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50 State Legal Matrices for 2024

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50 State Legal Matrix – Anti-Indemnity Statutes for 2024

The following matrix provides insight into state anti-indemnity statutes. Forty-five (45) states have enacted anti-indemnity statutes that limit or prohibit enforcing indemnification agreements in construction settings. Anti-indemnity legislation is intended to prevent the party with superior bargaining power from taking advantage of the party with inferior power. Also, some states with anti-indemnity legislation protect only the government by limiting the application of these rules to public projects.

STATE	CONTRACTS	STATUTES & CASE LAW	INDEMNITY		
			Sole Negligence of Indemnitee	Indemnitee's Concurrent Negligence	Indemnitor's Negligence (Sole & Concurrent)
Alabama	Not Applicable	No statute. Indemnity provisions are generally held valid. Indemnification for an indemnitee's own negligence must be clearly and unequivocally stated. *Craig Constr. Co., Inc. v. Hendrix,* 568 So.2d 752 (Ala. 1990). There is a limit to Alabama's acceptance of broad indemnity agreements. "Agreements that purport to indemnify another for the other's intentional conduct are void as a matter of public policy." *Price-Williams Associates, Inc. v. Nelson,* 631 So. 2d 1016, 1019 (Ala. 1994)	Yes	Yes	Yes
Alaska	Construction & Design	Alaska Statute § 45.45.900	No	Yes	Yes
Arizona	Construction & Design	Ariz. Rev. Stat. §§ 34-226; 41-2586 (public construction) and 32-1159; 32-1159.01 (private construction)	No	Private Contracts Only	Yes
Arkansas	Construction & Design	A.C.A. § 4-56-104; *Arkansas Power & Light Co. v. Home Ins. Co.*, 602 F.Supp. 740, 746 (E.D. Ark. 1985). A.C.A. § 22-9-214 (public construction)	No	Yes	Yes
California	Residential Construction Contracts post Jan. 1, 2009	Cal. Civ. Code § 2782(a);(d)	No	No	Yes
California	Non-residential Construction Contracts	Cal. Civ. Code § § 2782(b); (c) & 2782.05 (Contracts entered into on or after January 1, 2013 will no longer be allowed to contain indemnification for the indemnitee's own active negligence)	No	Yes but only for passive fault for contracts entered into before Jan 1, 2013	Yes

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STATE	CONTRACTS	STATUTES & CASE LAW	INDEMNITY		
			Sole Negligence of Indemnitee	Indemnitee's Concurrent Negligence	Indemnitor's Negligence (Sole & Concurrent)
Colorado	Construction	C.R.S. § 13-21-111.5. (Applicable to construction agreements entered into on or after July 1, 2007). For construction contracts entered into before July 1, 2007, indemnification is allowed for the indemnitee's own negligence if clearly and unequivocally stated. *Williams v. White Mountain Constr. Co.* 749 P.2d 423, 426 (Colo. 1998)	No (except for contracts entered into before July 1, 2007)	No (except for contracts entered into before July 1, 2007)	Yes
Colorado	Construction & Design with Public Entities	C.R.S. § 13-50.5-102	No	No	Yes
Connecticut	Construction	Conn. General Statute § 52-572k (Applicable to contracts entered into on or after October 14, 1977)	No	No	Yes
Delaware	Construction & Design	Del. Code Ann. Tit. 6 § 2704	No	No	Yes
District of Columbia	Construction	No statute. Case law provides that indemnity provisions should not be construed to permit an indemnitee to recover for its own negligence unless the court is convinced that such an interpretation reflects the intention of the parties (*Parker, et al. v. John Moriarty & Assoc.,*189 F.Supp.3d 38 (D.D.C. 2016); *W.M. Schlosser Co., Inc. v. Md. Drywall Co., Inc.*, 673 A.2d 647, 653 (D.C. 1996))	Not Applicable	Not Applicable	Yes
Florida	Construction	Fla. Stat. § 725.06 (Applicable to contracts entered into on or after July 1, 2001)	No, unless there is a monetary limit	No, unless there is a monetary limit	Yes
Florida	Design	Fla. Stat. § 725.08 (Applicable to contracts entered into on or after May 25, 2000)	No	No	Yes
Georgia	Construction	Ga. Codes Ann. § 13-8-2(b)	No	Yes	Yes
Georgia	Design	Ga. Codes Ann. § 13-8-2(c)	No	No	Yes
Hawaii	Construction	Hawaii Rev. Stat. § 431:10-222; *Haole v. State*, 111 Haw. 144 (Haw. 2006). (Applicable to contracts entered into on or after the statute's 1977 effective (specific date is not stated)	No	Yes	Yes
Idaho	Construction	Idaho Code Section § 29-114	No	Yes	Yes

