

CHAPTER 668

LIABILITY IN TORT — COMPARATIVE FAULT

Referred to in [§321J.4B](#), [625.21](#)

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668.1 Fault defined.

1. As used in [this chapter](#), “*fault*” means one or more acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages.

2. The legal requirements of cause in fact and proximate cause apply both to fault as the basis for liability and to contributory fault.

[84 Acts, ch 1293, §1](#)

See also [§619.17](#)

668.2 Party defined.

As used in [this chapter](#), unless otherwise required, “*party*” means any of the following:

1. A claimant.
2. A person named as defendant.
3. A person who has been released pursuant to [section 668.7](#).
4. A third-party defendant.

[84 Acts, ch 1293, §2](#)

Referred to in [§516A.5](#), [668.5](#)

668.3 Comparative fault — effect — payment method.

1. *a.* Contributory fault shall not bar recovery in an action by a claimant to recover damages for fault resulting in death or in injury to person or property unless the claimant bears a greater percentage of fault than the combined percentage of fault attributed to the defendants, third-party defendants and persons who have been released pursuant to [section 668.7](#), but any damages allowed shall be diminished in proportion to the amount of fault attributable to the claimant.

b. Contributory fault shall not bar recovery in an action by a claimant to recover damages for loss of services, companionship, society, or consortium, unless the fault attributable to the person whose injury or death provided the basis for the damages is greater in percentage than the combined percentage of fault attributable to the defendants, third-party defendants, and persons who have been released pursuant to [section 668.7](#), but any damages allowed shall be diminished in proportion to the amount of fault attributable to the person whose injury or death provided the basis for the damages.

2. In the trial of a claim involving the fault of more than one party to the claim, including third-party defendants and persons who have been released pursuant to [section 668.7](#),

the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating all of the following:

a. The amount of damages each claimant will be entitled to recover if contributory fault is disregarded.

b. The percentage of the total fault allocated to each claimant, defendant, third-party defendant, person who has been released from liability under [section 668.7](#), and injured or deceased person whose injury or death provides a basis for a claim to recover damages for loss of consortium, services, companionship, or society. For this purpose the court may determine that two or more persons are to be treated as a single party.

3. In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party and the extent of the causal relation between the conduct and the damages claimed.

4. The court shall determine the amount of damages payable to each claimant by each other party, if any, in accordance with the findings of the court or jury.

5. If the claim is tried to a jury, the court shall give instructions and permit evidence and argument with respect to the effects of the answers to be returned to the interrogatories submitted under [this section](#).

6. In an action brought under [this chapter](#) and tried to a jury, the court shall not discharge the jury until the court has determined that the verdict or verdicts are consistent with the total damages and percentages of fault, and if inconsistencies exist the court shall do all of the following:

a. Inform the jury of the inconsistencies.

b. Order the jury to resume deliberations to correct the inconsistencies.

c. Instruct the jury that it is at liberty to change any portion or portions of the verdicts to correct the inconsistencies.

7. When a final judgment or award is entered, any party may petition the court for a determination of the appropriate payment method of such judgment or award. If so petitioned the court may order that the payment method for all or part of the judgment or award be by structured, periodic, or other nonlump-sum payments. However, the court shall not order a structured, periodic, or other nonlump-sum payment method if it finds that any of the following are true:

a. The payment method would be inequitable.

b. The payment method provides insufficient guarantees of future collectibility of the judgment or award.

c. Payments made under the payment method could be subject to other claims, past or future, against the defendant or the defendant's insurer.

8. In an action brought pursuant to [this chapter](#) the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings on each specific item of requested or awarded damages indicating that portion of the judgment or decree awarded for past damages and that portion of the judgment or decree awarded for future damages. All awards of future damages shall be calculated according to the method set forth in [section 624.18](#).

[84 Acts, ch 1293, §3; 86 Acts, ch 1211, §39; 87 Acts, ch 157, §5, 6; 97 Acts, ch 197, §10–12, 16](#)
Referred to in [§321.445, 657.1, 668.5, 668.6, 668.7, 668.13](#)

668.4 Joint and several liability.

In actions brought under [this chapter](#), the rule of joint and several liability shall not apply to defendants who are found to bear less than fifty percent of the total fault assigned to all parties. However, a defendant found to bear fifty percent or more of fault shall only be jointly and severally liable for economic damages and not for any noneconomic damage awards.

