



(215) 864-6322

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**

Pure Comparative. Fla. Stat. § 768.81.

■ **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. Ct. Spec. 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”).

■ 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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This summary should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general, informational purposes only. Users are urged to consult with counsel on specific legal questions.