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			Sole Negligence of Indemnitee	Indemnitee's Concurrent Negligence	Indemnitor's Negligence (Sole & Concurrent)
Illinois	Construction	740 ILCS 35/1	No	No	Yes
Indiana	Construction & Design (except Highway)	Ind. Code § 26-2-5-1 (construction & design) & § 26-2-5-2 (exception for construction and design contracts for projects that constitute dangerous instrumentalities and cannot be insured); *GKN Co. v. Starnes Trucking, Inc.* 798 N.E. 2d 548, 552 (Ind. Ct. App. 2003)	No	Yes	Yes
Iowa	Construction & Design	Iowa Code 537A.5(2); (3)	No	No	Yes
Kansas	Construction & Design	Kan. Stat. Ann. § 16-121 (Applicable to contracts entered into on or after January 1, 2009)	No	No	Yes
Kentucky	Construction & Design entered on or after June 20 2005	Ky. Rev. Stat. § 371.180 (Applicable to contracts entered into on or after June 20, 2005)	No	No	Yes
Louisiana	Design & Construction	La. Rev. Stat. § 9:2780.1. Effective January 1, 2011. (prohibits indemnification for indemnitee's negligence over which indemnitor has no control)	No	No	Yes
Maine	Not Applicable	No statute. Agreements that indemnify a party for its own negligence are "looked upon with disfavor by the courts" and are only upheld where unequivocal language reflects an intention to provide such broad indemnification (*Emery v. Waterhouse Co.*, 467 A.2d 986, 993 (Me. 1983); *International Paper Co. v. A & A Brochu*, 899 F.Supp. 715, 719 (D.Me. 1995)	Not Applicable	Not Applicable	Yes
Maryland	Construction & Design	Md. Code Ann., Cts & Jud. Proc. § 5-401	No	Yes	Yes
Massachusetts	Construction	Mass. Gen. Laws Ch. 149 § 29C; *Rush v. Norfolk Elec. Co., Inc*. 70 Mass. App. Ct. 373 (2007) (indemnity for entire loss, even though subcontractor only partially responsible, is permissible)	No	Yes	Yes
Michigan	Construction	Mich. Comp. Laws § 691.991; *Peeples v. Detroit*, 297 N.W.2d 839 (Mich. App. 1980)	No	Yes	Yes

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			Sole Negligence of Indemnitee	Indemnitee's Concurrent Negligence	Indemnitor's Negligence (Sole & Concurrent)
Minnesota	Construction	Minn. Stat. Ann. §§ 337.01- 337.05 (exceptions stated for an owner, a responsible party, or a governmental entity that agrees to indemnify a contractor directly or through another contractor with respect to strict liability under environmental laws. §337.02(2))	No	No	Yes
Mississippi	Construction	Miss. Code Ann. § 31-5-41	No	No	Yes
Missouri	Construction	Mo. Rev. Stat. § 434.100 (exceptions stated for contracts between state agencies and private persons and governmental entities) (Applicable to contracts entered into after August 28, 1999)	No	No	Yes
Montana	Construction	Montana Code Ann. § 28-2-2111 (private construction and design) (enacted 2003) & Montana Code Ann. § 18-2-124 (public construction) (enacted 2007)	No	No	Yes
Nebraska	Construction	Nebraska Rev. Stat. § 25-21, 187(1)	No	No	Yes
Nevada	Residential Contracts post February 24, 2015	Nev. Rev. Stat. Ann. § 40.693 (contracts requiring subcontractor to indemnify the general contractor/developer for the contractor's negligence (whether active, passive, or intentional) are unenforceable)	Limited	Limited	Yes
New Hampshire	Construction & Design	N.H. Rev. Stat. Ann. § 338-A:1 (design) N.H. Rev. Stat. Ann. § 338-A:2 (construction)	No	No	Yes
New Jersey	Construction & Design	N.J. Stat. Ann. § 2A:40A-1 (construction) & § 2A:40A-2 (design)	No	Yes	Yes
New Mexico	Construction & Design	N.M. Stat. Ann. § 56-7-1 (construction & design contracts) & § 56-7-2 (oil, gas, and water wells or mineral mines)	No	No	Yes
New York	Construction & Design	N.Y. Gen Oblig. Law § 5-322.1 (construction); N.Y. Gen. Oblig. Law § 5-324 (design professional seeking indemnity for defects in maps, plans, designs and specifications) (For construction contracts, applicable to contracts entered into after August 20, 1975)	No	No	Yes
North Carolina	Construction & Design	N.C. Gen. Stat. Ann. 22B-1	No	No	Yes

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			Sole Negligence of Indemnitee	Indemnitee's Concurrent Negligence	Indemnitor's Negligence (Sole & Concurrent)
North Dakota	Not Applicable	No specific anti-indemnity statute. N.D. Cent. Code § 9-08-02. (No indemnification for intentional conduct); N.D. Cent. Code § 9-08-02.1 (owner cannot be indemnified by contractor for design errors); N.D. Cent. Code § 22-02-02 (no indemnity for a future act if known to be unlawful); N.D. Cent. Code § 22-02-03 (indemnity for a past act valid even if know to be wrongful, unless felony)	Not Applicable	Not Applicable	Yes
Ohio	Construction & Design	Ohio Rev. Code Ann. § 2305.31	No	No	Yes
Oklahoma	Construction	Okla. Stat. Ann. Tit. 15, § 221	No	No	Yes
Oregon	Construction & Design	Or. Rev. Stat. § 30.140; *Walsh Construction Co. v. Mutual Enumclaw*, 338 Or. 1 (2005) (statute applies to additional insured claims)	No	No	Yes
Pennsylvania	Design Contracts - Design Professional is Indemnitee	Pa. Stat. Ann. Tit 68 § 491	No	In limited circumstances – see statute	Yes
Rhode Island	Construction & Design	R.I. Gen. Law § 6-34-1	No	No	Yes
South Carolina	Construction & Design	S.C. Code Ann. § 32-2-10	No	Yes	Yes
South Dakota	Construction & Design	S.D. Codified Laws § 56-3-16 (design) & § 56-3-18 (construction)	No	Yes	Yes
Tennessee	Construction	Tenn. Code Ann. § 62-6-123	No	Yes	Yes
Texas	Construction & Design	Tex. Ins. Code § 151.001 et. seq., § 151.102 in particular. (Excluding residential construction and public works § 151.105(10); (Exception for indemnity for claim for bodily injury or death to indemnitor's employee or its agents or subcontractors § 151.103.); Civ. Prac. & Rem. Code Ann. § 130.002. (Construction contracts requiring an architect or engineer to indemnify for owner's sole negligence is void and unenforceable)	No	No	Yes

