ct. App. 2010).

### ■ HAWAII

Modified Comparative – 50%. Haw. Rev. Stat. § 663-31.

### ■ IDAHO

Modified Comparative – 49%. Idaho Code § 6-801.

### ■ ILLINOIS

Modified Comparative – 50%. 735 Ill. Comp. Stat. 5/2-1116.

### ■ INDIANA

Modified Comparative – 50%. Ind. Code § 34-51-2-6; see 34-51-2-5.

### ■ IOWA

Modified Comparative – 50%. Iowa Code § 668.3.

### ■ KANSAS

Modified Comparative – 49%. Kan. Stat. Ann. § 60-258a.

### ■ KENTUCKY

Pure Comparative. Ky. Rev. Stat. Ann. § 411.182.

### ■ LOUISIANA

Pure Comparative, except for intentional torts. La. Civ. Code Ann. art. 2323.

### ■ MAINE

Modified Comparative – 49%. Me. Rev. Stat. tit. 14, § 156.

### ■ MARYLAND

Strict Contributory. Coleman v. Soccer Ass'n of Columbia, 69 A.3d 1149 (Md. 2013). However, the doctrine of last clear chance permits a contributorily negligent plaintiff to recover damages from a negligent defendant if each of the following elements is satisfied: (i) the defendant is negligent; (ii) the plaintiff is contributorily negligent; and (iii) the plaintiff makes a showing of something new or sequential, which affords the defendant a fresh opportunity, of which he fails to avail himself, to avert the consequences of his original negligence. Wooldridge v. Price, 966 A.2d 955 (Md. App. 2009).

### ■ MASSACHUSETTS

Modified Comparative – 50%. Mass. Gen. Laws ch. 231, § 85.

### ■ MICHIGAN

Pure Comparative for economic damages. Modified Comparative – 50% for noneconomic damages. Mich. Comp. Laws § 600.2959.

### ■ MINNESOTA

Modified Comparative – 50%. Minn. Stat. § 604.01.

### ■ MISSISSIPPI

Pure Comparative. Miss. Code Ann. § 11-7-15.

### ■ MISSOURI

Pure Comparative. Children's Wish Found. Int'l v. Mayer Hoffman McCann, P.C., 331 S.W.3d 648 (Mo. 2011); Gustafson v. Benda, 661 S.W.2d 11 (Mo. 1983).

■ **MONTANA**

Modified Comparative – 50%. Mont. Code Ann. § 27-1-702.

■ **NEBRASKA**

Modified Comparative – 49%. Neb. Rev. Stat. § 25-21,185.09.

■ **NEVADA**

Modified Comparative – 50%. Nev. Rev. Stat. § 41.141.

■ **NEW HAMPSHIRE**

Modified Comparative – 50%. N.H. Rev. Stat. Ann. § 507:7-d.

■ **NEW JERSEY**

Modified Comparative – 50%. N.J. Stat. Ann. § 2A:15-5.1.

■ **NEW MEXICO**

Pure Comparative. Scott v. Rizzo, 634 P.2d 1234 (N.M. 1981).

■ **NEW YORK**

Pure Comparative. N.Y. C.P.L.R. § 1411.

■ **NORTH CAROLINA**

Strict Contributory. Sorrells v. M.Y.B. Hospitality Ventures of Asheville, 423 S.E. 2d 72 (N.C. 1992); Crawford v. Mintz, 673 S.E.2d 746 (N.C. Ct. App. 2009); N.C. Gen. Stat. § 99B-4 (products liability). Contributory negligence is not a bar in cases of gross negligence, or willful or wanton conduct. Yancey v. Lea, 550 S.E.2d 155 (N.C. 2001).

■ **NORTH DAKOTA**

Modified Comparative – 49%. N.D. Cent. Code § 32-03.2-02.

■ **OHIO**

Modified Comparative – 50%. Ohio Rev. Code Ann. § 2315.33.

■ **OKLAHOMA**

Modified Comparative – 50%. 23 Okla. Stat. §§ 13 – 14.