[84 Acts, ch 1293, §4; 97 Acts, ch 197, §13, 16](#)

668.5 Right of contribution.

1. A right of contribution exists between or among two or more persons who are liable upon the same indivisible claim for the same injury, death, or harm, whether or not judgment has been recovered against all or any of them. It may be enforced either in the original action

or by a separate action brought for that purpose. The basis for contribution is each person's equitable share of the obligations, including the share of fault of a claimant, as determined in accordance with [section 668.3](#).

2. Contribution is available to a person who enters into a settlement with the claimant only if the liability of the person against whom contribution is sought has been extinguished and only to the extent that the amount paid in settlement was reasonable.

3. Contractual or statutory rights of persons not enumerated in [section 668.2](#) for subrogation for losses recovered in proceedings pursuant to [this chapter](#) shall not exceed that portion of the judgment or verdict specifically related to such losses, as shown by the itemization of the judgment or verdict returned under [section 668.3, subsection 8](#), and according to the findings made pursuant to [section 668.14, subsection 3](#), and such contractual or statutory subrogated persons shall be responsible for a pro rata share of the legal and administrative expenses incurred in obtaining the judgment or verdict.

4. Subrogation payment restrictions imposed pursuant to [subsection 3](#) apply to settlement recoveries, but only to the extent that the settlement was reasonable.

[84 Acts, ch 1293, §5; 87 Acts, ch 157, §7](#)

Referred to in [§455B.472B](#)

668.6 Enforcement of contribution.

1. If the percentages of fault of each of the parties to a claim for contribution have been established previously by the court as provided in [section 668.3](#), a party paying more than the party's percentage share of damages may recover judgment for contribution upon motion to the court or in a separate action.

2. If the percentages of fault of each of the parties to a claim for contribution have not been established by the court, contribution may be enforced in a separate action, whether or not a judgment has been rendered against either the person seeking contribution or the person from whom contribution is sought.

3. If a judgment has been rendered, an action for contribution must be commenced within one year after the judgment becomes final. If a judgment has not been rendered, a claim for contribution is enforceable only upon satisfaction of one of the following sets of conditions:

a. The person bringing the action for contribution must have discharged the liability of the person from whom contribution is sought by payment made within the period of the statute of limitations applicable to the claimant's right of action and must have commenced the action for contribution within one year after the date of that payment.

b. The person seeking contribution must have agreed while the action of the claimant was pending to discharge the liability of the person from whom contribution is sought and within one year after the date of the agreement must have discharged that liability and commenced the action for contribution.

[84 Acts, ch 1293, §6](#)

668.7 Effect of release.

A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. However, the claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation, as determined in [section 668.3, subsection 4](#).

[84 Acts, ch 1293, §7](#)

Referred to in [§668.2, 668.3](#)

668.8 Tolling of statute.

The filing of a petition under [this chapter](#) tolls the statute of limitations for the commencement of an action against all parties who may be assessed any percentage of fault under [this chapter](#).

[84 Acts, ch 1293, §8](#)

Referred to in [§516A.5](#)

668.9 Insurance practice.

It shall be an unfair trade practice, as defined in [chapter 507B](#), if an insurer assigns a percentage of fault to a claimant, for the purpose of reducing a settlement, when there exists no reasonable evidence upon which the assigned percentage of fault could be based. The prohibitions and sanctions of [chapter 507B](#) shall apply to violations of [this section](#).

[84 Acts, ch 1293, §9](#)

668.10 Governmental exemptions.

1. In any action brought pursuant to [this chapter](#), the state or a municipality shall not be assigned a percentage of fault for any of the following:

a. The failure to place, erect, or install a stop sign, traffic control device, or other regulatory sign as defined in the uniform manual for traffic control devices adopted pursuant to [section 321.252](#). However, once a regulatory device has been placed, created, or installed, the state or municipality may be assigned a percentage of fault for its failure to maintain the device.

b. The failure to remove natural or unnatural accumulations of snow or ice, or to place sand, salt, or other abrasive material on a highway, road, or street if the state or municipality establishes that it has complied with its policy or level of service for snow and ice removal or placing sand, salt, or other abrasive material on its highways, roads, or streets.