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			Sole Negligence of Indemnitee	Indemnitee's Concurrent Negligence	Indemnitor's Negligence (Sole & Concurrent)
Texas cont.	Residential Construction	Texas imposes the fair notice requirement which includes the express-negligence test and the conspicuousness requirement. *Enserch Corp. v. Parker*, 794 S.W.2d 2, 8 (Tex. 1990); Indemnity provision must be clearly and unambiguously stated. *Houston Lighting & Power Co. v. Atchison, Topeka & Santa Fe Ry. Co.*, 890 S.W.2d 455, 458 (Tex. 1994)	If clearly stated	If clearly stated	Yes
Utah	Construction & Design	Utah Code Ann. § 13-8-1 (construction) (Applicable to contracts entered into on or after the statute's 1969 effective (specific date is not stated)	No	Yes, in limited circumstances (Utah Code Ann. § 13-8-1(3)	Yes
Vermont	Not Applicable	No statute. The courts have upheld indemnification provisions that indemnify a party for liabilities resulting from the indemnitee's sole negligence only where there is a clear expression of that intent (*Tateosian v. State*, 945 A.2d 833 (Vt. 2007))	Not Applicable	Yes	Not Applicable
Virginia	Construction & Design	Va. Code Ann. § 11-4.1 (construction) & § 11-4.4 (design) (For construction contracts, applicable to contracts entered into after July 1, 1973)	No	Yes	Yes
Washington	Construction & Design	Wash. Rev. Code Ann. § 4.24.115 (For concurrent negligence, applicable to contracts entered into after June 11, 1986)	No	No (Concurrent limited to the extent of indemnitor's negligence)	Yes
West Virginia	Construction	W. Va. Code § 55-8-14	No	Not Applicable	Yes
Wisconsin	Construction	Wis. Stat. § 895.447 Applicable to contracts entered into after July 1, 1978)	No	No	Yes
Wyoming	Not Applicable	No general anti-indemnity statute. Indemnification agreements allowed if clearly stated. *United Pacific Resources Co. v. Dolenc*, 86 P.3d 1287 (Wyo. 2004)	If clearly stated	If clearly stated	Yes

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50 State Legal Matrix – Architects/Engineers/Land Surveyors Claim and Settlement Reporting Requirements for 2024

The following matrix provides insight into state statutory and regulatory reporting requirements for claims asserted against Architects, Engineers, and Land Surveyors. Many states require design professionals to report any legal claims and resulting settlements that stem from their respective practice areas. These reporting requirements vary significantly from state to state. The general consensus is that whenever a professional Architect, Engineer, or Land Surveyor has a legal claim brought against them, the regulatory agency for the state they are licensed in may require disclosure of that claim and/or settlement. This disclosure may be required by state agencies to determine whether to investigate the design professional in an effort to regulate malpractice. The following reporting requirements are derived from state statutes and regulatory rules established by professional boards of each profession.

*Please note that two states, California and Colorado, also have an insurance carrier statutory reporting requirement to the regulatory boards for the respective design professionals and are further detailed below in the matrix.

Please be advised that hyperlinks were added to the statutory and regulatory citations. By clicking on the citation hyperlinks, you will be brought to the regulatory webpage containing the statutes and rules that will provide the relevant information.

STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
AL	Alabama Board of Architects	**Claims/Settlements** Alabama has no claim/settlement reporting requirements for architects. Other Considerations Settlement agreements, consent agreements, and orders resulting from disciplinary hearings are public records. The Board will report disciplinary actions on its web site, in its newsletter and to the NCARB disciplinary data base. Additional publication will be ordered on a case-by-case basis at the discretion of the Board. Code of Ala. 1975 (Amend. 2010) §34-2-34 Law and Rules (alabama.gov)	**Alabama Board for Engineers & Land Surveyors** Alabama Board of Licensure for Professional Engineers and Land Surveyors	**Claims/Settlements** **Engineers:** Alabama has no claim/settlement reporting requirements for engineers. Other Considerations Licensees having knowledge of possible/probable violations of any of these Rules of Professional Conduct shall provide the Board with the information and cooperate as necessary to make the final determination of such violation. Code of Ala. 1975 (Amend. 2019) § 34-11-35 LAW & CODE – Alabama Board of Licensure for Professional Engineers and Land Surveyors **Land Surveyors:** Same as for engineers above.

