

Governor's Tort Proposals Present Legitimate Solutions

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In her State of the State address on Jan. 13, 2026, and subsequent budget proposals, New York State Governor Kathy Hochul advanced a series of legislative reforms aimed at shielding consumers from steadily rising automobile insurance premiums.

Considered individually and collectively, these proposals are both practical and overdue. If enacted, they would meaningfully protect motorists and help stabilize, and potentially reduce, the cost of automobile insurance.

Taken together, these procedural and substantive measures not only reshape aspects of automobile tort practice, but more importantly, recalibrate several long-standing features of New York civil law that many have viewed as inequitable and out of balance. The hope is that these changes will go a long way toward lowering the cost of motor vehicle insurance premiums and make it more difficult for fraudsters to profit.

Comparative Fault

New York is currently a "pure comparative fault" jurisdiction. Under this framework, a plaintiff may recover damages reduced by their percentage of fault, even if they were 99% responsible for the accident.

In practice, this allows highly culpable plaintiffs to recover, diminishes deterrence for irresponsible conduct, and incentivizes the pursuit of marginal



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claims. The result is predictable: increased litigation, increased payouts, and ultimately increased insurance premiums for consumers.

New York is Outside the Mainstream. Forty-six states follow some form of comparative negligence. Of those, only a small minority retain a "pure" system akin to New York's. The vast majority apply "modified comparative negligence," either barring recovery if the plaintiff is 50% at fault or if the plaintiff's fault exceeds 51%. New York stands among a shrinking group that permits recovery regardless of how responsible the claimant may be.

Two of the other states that also have a pure comparative fault approach, California and

Florida, have, together with New York, some of the highest automobile insurance premiums in the country.

Litigation and Cost Consequences. Beyond questions of fairness, the pure comparative fault model has substantial real-world ramifications on automobile litigation. It provides plaintiffs with disproportionate leverage in settlement negotiations, knowing recovery remains available even where the claimant was primarily responsible for the accident. Further, while plaintiffs often have contingency fee arrangements with their counsel, defendants in civil litigation (and by extension their insurance carrier) are responsible for the significant legal fees and costs in defending the claim, regardless of the outcome of the suit. That dynamic logically increases the volume of claims filed and pursued in New York courts, and, logically, increased insurance costs.

The Proposed Reform to CPLR Article 14-A. The proposal would amend CPLR § 1411 to provide:

In an action to recover damages for personal injury subject to article fifty-one of the insurance law, the culpable conduct attributable to the claimant shall bar recovery if the culpable conduct attributable to the claimant is greater than the culpable conduct of the person against whom recovery is sought or is greater than the combined culpable conduct of the persons against whom recovery is sought.

The language is straightforward: a party more at fault than the defendant, or more at fault than all defendants combined, would be barred from recovery. In effect, New York would move to a modified comparative negligence system consistent with neighboring states such as New Jersey, Pennsylvania, and Vermont, as well as larger jurisdictions including Illinois, Michigan, Ohio, and Texas.

Related to concept of comparative fault, the proposal also places a cap of \$100,000 on noneconomic damages for a plaintiff if that plaintiff was (i) driving an uninsured vehicle, (ii)

driving while impaired or (iii) using a vehicle in the commission of a crime. This change adopts real consequences for those who break the law.

Balanced, Modern Approach. This reform reflects a commonsense principle: civil litigation should not reward those primarily responsible for causing their own injuries. At the same time, it preserves the foundational concept of proportionate fault, namely that each party should bear responsibility for their share of damages.

By discouraging the pursuit of marginal negligence claims, the proposal would likely reduce court congestion, moderate insurer payouts, and help stabilize automobile insurance premiums. It is the marginal negligence claims that are most likely to be vigorously defended, thus increasing litigation costs borne by the defendants, higher premiums, and increased use of court resources. In short, shifting to a modified comparative negligence framework modernizes New York law while restoring balance, logic and fairness to the system.

Joint and Several Liability

The framework governing joint and several liability is set forth in Article 16 of the Civil Practice Law and Rules. By common law, all defendants found liable were jointly and severally responsible for the full amount of a plaintiff's damages. Article 16 modified that rule.