2. In any action brought pursuant to [this chapter](#), the state shall not be assigned a percentage of fault for contribution unless the party claiming contribution has given the state notice of the claim pursuant to [section 669.13](#).

[84 Acts, ch 1293, §10; 2007 Acts, ch 110, §3](#)

668.11 Disclosure of expert witnesses in liability cases involving licensed professionals.

1. A party in a professional liability case brought against a licensed professional pursuant to [this chapter](#) who intends to call an expert witness of their own selection, shall certify to the court and all other parties the expert's name, qualifications and the purpose for calling the expert within the following time period:

a. The plaintiff within one hundred eighty days of the defendant's answer unless the court for good cause not ex parte extends the time of disclosure.

b. The defendant within ninety days of plaintiff's certification.

2. If a party fails to disclose an expert pursuant to [subsection 1](#) or does not make the expert available for discovery, the expert shall be prohibited from testifying in the action unless leave for the expert's testimony is given by the court for good cause shown.

3. [This section](#) does not apply to court appointed experts or to rebuttal experts called with the approval of the court.

[86 Acts, ch 1211, §40](#)

Referred to in [§147.140](#)

668.12 Liability for products — defenses.

1. In any action brought pursuant to [this chapter](#) against an assembler, designer, supplier of specifications, distributor, manufacturer, or seller for damages arising from an alleged defect in the design, testing, manufacturing, formulation, packaging, warning, or labeling of a product, a percentage of fault shall not be assigned to such persons if they plead and prove that the product conformed to the state of the art in existence at the time the product was designed, tested, manufactured, formulated, packaged, provided with a warning, or labeled.

2. Nothing contained in [subsection 1](#) shall diminish the duty of an assembler, designer, supplier of specifications, distributor, manufacturer, or seller to warn concerning subsequently acquired knowledge of a defect or dangerous condition that would render the product unreasonably dangerous for its foreseeable use or diminish the liability for failure to so warn.

3. An assembler, designer, supplier of specifications, distributor, manufacturer, or seller shall not be subject to liability for failure to warn regarding risks and risk-avoidance measures that should be obvious to, or generally known by, foreseeable product users. When reasonable

minds may differ as to whether the risk or risk-avoidance measure was obvious or generally known, the issues shall be decided by the trier of fact.

4. In any action brought pursuant to [this chapter](#) against an assembler, designer, supplier of specifications, distributor, manufacturer, or seller for damages arising from an alleged defect in packaging, warning, or labeling of a product, a product bearing or accompanied by a reasonable and visible warning or instruction that is reasonably safe for use if the warning or instruction is followed shall not be deemed defective or unreasonably dangerous on the basis of failure to warn or instruct. When reasonable minds may differ as to whether the warning or instruction is reasonable and visible, the issues shall be decided by the trier of fact.

[86 Acts, ch 1211, §41](#); [2004 Acts, ch 1050, §1](#)

Referred to in [§683.1](#)

668.12A No liability for negligent hiring in actions involving commercial motor vehicles.

1. In any civil action involving the operation of a commercial motor vehicle requiring a commercial driver's license, there shall not be civil liability for damages for an employer's negligent hiring of an employee if all of the following apply:

a. The employer complies with [subsection 2](#).

b. The employee's actions that caused the claimant damage are within the course and scope of the employee's employment.

2. On motion of an employer who is a defendant in a civil action involving the operation of a commercial motor vehicle requiring a commercial driver's license, a trial court shall dismiss from the civil action any claim of the employer's direct negligence in hiring the employee driver, if the employer stipulates that at the time of the event that caused the damages that are the subject of the civil action all of the following are true:

a. The person whose negligence is alleged to have caused the damages was the employer's employee.

b. The person whose negligence is alleged to have caused the damages was acting within the course and scope of employment with the employer.

3. If an employer makes the stipulations in [subsection 2](#) with respect to an employee, and the employee's negligence is found to have caused or contributed to causing the damages, the employer's liability for negligent hiring shall be adjudged solely on the basis of respondeat superior.