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
AK	**Alaska Department of Commerce, Community, and Economic Development** **Board of Architects, Engineers, and Land Surveyors, Professional Licensing, Division of Corporations, Business and Professional Licensing (alaska.gov)**	**Claims/Settlements** Alaska has no claim/settlement reporting requirements for architects. Other Considerations 12 AAC 36.210. PROFESSIONAL CONDUCT. (a) A registrant: (6) shall inform the board if he or she has knowledge or reason to believe that another person or firm might be in violation of AS 08.48, or a regulation adopted under it, and shall cooperate with the board by furnishing all further information or assistance required. 12 AAC 36.210 **Statutes and Regulations, Board of Architects, Engineers, and Land Surveyors, Professional Licensing, Division of Corporations, Business and Professional Licensing (alaska.gov)**	**Alaska Department of Commerce, Community, and Economic Development** **Board of Architects, Engineers, and Land Surveyors, Professional Licensing, Division of Corporations, Business and Professional Licensing (alaska.gov)**	**Claims/Settlements** **Engineers:** Alaska has no claim/settlement reporting requirements for engineers. Other Considerations 12 AAC 36.210. PROFESSIONAL CONDUCT. (a) A registrant: (6) shall inform the board if he or she has knowledge or reason to believe that another person or firm might be in violation of AS 08.48, or a regulation adopted under it, and shall cooperate with the board by furnishing all further information or assistance required. 12 AAC 36.210 **Statutes and Regulations, Board of Architects, Engineers, and Land Surveyors, Professional Licensing, Division of Corporations, Business and Professional Licensing (alaska.gov)** **Land Surveyors:** Same as for engineers above.
AR	**Arkansas State Board of Architects, Landscape Architects, and Interior Designers** **Architects - ASBALAID (arkansas.gov)**	**Claims/Settlements** Arkansas has no claim/settlement reporting requirements for architects. Other Considerations The board shall have authority over architects, landscape architects, and registered interior designers to deny, suspend, or revoke any license to practice issued by the board or applied for in accordance with the provisions of the Act, or to otherwise discipline a licensee upon the following determination: (5) The holder of the license or certificate has been guilty of a felony; (6) The holder of the license or certificate has been guilty of fraud or deceit or of gross negligence or misconduct in the practice of landscape architecture; (9) The holder of the license has committed gross unprofessional conduct;	**Arkansas Engineers** **ARKANSAS ENGINEERS**	**Claims/Settlements** **Engineers:** Arkansas has no claim/settlement reporting requirements for engineers. Other Considerations 8. Licensees having knowledge of possible violations of any of these Rules of Professional Conduct shall provide the Board with information and assistance necessary for the final determination of such violation. See Board Laws and Rules, Article 20.A.8. The State Board of Licensure for Professional Engineers and Professional Surveyors may suspend, revoke, or refuse to issue, restore, or renew a certificate of licensure of, or place on probation, fine, or reprimand a professional engineer who is: (a)(1) Found guilty of:

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
AR cont.		(10) The holder of the license has: (A) Had a professional license suspended or revoked; (B) Had imposed other disciplinary action by a regulatory body of another state for any cause other than failure to pay applicable fees; or (C) Surrendered or did not renew a professional license after the initiation of any investigation or proceeding by such a body. See 17-36-306 - Grounds for revocation. Laws & Rules - ASBALAID (arkansas.gov)		(B) Negligence, incompetency, or misconduct in the practice of engineering; (D) Discipline by another state, territory, the District of Columbia, a foreign country, the United States Government, or any other governmental agency, if at least one (1) of the grounds for discipline is the same or substantially equivalent to those contained in this section; (E) Failure within thirty (30) days to provide information requested by the board as a result of a formal or informal complaint to the board that would indicate a violation of this chapter; (K) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public; or (a)(2) Found guilty of or enters a plea of guilty or nolo contendere to: (A) A felony listed under § 17-3-102; (B) A crime of which an essential element is dishonesty; or (C) A crime that is directly related to the practice of engineering. Board Laws and Rules 17-30-305 2020-Board-laws-and-rules-handbook.pdf (arkansas.gov) **Land Surveyors:** Same as for engineers above.
AZ	**Arizona State Board of Technical Registration** **Statutes | State Board of Technical Registration (az.gov)**	**Claims/Settlements** Arizona has no claim/settlement reporting requirements for architects. Other Considerations If a registrant violates any state or federal criminal statute, the Board may take action against a registrant's license or certificate if a violation of the law is reasonably related to a registrant's area of practice. R4-30-301.5 Rules of Professional Conduct	**Arizona State Board of Technical Registration** **Statutes | State Board of Technical Registration (az.gov)**	**Claims/Settlements** **Engineers:** Arizona has no claim/settlement reporting requirements for engineers. Other Considerations If a registrant violates any state or federal criminal statute, the Board may take action against a registrant's license or certificate if a violation of the law is reasonably related to a registrant's area of practice. R4-30-301.5 Rules of Professional Conduct **Land Surveyors:** Same as for engineers above.

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
CA	California Architects Board	**Claims/Settlements** Licensees must report any civil action judgment, settlement, arbitration award, or administrative action resulting in a judgment, settlement, or arbitration award that exceeds $5,000 against the licensee in any action alleging fraud, deceit, negligence, incompetence, or recklessness by the licensee in the practice of architecture. BPC section 5588 Reports must be sent to the Board within **30 days** of the architect having knowledge of the triggering event (e.g., settlement). BPC section 5588 *Requirements For Insurance Carriers Within 30 days of payment of all or any portion of a civil action judgment, settlement, or arbitration award described in Section 5588 against a licensee of the board in which the amount or value of the judgment, settlement, or arbitration award is $5,000 or greater, any insurer providing professional liability insurance to that licensee or architectural entity shall report to the board: the name of the licensee; claim or file number; amount or value of judgment, settlement, or arbitration award; amount paid by the insurer; and identity of the payee. BPC section 5588.1	California Board for Professional Engineers, Land Surveyors, and Geologists	**Claims/Settlements** **Engineers:** A licensee must report in writing, within 90 days the licensee has knowledge, any civil action settlements or administrative actions resulting in a settlement greater than $50,000. Bus. & Prof. Code § 6770(a)(3) A licensee must report in writing, within 90 days the licensee has knowledge, any civil action judgment, binding arbitration award, or administrative action resulting in a judgment or binding arbitration award of $25,000 or greater against the licensee must be reported to the Board. Bus. & Prof. Code § 6770(a)(4) A licensee must report in writing, within 90 days the licensee has knowledge, all felony convictions and any misdemeanors convictions or infractions that are substantially related to the practice of professional engineering or land surveying to the Board. Bus. & Prof. Code § 6770(a)(1)-(2) Reports must be sent to the Board within **90 days** of their occurrence or from when the licensee has knowledge of the action. Bus. & Prof. Code § 6770(a) *Requirements For Insurance Carriers Within 30 days of payment of all or any portion of any civil action judgment, settlement, or binding arbitration award described in Section 6770 against a licensee of the board, any insurer providing professional liability insurance to that licensee shall report to the board the name of the licensee; the amount or value of the judgment, settlement, or binding arbitration award; the amount paid by the insurer; and the identity of the payee. BPC section 6770.2 **Land Surveyors:** Same as for engineers above.

