

# Colorado Comparative Fault Law

Legal View

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Colorado was a “no-fault” car insurance state until 2003 when the law was changed and now requires fault to be determined before an insurance company will pay a claim. In some cases, there may be some degree of fault attributed to the person who suffered damages or injuries, which is known as “contributory negligence.” There are three main ways courts in the United States look at contributory negligence: comparative negligence, comparative fault, and pure contributory negligence. Colorado law uses a comparative negligence system where the injured party may still recover some of his or her damages even if partially at fault. A Colorado law (C.R.S. § 13-21-111) provides that: “Contributory negligence shall not bar recovery in any action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence *was not as great as the negligence* of the person against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person for whose injury, damage, or death recovery is made.”

At one time, 12 states (including Colorado) followed the 50% “bar rule,” another 21 states required 51% comparative negligence to bar recovery. Other states (including California) follow a pure comparative fault rule allowing any percentage of recovery based on an allocation of negligence and a few states (including the District of Columbia) follow a pure contributory negligence rule that bars recovery if *any* fault is found on the part of the person bringing the claim.

## Origin of Contributory Negligence

Historically, contributory negligence was a common law defense to negligence actions. The policy was based in English common law and provided a harsh rule that if the injured person was at fault to any degree, there would be no recovery - hence the term “pure” contributory negligence. As noted above, most states have moved away from this harsh doctrine and developed forgiving systems of modified comparative fault. Colorado rejects such harsh application of contributory negligence and instead provides that the fact finder (a jury or judge) can assess the *comparative fault* of the injured party. Therefore, if a jury finds that a claimant was negligent and that negligence contributed 40 percent to the injury and the other driver was 60 percent at fault, the claimant would recover 60 percent of their damages. For example, if the damages totaled \$100,000, then the other driver would only be liable for \$60,000 in damages. Of course, if the claimant is found to be 50 percent or more negligent, then they will be barred from any recovery. This can be a harsh result after a lengthy, expensive trial.

## How Is Comparative Fault Established?

Comparative fault questions arise in many negligence cases and is the often the reason many cases do not settle before going to trial. In defending a case of negligence, an attorney (or insurance claims adjuster) will evaluate how the collision occurred and what the parties were doing at the time it occurred. Excited utterances made by the parties immediately following a crash will be admissible in court and may contain admissions of fault. Witness statements obviously will be important if they note the injured person was distracted, on the phone, or was

intoxicated. Often times, contributory acts are discovered during a party's deposition when questioned carefully about what they were doing before and during the collision. In the case of motorcycle collisions, the rider is usually not able to present his or her side of the story as they may be unconscious or immediately transported to the hospital. When this occurs, the other driver may blame the motorcyclist for going too fast or driving erratically even though they received a citation. To get to the bottom of allegations of contributory fault, certain electronic devices may be useful for evaluation, such as intersection (HALO) cameras, cell phone records or data recovered from the vehicles' "black box" that may have recorded speed, acceleration and braking information. The claimant's attorney may need to hire a forensic expert such as a professional engineer, to collect and analyze all the data who can be prepared to present expert testimony at trial. In such a case, data must be collected and preserved quickly before evidence is destroyed or lost. Important information such as 911 transmissions or intersection camera footage may only be available for 30 days or less, so in order to have the best possible case, it is essential to take action sooner rather than later and avoid being blamed for causing your own injuries.

Do you have a legal question? Send your inquiry to [Jeff@klfpc.com](mailto:Jeff@klfpc.com). Appointments are available in both Black Hawk and Denver Offices.

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