4. As used in [this section](#):

a. "Commercial motor vehicle" means as defined in [section 321.1, subsection 11](#), paragraph "f", subparagraphs (1), (2), and (4), and also includes a glider kit vehicle as defined in [section 321.1, subsection 28A](#); a road tractor as defined in [section 321.1, subsection 64A](#); a towing or recovery vehicle as defined in [section 321.1, subsection 83A](#); and a truck tractor as defined in [section 321.1, subsection 88](#).

b. "Operation" means actual physical control of a commercial motor vehicle upon a highway as defined in [section 321.1](#).

[2023 Acts, ch 84, §1](#)

668.13 Interest on judgments.

Interest shall be allowed on all money due on judgments and decrees on actions brought pursuant to [this chapter](#), subject to the following:

1. Interest, except interest awarded for future damages, shall accrue from the date of the commencement of the action.

2. If the interest rate is fixed by a contract on which the judgment or decree is rendered, the interest allowed shall be at the rate expressed in the contract, not exceeding the maximum rate permitted under [section 535.2](#).

3. Interest shall be calculated as of the date of judgment at a rate equal to the one-year treasury constant maturity published by the federal reserve in the H15 report settled immediately prior to the date of the judgment plus two percent. The state court administrator shall distribute notice monthly of that rate and any changes to that rate to all district courts.

4. Interest awarded for future damages shall not begin to accrue until the date of the entry of the judgment.

5. Interest shall be computed daily to the date of the payment, except as may otherwise be ordered by the court pursuant to a structured judgment under [section 668.3, subsection 7](#).

6. Structured, periodic, or other nonlump-sum payments ordered pursuant to [section 668.3, subsection 7](#), shall reflect interest in accordance with annuity principles.

[87 Acts, ch 157, §8; 97 Acts, ch 197, §14, 16; 2001 Acts, ch 87, §9, 10; 2003 Acts, ch 151, §58](#)
Referred to in [§202C.3, 535.3, 551A.8, 602.1209](#)

668.14 Evidence of previous payment or future right of payment.

1. In an action brought pursuant to [this chapter](#) seeking damages for personal injury, the court shall permit evidence and argument as to the previous payment or future right of payment of actual economic losses incurred or to be incurred as a result of the personal injury for necessary medical care, rehabilitation services, and custodial care except to the extent that the previous payment or future right of payment is pursuant to a state or federal program or from assets of the claimant or the members of the claimant's immediate family.

2. If evidence and argument regarding previous payments or future rights of payment is permitted pursuant to [subsection 1](#), the court shall also permit evidence and argument as to the costs to the claimant of procuring the previous payments or future rights of payment and as to any existing rights of indemnification or subrogation relating to the previous payments or future rights of payment.

3. If evidence or argument is permitted pursuant to [subsection 1 or 2](#), the court shall, unless otherwise agreed to by all parties, instruct the jury to answer special interrogatories or, if there is no jury, shall make findings indicating the effect of such evidence or argument on the verdict.

4. [This section](#) does not apply to actions governed by [section 147.136](#).

[87 Acts, ch 157, §9](#)

Referred to in [§668.5](#)

668.14A Recoverable damages for medical expenses.

1. In an action brought to recover damages for personal injury, the damages that may be recovered by a claimant for the reasonable and necessary cost or value of medical care rendered shall not exceed the sum of the amounts actually paid by or on behalf of the injured person to the health care providers who rendered treatment and any amounts actually necessary to satisfy the medical care charges that have been incurred but not yet satisfied.

2. [This section](#) does not apply to actions governed by [section 147.136](#).

[2020 Acts, ch 1070, §2](#)

668.15 Damages resulting from sexual abuse — evidence.

1. In a civil action alleging conduct which constitutes sexual abuse, as defined in [section 709.1](#), sexual assault, or sexual harassment, a party seeking discovery of information concerning the plaintiff's sexual conduct with persons other than the person who committed the alleged act of sexual abuse, as defined in [section 709.1](#), sexual assault, or sexual harassment, must establish specific facts showing good cause for that discovery, and that the information sought is relevant to the subject matter of the action and reasonably calculated to lead to the discovery of admissible evidence.

2. In an action against a person accused of sexual abuse, as defined in [section 709.1](#), sexual assault, or sexual harassment, by an alleged victim of the sexual abuse, sexual assault, or sexual harassment, for damages arising from an injury resulting from the alleged conduct, evidence concerning the past sexual behavior of the alleged victim is not admissible.