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
CO	**Colorado Department of Regulatory Agencies – Colorado State Board of Licensure for Architects, Professional Engineers and Professional Land Surveyors** **AES HOME | Division of Professions and Occupations (colorado.gov)**	**Claims/Settlements** Notification to board. Each architect shall report to the board any malpractice claim against the architect, or against any entity of which the architect is a member, that is settled or in which judgment is rendered, within sixty days after the effective date of the settlement or judgment, if the claim concerned the practice of architecture performed or supervised by the architect; except that a licensee is not required to report any claim that was dismissed by a court of law. C.R.S. § 12-120-411 State Board of Licensure for Architects, Professional Engineers and Professional Land Surveyors: Practice Act and Laws | Division of Professions and Occupations (colorado.gov) *Requirements For Insurance Carriers Colorado has the same reporting requirements for insurers of Architects. Each insurance company doing business in this state and engaged in the writing of malpractice insurance for architects shall send to the state board of licensure for architects, professional engineers, and professional land surveyors information relating to each malpractice claim against a licensed architect or a corporation, partnership, or group of persons practicing architecture that is settled or in which judgment is rendered against the insured within ninety days after the effective date of such settlement or judgment. C.R.S. § 10-1-122 (2021).	**Colorado Department of Regulatory Agencies – Colorado State Board of Licensure for Architects, Professional Engineers and Professional Land Surveyors** AES HOME | Division of Professions and Occupations (colorado.gov)	**Claims/Settlements** **Engineers:** Disciplinary actions - grounds for discipline. (1) The board may take disciplinary or other action as authorized by section 12-20-404 against, or limit the scope of practice of, any professional engineer or engineer-intern for: (j) Failing to report to the board any malpractice claim against the professional engineer or any partnership, corporation, limited liability company, or joint stock association of which the professional engineer is a member, that is settled or in which judgment is rendered, within sixty days after the effective date of the settlement or judgment, if the claim concerned engineering services performed or supervised by the engineer; C.R.S. § 12-120-206 State Board of Licensure for Architects, Professional Engineers and Professional Land Surveyors: Practice Act and Laws | Division of Professions and Occupations (colorado.gov) **Land Surveyors:** Disciplinary actions - grounds for discipline. (1) The board may take disciplinary or other action as authorized by section 12-20-404, limit the scope of practice of, or require additional training of any professional land surveyor or land surveyor-intern for: (j) Failing to report to the board any malpractice claim against the professional land surveyor or any partnership, limited liability company, corporation, or joint stock association of which the professional land surveyor is a member, which claim is settled or in which judgment is rendered, within sixty days after the effective date of the settlement or judgment, if the claim concerned land surveying services performed or supervised by the land surveyor; C.R.S. § 12-120-306 State Board of Licensure for Architects, Professional Engineers and Professional

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
CO cont.				Land Surveyors: Practice Act and Laws | Division of Professions and Occupations (colorado.gov)
CT	**Connecticut State Department of Consumer Protection** **Architecture**	**Claims/Settlements** Connecticut has no claim/settlement reporting requirements for architects. Other Considerations (6) An architect possessing knowledge of a violation of sections 20-289-1a to 20-289-12a, inclusive, of the Regulations of Connecticut State Agencies by another architect shall report such knowledge to the department immediately. Professional and Occupational Licensing, Certification, Department of Consumer Protection, Title 20, Sec 20-289-10a(c)(6) eRegulations - Browse Regulations of Connecticut State Agencies	**Connecticut State Department of Consumer Protection** **Professional Engineers and Land Surveyors Licensing (ct.gov)**	**Claims/Settlements** **Engineers:** Connecticut has no claim/settlement reporting requirements for engineers. Other Considerations (17) If the engineer or land surveyor has knowledge or reason to believe that another person or firm may be in violation of any of these provisions, he or she shall present such information to the board in writing, as specified in section 20-300-14a, and shall cooperate with the board in furnishing such further information or assistance as may be required by the board. Professional and Occupational Licensing, Certification, Department of Consumer Protection, Title 20, Sec. 20-300-12(a)(17) eRegulations - Browse Regulations of Connecticut State Agencies **Land Surveyors:** Same as for engineers above.

STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
DC	**Department of Consumer and Regulatory Affairs: Architecture, Interior Design and Landscape Architecture** Architecture, Interior Design and Landscape Architecture | dcra	**Claims/Settlements** The District of Columbia has no claim/settlement reporting requirements for architects.	**Engineers:** **Department of Consumer and Regulatory Affairs: Professional Engineers** Professional Engineers | dcra **Land Surveyors:** **Department of Consumer and Regulatory Affairs: Surveyor Services** Professional Engineers | dcra	**Claims/Settlements** **Engineers:** The District of Columbia has no claim/settlement reporting requirements for engineers. Other Considerations 1517.9 The Licensee shall perform services in an ethical and lawful manner and: (b) If the licensee has knowledge or reason to believe that another person or firm may be in violation of any of these provisions or of D.C. Law 12-261, shall present such information to the Board in writing and shall cooperate with the Board in furnishing such further information or assistance as may be required by the Board. The licensee shall timely respond to all inquiries and correspondence from the Board and shall timely claim correspondence from the U. S. Postal Service, or other delivery service, sent to the licensee from the Board. 54 DCR 8783 (September 7, 2007) DCRegs **Land Surveyors:** Same as for engineers above.
DE	**Division of Professional Regulation** Board of Architects - Division of Professional Regulation - State of Delaware	**Claims/Settlements** Delaware has no claim/settlement reporting requirements for architects. Other Considerations 7.4.1 An architect shall comply with the registration laws and regulations governing his/her professional practice in any United States jurisdiction. An architect may be subject to disciplinary action if, based on grounds substantially similar to those which lead to disciplinary action in this jurisdiction, the architect is disciplined in any other United States jurisdiction. 7.4.2 An employer engaged in the practice of architecture shall not have been found by a court or an administrative tribunal to have violated any applicable federal or state law	**Engineers:** **Delaware Association of Professional Engineers** Delaware's Professional Engineering Licensing Board (dape.org) **Land Surveyors:** **Delaware Division of Professional Regulation: Board of Professional Land Surveyors**	**Claims/Settlements** **Engineers:** A. The crimes listed herein have been determined by Council to be substantially related to the practice of engineering, and, as such, the engineer shall report to Council within ninety (90) days of any conviction of any crime specified in the following sections of the Delaware Criminal Code: B. The engineer shall report to Council within ninety (90) days any conviction in any other state, municipal, or federal jurisdiction, for a crime similar to those listed in Canon 6.A. C. The engineer, upon conviction for any felony crime not specifically listed in Canon 6.A, shall provide within ninety (90) days of conviction, information to the

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
DE cont.		protecting the rights of persons working for the employer with respect to fair labor standards or with respect to maintaining a workplace free of discrimination. For purposes of this rule, any registered architect employed by a firm engaged in the practice of architecture who is in charge of the firm's architectural practice, either alone or with other architects, shall be deemed to have violated this rule if the firm has violated this rule. Division of Professional Regulation, 300 Board of Architects, 7.0 Rules of Professional Conduct. 7.4.1-2	**Board of Professional Land Surveyors - Division of Professional Regulation - State of Delaware**	Council in sufficient specificity to enable Council to make a determination of whether the crime constitutes conduct reasonably likely to deceive, defraud, or harm the public. Delaware Association of Professional Engineers, Code of Ethics 6(A)-(C). Microsoft Word - CODEETH Rev 70908.DOC (dape.org) **Land Surveyors:** Delaware has no claim/settlement reporting requirements for land surveyors. 2700 Board of Registration for Professional Land Surveyors (delaware.gov)
FL	**Florida Department of State** **Div. 61G1: Board of Architecture and Interior Design - Florida Administrative Rules, Law, Code, Register - FAC, FAR, eRulemaking (flrules.org)**	**Claims/Settlements** Florida has no claim/settlement reporting requirements for architects. Other Considerations (1) Pursuant to Sections 481.225(2) and 481.2251(2), F.S., to the extent not otherwise set forth in Florida Statutes, the following specific acts or omissions are grounds for disciplinary proceedings as provided in Sections 481.225(1) and 481.2251(1), F.S. (f) Violation of any law of the State of Florida directly regulating the practice of architecture; (g) Use of architectural expertise or status as an architect in the commission of a felony; Department of Architecture and interior Design, Chapter 61G1-12. Div. 61G1: Board of Architecture and Interior Design - Florida Administrative Rules, Law, Code, Register - FAC, FAR, eRulemaking (flrules.org)	**Engineers:** **Florida Board of Professional Engineers** **Statutes and Rules - Florida Board of Professional Engineers (fbpe.org)** **Land Surveyors:** **Florida Board of Professional Surveyors and Mappers** **Board of Professional Surveyors and Mappers / Surveyors and Mappers / Business Services / Home - Florida Department of Agriculture & Consumer Services (fdacs.gov)**	**Claims/Settlements** **Engineers:** Florida has no claim/settlement reporting requirements for engineers. Other Considerations (1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken: (e) Making or filing a report or record that the licensee knows to be false, willfully failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records include only those that are signed in the capacity of a licensed engineer. 2022 Florida Statutes 471.033(1)(e) Chapter-471-FS-as-of-2021.pdf (fbpe.org) **Land Surveyors:** Florida has no claim/settlement reporting requirements for land surveyors. Citations, Disciplinary Actions, Suspensions / Surveyors and Mappers / Business Services / Home - Florida Department of Agriculture & Consumer Services (fdacs.gov)

