

Understanding Ohio's Comparative Negligence Law



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In 1980, Ohio became the 35th state to enact a comparative negligence law. For the purpose of this law, “negligence” is defined as the failure to exercise the degree of care required of a reasonable and prudent person in any given circumstance resulting in injury or damage to another.

Comparative negligence allows for a person to recover damages as reduced by the person’s own percentage of negligence. In Ohio, if a party is more than 50 percent at fault, recovery is not allowed. The law applies most often to automobile accidents, but comparative negligence may also apply to accidents involving a home or business.

In Ohio prior to 1980, if a party was guilty of negligence to any degree, recovery was not allowed.

What is comparative negligence?

To understand comparative negligence, it helps to look at the previous Ohio law, known as “contributory negligence.” Under the old law, if you were negligent in an automobile accident and were injured, you could not recover your loss. This was true even when your negligence was minor in comparison to the other driver. For example, if you were seriously injured and the other driver was 80 percent negligent, you would not be compensated for medical costs, auto repairs, etc., since you were 20 percent at fault.

Comparative negligence provides for you and the other driver to share the cost of damages from an accident in proportion to your share of negligence. You can recover your damages, minus the percent caused by your own negligence if it’s judged to be 50 percent or less. If you’re more than 50 percent negligent, you may not recover any losses from the other driver.

Going back to the example of your being only 20 percent negligent, you would recover 80 percent of your damage under comparative negligence. The other driver would receive no compensation because that person’s negligence exceeded 50 percent.

What types of accidents are affected by negligence law?

The law most often applies to automobile accidents. Insurance companies must investigate each accident on its own merits to determine the degree of negligence of all parties.

Because it applies to all accidents caused by negligence, including those that happen in the home or on commercial property, the comparative negligence law is also applied in such common situations as injuries to guests, property damage and related liability.

Continued on page 2 ➔

If I'm in an accident, who decides my share of negligence?

The insurance company investigates the factual circumstances of the accident and many factors must be taken into account. A police report is an important source of information, but does not supply all the information necessary to determine the negligence of each person. Additional considerations, including what a reasonable and prudent person would have done in the situation, are as important as violation of motor vehicle laws.

What if I disagree concerning my percent of negligence?

When you disagree about your share of negligence, the case may have to go to court, where the final decision is made by a judge or jury. Filing the claim with your own insurance company under your own auto coverage is an alternative to legal action. This will speed up repairs on your vehicle, and your insurer can take over negotiations with the other person.

Which procedures should I follow if I'm in an accident?

Most insurance companies provide their policyholders with specific information on the steps to take after an accident. Report all accidents to your insurance company. State law says that persons involved in traffic accidents causing \$400 or more in property damage or any bodily injury must file a report with the Ohio Bureau of Motor Vehicles.

Can a driver whose car is parked be considered negligent?

Yes. An illegally parked car can trigger an accident. For example, the car may block out a stop sign, causing two vehicles to collide at an intersection. You don't have to be moving to be considered negligent. A driver may cause a collision by stopping in an intersection. Refresh your memory on Ohio's driving laws, particularly if a number of years have passed since you took your driving test. Go beyond the legal requirements and watch out for the other driver. Defensive driving and the use of seat belts saves lives.

How does the doctrine of joint and several liability affect me if I'm involved in a lawsuit as a result of an accident?

Joint and several liability doctrine states that when there is more than one defendant involved in a case, the plaintiff can collect all or most of the damages from any one of the defendants. Several defendants can be drawn into a lawsuit, and the one with the most insurance could pay the entire amount.

Questions or concerns?

The Ohio Department of Insurance regulates agents and companies that are licensed to sell insurance in our state. The Department's Consumer Services representatives can answer your insurance questions and investigate your complaints about an insurance company or agent. **Call 1-800-686-1526.**