Under CPLR § 1601(1), when multiple tortfeasors are found liable, a defendant whose share of fault is less than fifty percent "of the total liability assigned to all persons liable" is not jointly liable for noneconomic damages beyond that defendant's equitable share. In such circumstances, liability for non-economic loss is limited to the proportionate culpability attributed to that defendant relative to "each person causing or contributing to the total liability for noneconomic loss."

Notably, Article 16 does not limit joint and several liability for economic damages. Thus, even where Article 16 applies, all tortfeasors

remain jointly and severally liable for the entirety of a plaintiff's economic losses.

The Automobile Exception. When the Legislature enacted Article 16, it expressly excluded motor vehicle cases from these limitations. As a result, an automobile defendant found even one percent at fault may be held jointly and severally liable for 100% of both economic and noneconomic damages. A driver deemed minimally culpable can therefore be compelled to satisfy the entirety of a judgment, even where the overwhelming fault rests elsewhere.

The policy rationale for this exception was rooted in concern that injured parties should not face uncompensated losses due to insufficient insurance coverage carried by more culpable tortfeasors. In effect, the Legislature chose to prioritize assured compensation, placing the financial burden on defendants, and, by extension, their insurers, rather than risk under-recovery by plaintiffs.

The governor's proposal seeks to repeal the Automobile Exception to Article 16's limit on joint and several liability. Thus, under the proposal, defendants would still remain joint and severally liable for a plaintiff's *economic* damages, but, going forward, they would only be liable for their proportionate share of plaintiff's *noneconomic* damages if their percentage of fault is less than 50%.

Practical Consequences. When a jury determines that one defendant is 10% responsible for an accident and another 90%, the natural expectation is that the 10% defendant will pay 10% of the verdict. Under New York's current automobile joint and several liability framework, however, that minimally culpable defendant may be compelled to satisfy nearly the entire judgment if the primarily responsible party lacks sufficient insurance or assets to satisfy the judgment.

Fairness suggests that a jury's allocation of fault should carry real meaning. Yet jurors are never told that, in motor vehicle cases, their carefully calibrated findings may be effectively

overridden by statutory rules that shift the full financial burden to the "deep pocket" defendant. Nor is recovery limited to available insurance proceeds; personal and corporate assets remain exposed.

The continued application of New York's joint and several liability rules in automobile litigation, particularly as to noneconomic damages, has significant practical consequences. Because noneconomic damages are inherently subjective and often substantial, the rule incentivizes plaintiffs to pursue claims against minimally responsible defendants who possess deeper insurance coverage. Plaintiffs may pursue claims against marginally responsible drivers not because of their fault, but because of their coverage limits, seeking to secure a minimal finding of liability that unlocks access to a substantially larger recovery than the jury's percentage allocation would otherwise support.

The exposure is not theoretical. A defendant with marginal fault may face responsibility for the full measure of a plaintiff's damages, creating settlement pressure disproportionate to actual culpability. The predictable result is expanded litigation, increased insurer payouts, and upward pressure on insurance premiums, particularly those affecting commercial vehicle operators and individuals who responsibly maintain higher policy limits.

Revisiting the automobile exception to Article 16 would restore proportionality to fault allocation while preserving fair compensation. It would align financial responsibility more closely with actual culpability and reduce the strategic incentives that currently distort automobile litigation in New York.

It must be noted that this modification would not change the law that all parties remain joint and severally liable for an injured person's *economic damages*. It would only affect any "pain and suffering" award.

If the stated objective of reform is to reduce insurance costs for New Yorkers, then the

automobile exception to Article 16 warrants serious scrutiny. A system that, as a practical matter, pressures insurers with higher policy limits to pay far beyond their insured's proportionate share, regardless of relative fault, inevitably drives settlement values upward and contributes to escalating premiums. Restoring proportionality between fault and financial responsibility would align outcomes more closely with both fairness and economic reality.

Removing the 90/180 Category of 'Serious Injury'

The governor's proposal removes one of the statutory definitions of what types of injuries can qualify as a "serious injury" under Article 51 of the Insurance. A Plaintiff in most automobile personal injury lawsuits must prove that they suffered a "serious injury" in order to recover noneconomic—i.e., "pain and suffering"—damages.