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
GA	**Rules and Regulations of the State of Georgia** **GA - GAC - Department 50. GEORGIA STATE BOARD OF ARCHITECTS AND INTERIOR DESIGNERS**	**Claims/Settlements** Georgia has no claim/settlement reporting requirements for architects. Other Considerations Under the authority granted by the O.C.G.A. T. 43, Ch. 4, and O.C.G.A. Section 43-1-19, the Georgia State Board of Architects and Interior Designers ("Board") shall have the power to reprimand, cancel, suspend, revoke, or otherwise restrict any license or permit issued by the Board. (2) Making a false statement or failing to disclose accurately and completely a material fact in connection with an application for registration or renewal, or in response to inquiry from the Board; (3) Assisting the application for registration of a person known by the licensee to be unqualified in respect to education, training, or experience; (4) Violation of any state or federal criminal law; (5) Disciplinary action taken against the licensee in another state; Rules and Regulations of the State of Georgia. Department 5-, Chapter 50-8. GA - GAC	**Georgia Secretary of State: Rules and Regulations for the Engineers and land Surveyors Board** **Rules and Regulations for the Engineers and Land Surveyors Board | Georgia Secretary of State (ga.gov)**	**Claims/Settlements** **Engineers:** Georgia has no claim/settlement reporting requirements for engineers. Other Considerations A violation of O.C.G.A. Chapter 15, Title 43, or of the rules of another jurisdiction, if for a cause which in the State of Georgia would constitute a violation of O.C.G.A. 43-15 or these rules, shall be grounds for a charge of violation of these rules. Rules and Regulations of the State of Georgia, Rule 180-6-.08 Convictions. GA - GAC **Land Surveyors:** Same as for engineers above.
HI	**Department of Commerce and Consumer Affairs, Professional & Vocational Licensing Division** **Professional & Vocational Licensing Division | Board of Professional Engineers, Architects, Surveyors & Landscape Architects (hawaii.gov)**	**Claims/Settlements** Hawaii has no claim/settlement reporting requirements for architects. Other Considerations In addition to any other actions authorized by law, the board may revoke, suspend, or refuse to renew the license of any licensee for any cause authorized by law, including but not limited to fraud or deceit in obtaining the license or gross negligence, incompetency, or misconduct in the practice of the profession, or violating this chapter or the rules of the board. §464-10 Licensees; suspension or revocation of licenses; fines; hearings.	**Department of Commerce and Consumer Affairs, Professional & Vocational Licensing Division** **Professional & Vocational Licensing Division | Board of Professional Engineers, Architects, Surveyors & Landscape Architects (hawaii.gov)**	**Claims/Settlements** **Engineers:** Hawaii has no claim/settlement reporting requirements for engineers. Other Considerations In addition to any other actions authorized by law, the board may revoke, suspend, or refuse to renew the license of any licensee for any cause authorized by law, including but not limited to fraud or deceit in obtaining the license or gross negligence, incompetency, or misconduct in the practice of the profession, or violating this chapter or the rules of the board. §464-10 Licensees; suspension or revocation of licenses; fines; hearings.

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
HI cont.		Hawaii Revised Statutes Chapter 464-EASLA		Hawaii Revised Statutes Chapter 464-EASLA **Land Surveyors:** Same as for engineers above.
IA	**Iowa Professional Licensing Bureau** **Architects | Iowa Professional Licensing Bureau**	**Claims/Settlements** Iowa has no claim/settlement reporting requirements for architects. **NCARB Rules of Conduct | Iowa Professional Licensing Bureau**	**Iowa Professional Licensing Bureau** **Engineers & Land Surveyors | Iowa Professional Licensing**	**Claims/Settlements** **Engineers:** 193C—9.7(542B) Disputes between licensees and clients. Reports from the insurance commissioner or other agencies on the results of judgments or settlements of disputes arising from malpractice claims or other actions between professional engineers or professional land surveyors and their clients may be referred to counsel or peer review committee. The counsel or peer review committee shall investigate the report for violation of the statutes or rules governing the practice or conduct of the licensee. The counsel or peer review committee shall advise the board of any probable violations, any further action required, or recommend dismissal from further consideration. 07-27-2022.193C.9.pdf (iowa.gov) **Land Surveyors:** Same as for engineers above.
ID	**Division of Occupational and Professional Licenses; Board of Architectural Examiners** **Rules of Conduct / Documents Incorporated by Reference (idaho.gov)**	**Claims/Settlements** Idaho has no claim/settlement reporting requirements for architects. NewDoc (idaho.gov)	**Board of Licensure of Professional Engineers and Professional Land Surveyors** **Welcome - Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors**	**Claims/Settlements** **Engineers:** Idaho has no claim/settlement reporting requirements for engineers. Other Considerations If a Licensee or Certificate Holder, during the course of his work, discovers a material discrepancy, error or omission in the work of another Licensee or Certificate Holder, which may impact the health property and welfare of the public, the discoverer must make a reasonable effort to inform the Licensee or Certificate Holder whose work is believed to contain the discrepancy, error or omission. Such communication must reference specific codes, standards or physical laws which are believed to be violated and identification of documents which are believed to contain the discrepancies. The Licensee or Certificate Holder whose

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
ID cont.				work is believed to contain the discrepancy must respond within twenty (20) calendar days to any question about his work raised by another Licensee or Certificate Holder. In the event a response is not received within twenty (20) days, the discoverer must notify the Licensee or Certificate Holder in writing, who has another twenty (20) days to respond. The discoverer must notify the Board in the event a response does not answer the concerns of the discoverer or is [not] obtained within the second twenty (20) days. **IDAPA 24.32.01 - Division of Occupational and Professional Licenses. (idaho.gov)** **Land Surveyors:** Same as for engineers above.
IL	**Illinois Department of Financial & Professional Regulation** **State of Illinois | Department of Financial & Professional Regulation**	**Claims/Settlements** Illinois has no claim/settlement reporting requirements for architects. Other Considerations Sec. 22. Grounds for disciplinary action. (a) The Department may refuse to issue or renew a license or may revoke, suspend, place on probation, reprimand, or take other disciplinary or non-disciplinary action the Department may deem proper, including fines not to exceed $10,000 for each violation, with regard to any license issued under this Act, for any one or a combination of the following reasons: (8) Failing to provide information in response to a written request made by the Department within 60 days after receipt of the written request. 225 ILCS 305/22 (from Ch. 111, par. 1322) 225 ILCS 305/ Illinois Architecture Practice Act of 1989. (ilga.gov)	**Illinois Department of Financial & Professional Regulation** **State of Illinois | Department of Financial & Professional Regulation**	**Claims/Settlements** **Engineers:** Illinois has no claim/settlement reporting requirements for engineers. 225 ILCS 325/ Professional Engineering Practice Act of 1989. (ilga.gov) **Land Surveyors:** Same as for engineers above.