[89 Acts, ch 138, §1; 90 Acts, ch 1241, §1](#)

668.15A Noneconomic damages — commercial motor vehicle owners or operators.

1. As used in [this section](#):

a. "Commercial motor vehicle" means as defined in [section 321.1, subsection 11](#), paragraph "f", subparagraphs (1), (2), and (4), and also includes a glider kit vehicle as defined in [section 321.1, subsection 28A](#); a road tractor as defined in [section 321.1, subsection 64A](#); a towing or recovery vehicle as defined in [section 321.1, subsection 83A](#); and a truck tractor as defined in [section 321.1, subsection 88](#).

b. “Inflation” means the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for all urban consumers for the midwest region, all items, or its successor index.

c. “Noneconomic damages” means damages arising from pain, suffering, inconvenience, physical impairment, mental anguish, emotional pain and suffering, loss of chance, loss of consortium, or any other nonpecuniary damages.

d. “Operation” means actual physical control of a commercial motor vehicle upon a highway as defined in [section 321.1](#).

2. The total amount recoverable per plaintiff against the owner or operator of a commercial motor vehicle for noneconomic damages for personal injury or death in a civil action involving the operation of a commercial motor vehicle requiring a commercial driver’s license, whether in tort or otherwise, is five million dollars. This limitation on damages applies regardless of the number of derivative claims or theories of liability in the civil action, subject to [subsection 3](#).

3. Upon motion by any plaintiff in a civil action against the owner or operator of a commercial motor vehicle requiring a commercial driver’s license and prior to entry of judgment by the trial court, the trial court shall not apply the limitation on damages set forth in [subsection 2](#) if the trial court finds, by a preponderance of the evidence, that the negligent act leading to the plaintiff’s claimed harm involved any of the following:

a. Operating a commercial motor vehicle with an alcohol concentration, as defined in [section 321J.1](#), of .04 or more.

b. Operating a commercial motor vehicle under the influence of a drug.

c. A refusal to submit to chemical testing required under [chapter 321J](#).

d. A felony involving the use of a motor vehicle.

e. The use of a commercial motor vehicle involving the manufacturing, distributing, or dispensing of a controlled substance as defined in [section 124.101](#); not including the lawful transport for hire of a controlled substance.

f. Knowingly operating a commercial motor vehicle without a proper license, or while the person’s commercial driver’s license is revoked, suspended, or canceled, or while the person is otherwise disqualified from operating a commercial motor vehicle.

g. Operating a commercial motor vehicle without the possession of a commercial driver’s license or commercial learner’s permit valid for the vehicle operated.

h. Operating a commercial motor vehicle involving an act or practice of human trafficking as defined in [section 710A.1](#).

i. Reckless driving, as described in [section 321.277](#).

j. Use of an electronic communication device while driving, as described in [section 321.276](#).

k. Speeding fifteen miles per hour or more over the legal speed limit.

l. Violating any state or local law or ordinance restricting or prohibiting the use of a mobile telephone, computer, tablet, or other device that is not a part of the vehicle while operating the vehicle.

4. a. The limitation on damages set forth in [subsection 2](#) does not apply to any case involving operation of a vehicle that does not require a commercial driver’s license.

b. The limitation on damages set forth in [subsection 2](#) does not apply to a civil action involving the operation of a commercial motor vehicle serving as a common carrier of passengers, or a commercial motor vehicle that is primarily engaged in transporting passengers, or a commercial motor vehicle as defined in [section 321.1](#), [subsection 11](#), paragraph “f”, subparagraph (3); commercial vehicle as defined in [section 321.1](#), [subsection 12](#), paragraph “c”; school bus as defined in [section 321.1](#), [subsection 69](#); or other passenger transport.

5. The limitation on damages set forth in [subsection 2](#) shall be adjusted for inflation by the secretary of state on January 1, 2028, and on January 1 of each even-numbered year thereafter. The secretary of state shall certify and publish the adjusted limitation on damages within fourteen days after the appropriate information is available.

2023 Acts, ch 84, §2

668.16 Applicability of this chapter.

[This chapter](#) does not apply to [Article 3 or 4 of chapter 554.94 Acts, ch 1167, §119, 122](#)