The governor's proposal would eliminate one of those nine categories, commonly known as the "90/180" category, from the "serious injury threshold."

A "90/180" injury is currently defined as:

A medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute their usual and customary daily activities for not less than ninety of the one hundred eighty days following the accident.

Although the language is lengthy, the practical application is often narrower than it appears. In many cases, the issue is whether a medical provider removes a claimant from work for long the arbitrary 90-day period.

Concerns with 90/180. The 90/180 category does not reliably measure the true severity of an injury because whether someone is taken out of work does not necessarily reflect the objective degree of impairment. Moreover, concerns arise where:

- *The professional certifying disability is not truly "medical" in a clinical sense, or*

- *The provider has financial incentives tied to treatment and first-party No-Fault (PIP) reimbursement.*

Unlike categories such as fracture, dismemberment, or objectively quantified limitations, the 90/180 category turns on inherently subjective inquiries:

- *What constitutes a claimant's "usual and customary" activities?*
- *What does "substantially all" actually mean?*
- *How much restriction is enough?*

Because these questions are intensely fact-specific with subjective interpretation, summary judgment is often difficult to obtain. As a result, cases that might otherwise be dismissed frequently proceed to trial or settlement. Similarly, individuals with identical injuries could have different outcomes under the 90/180 category simply because they went to a medical provider who may be more liberal in their approach to placing restrictions on them.

Litigation and Cost Implications. The 90/180 category is most commonly invoked in non-surgical soft-tissue cases where:

- *Diagnostic imaging may be inconclusive,*
- *Objective findings are limited, and*
- *Disability claims are largely based on subjective complaints.*

Those three scenarios are exactly the types of cases that the serious injury threshold was meant to preclude. Instead of relying on these subjective events, the focus of the serious injury threshold should be on plaintiffs establishing, *through objective evidence*, that they actually suffered significant injuries.

From the consumer perspective, 90/180 erodes the intended gatekeeping function of the serious injury threshold. When the threshold becomes easier to satisfy and harder to dismiss, litigation volume increases, defense costs rise, and marginal claims are more likely to be pursued—all of which ultimately factor into the cost of automobile insurance.

Procedure Related to Serious Injury

Removing the 90/180 category is not the only proposal by the Governor that touches New York's "serious injury threshold." The proposal also seeks to codify the procedure related to establishing liability in automobile lawsuits subject to Article 51 of the Insurance Law. This proposal seeks to establish that (i) liability for noneconomic loss consists of negligence *and* serious injury and (ii) that plaintiffs must prove negligence prior to proving serious injury.

This is a commonsense provision that will eliminate a split in procedure amongst the appellate departments of New York State. Currently, half of New York treats "liability" as consisting of negligence plus serious injury while the other half treats serious injury as a component of damages, independent of negligence.

This is not merely academic. Under the CPLR, interest begins to accrue once a party is found "liable." If serious injury is considered part of liability, interest does not begin until both negligence and threshold injury are established.

As a result, the timing of interest accrual—and therefore the financial exposure—currently varies depending on where the case is venued within the state. Codifying a uniform rule simply makes sense.

The proposal promotes procedural consistency statewide; greater predictability in interest accrual and litigation sequencing should translate into more rational valuation of cases. Additionally,

by placing a higher significance on a plaintiff needing to establish a "serious injury," hopefully Article 51's gatekeeping purpose can better be effectuated. All of this, in theory, should work to lower overall claim costs—with corresponding implications for insurance premiums.

Conclusion

In sum, the combination of rising insurance premiums and the focus on the widespread accident-related fraud occurring downstate has led to the Governor proposing the above-described reforms to New York's current litigation rules concerning automobile-based personal injury claims.

These proposals rightfully seek to modernize New York and focus on tort law doing what it is meant to do—requiring entities to pay their fair share of compensation to individuals hurt by the negligent acts of other. Not a single one of these changes will negatively impact plaintiffs who have genuine, real, legitimate injury claims. Instead, they all further clear goals associated with logic, fairness, and deterring frivolous suits.

All of these changes should reduce litigation costs, and, as a consequence, help New Yorkers by working to stem the upward trend of automobile insurance premiums.

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