■ **OREGON**

Modified Comparative – 50%. Or. Rev. Stat. § 31.600.

■ **PENNSYLVANIA**

Modified Comparative – 50%. 42 Pa. Cons. Stat. § 7102.

■ **RHODE ISLAND**

Pure Comparative. R.I. Gen. Laws, § 9-20-4.

■ **SOUTH CAROLINA**

Modified Comparative – 50%. Berberich v. Jack, 709 S.E.2d 607 (S.C. 2011); Nelson v. Concrete Supply Co., 399 S.E.2d 783 (S.C. 1991).

■ **SOUTH DAKOTA**

Modified Comparative – Slight Negligence. S.D. Codified Laws § 20-9-2. What constitutes “slight” or “small” contributory negligence varies with the facts and circumstances in each case. Westover v. East River Elec. Power Co-op., Inc., 488 N.W.2d 892 (S.D. 1992).

■ **TENNESSEE**

Modified Comparative – 49%. Mann v. Alpha Tau Omega Fraternity, 380 S.W.3d 42 (Tenn. 2012); McIntyre v. Balentine, 833 S.W.2d 52 (Tenn. 1992).

■ **TEXAS**

Modified Comparative – 50%. Tex. Civ. Prac. & Rem. Code § 33.001.

■ **UTAH**

Modified Comparative – 49%. Utah Code Ann. § 78B-5-818.

■ **VERMONT**

Modified Comparative – 50%. 12 Vt. Stat. Ann. § 1036.

■ **VIRGINIA**

Strict Contributory. Moses v. Southwestern Virginia Transit Mgmt. Co., Inc., 643 S.E.2d 156 (Va. 2007).

■ **WASHINGTON**

Pure Comparative. Wash. Rev. Code § 4.22.005; see Wash. Rev. Code § 4.22.015 (defining “fault”); see also Wash. Rev. Code § 4.16.326 (discussing affirmative defenses and comparative fault in construction defect claims).

■ **WEST VIRGINIA**

Modified Comparative – 50%. W. Va. Code § 55-7-13c. Contributory negligence if injury was sustained during the commission of a felony. W. Va. Code § 55-7-13d(c)(1).

■ **WISCONSIN**

Modified Comparative – 50%. Wis. Stat. § 895.045.

■ **WYOMING**

Modified Comparative – 50%. Wyo. Stat. § 1-1-109.

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### **STRICT CONTRIBUTORY**

Plaintiff is barred from recovery if he/she is as little as 1% at fault.

### **MODIFIED COMPARATIVE – SLIGHT NEGLIGENCE**

Plaintiff can recover if plaintiff's negligence is slight in comparison with the negligence of the defendant. In such cases, plaintiff's recovery shall be reduced in proportion to plaintiff's negligence. If plaintiff's negligence is more than slight in comparison with the defendant's negligence, plaintiff is barred from recovery.

### **MODIFIED COMPARATIVE – 49%**

Plaintiff can recover if plaintiff's negligence is less than defendant's negligence. If plaintiff is less than 50% at fault, plaintiff's recovery will be diminished in proportion to plaintiff's negligence. If plaintiff is 50% or more at fault, plaintiff is barred from recovery.

### **MODIFIED COMPARATIVE – 50%**

Plaintiff can recover if plaintiff's negligence does not exceed defendant's negligence. If plaintiff is as much as 50% at fault, plaintiff's recovery will be diminished in proportion to the amount of negligence attributable to plaintiff. If plaintiff is more than 50% at fault, plaintiff is barred from recovery.

### **PURE COMPARATIVE**

Damages are diminished in proportion to amount of negligence attributable to plaintiff. Plaintiff can recover even if 99% at fault (e.g., if plaintiff is 62% at fault, plaintiff would recover 38% of damages).

### **Monday through Friday**

8:30 a.m. – 5:00 p.m.: (215) 864-6322

### **After Hours Contacts:**

*(If no response in 15 minutes, go to next number on list.)*

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