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
IN	**Indiana Professional Licensing Agency: State Board of Registration for Architects & Landscape Architects** **PLA: State Board of Registration for Architects & Landscape Architects (in.gov)**	**Claims/Settlements** Indiana has no claim/settlement reporting requirements for architects. **PLA: Statute & Administrative Rules**	**Engineers:** **Indiana Professional Licensing Agency: Engineering Board** **PLA: Engineering Resources** **Land Surveyors:** **Indiana Professional Licensing Agency: Surveyors Board** **PLA: Surveyors Home (in.gov)**	**Claims/Settlements** **Engineers:** Indiana has no claim/settlement reporting requirements for engineers. PLA: Engineering Resources **Land Surveyors:** Indiana has no claim/settlement reporting requirements for land surveyors. PLA: Surveyors Home (in.gov)
KS	**Kansas State Board of Technical Professions** **Architects (ks.gov)**	**Claims/Settlements** Kansas has no claim/settlement reporting requirements for architects. Other Considerations 66-7-4. Potentially disqualifying civil and criminal records; advisory opinion; fee. (b) Civil records that may disqualify an applicant from receiving a license shall be the records of any court judgement or settlement in which the applicant admitted or was found to have engaged in conduct that would constitute a violation of the technical professions act or any of the board's regulations. Those records shall not be used to disqualify an applicant for more than five years after the applicant satisfied any judgement or restitution ordered by the court or agreed in the settlement. 2016-june-law-book.pdf (ks.gov)	**Kansas State Board of Technical Professions** **Engineers (ks.gov)**	**Claims/Settlements** **Engineers:** Kansas has no claim/settlement reporting requirements for engineers. Other Considerations 66-7-4. Potentially disqualifying civil and criminal records; advisory opinion; fee. (b) Civil records that may disqualify an applicant from receiving a license shall be the records of any court judgement or settlement in which the applicant admitted or was found to have engaged in conduct that would constitute a violation of the technical professions act or any of the board's regulations. Those records shall not be used to disqualify an applicant for more than five years after the applicant satisfied any judgement or restitution ordered by the court or agreed in the settlement. 2016-june-law-book.pdf (ks.gov) **Land Surveyors:** Same as for engineers above.

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
KY	**Kentucky Board of Architects** BOA (ky.gov)	**Claims/Settlements** Kentucky has no claim/settlement reporting requirements for architects. Kentucky Revised Statutes - Chapter 323	**Kentucky Board of Engineers & Land Surveyors** Kentucky Board of Engineers & Land Surveyors	**Claims/Settlements** **Engineers:** Kentucky has no claim/settlement reporting requirements for engineers. **Land Surveyors:** Same as for engineers above. Title 201 • Kentucky Administrative Regulations • Legislative Research Commission
LA	**Louisiana State Board of Architectural Examiners** Home - LSBAE	**Claims/Settlements** Louisiana has no claim/settlement reporting requirements for architects. Top line of doc (lsbae.com)	**Louisiana Professional Engineering and Land Surveying Board** Louisiana Professional Engineering and Land Surveying Board (LAPELS)	**Claims/Settlements** **Engineers:** Louisiana has no claim/settlement reporting requirements for engineers. LAPELS - Laws and Rules **Land Surveyors:** Same as for engineers above.
MA	**Board of Registration of Architects** Board of Registration of Architects | Mass.gov	**Claims/Settlements** Massachusetts has no claim/settlement reporting requirements for architects. Statutes and Regulations (Architects) | Mass.gov	**Board of Registration of professional Engineers and Land Surveyors** Board of Registration of Professional Engineers and Land Surveyors | Mass.gov	**Claims/Settlements** **Engineers:** Massachusetts has no claim/settlement reporting requirements for engineers. Other Considerations 5.09: Professional and Moral Character (1) A Registrant shall provide the Board with written notification of any disciplinary action or restriction on practice imposed against any professional License, registration, certificate, or permit held by the Registrant by the applicable governmental authority of any state, territory or political subdivision of the United States or any foreign jurisdiction. Such notice must be received by the Board within 30 days of the effective date of said discipline or restriction. (2) A Registrant shall provide the Board with written notification of the Registrant's conviction of any crime, including any misdemeanor or felony, other than a routine traffic violation, made by a court or any other adverse action by any state or federal agency. Such notice must be received by the Board within 30 days of said conviction or adverse action. Records of compliance with 250 CMR

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
MA cont.				5.09(2) shall be exhibited to the Board upon demand. 250 CMR 5.00 § 5.01 250 CMR 5.00: Professional practice | Mass.gov **Land Surveyors:** Same as for engineers above.
MD	**Maryland Department of Labor** **Maryland Board of Architects - Division of Occupational and Professional Licensing - Maryland Department of Labor (state.md.us)**	**Claims/Settlements** Maryland has no claim/settlement reporting requirements for architects. Law and Regulations - Maryland Board of Architects - Division of Occupational and Professional Licensing (state.md.us)	**Engineers:** **Maryland Department of Labor** **Maryland Board for Professional Engineers - Division of Occupational and Professional Licensing (state.md.us)** **Land Surveyors:** **Maryland Department of Labor** **Maryland Board for Professional Land Surveyors - Division of Occupational and Professional Licensing (state.md.us)**	**Claims/Settlements** **Engineers:** Maryland has no claim/settlement reporting requirements for engineers. Law and Regulations - Maryland Board for Professional Engineers - Division of Occupational and Professional Licensing (state.md.us) **Land Surveyors:** Maryland has no claim/settlement reporting requirements for land surveyors. Law and Regulations - Maryland Board for Professional Land Surveyors - Division of Occupational and Professional Licensing (state.md.us)
ME	**State of Maine, Professional & Financial Regulation** **Board of Licensure for Architects, Landscape Architects and Interior Designers | Office of Professional and Occupational Regulation (maine.gov)**	**Claims/Settlements** Maine has no claim/settlement reporting requirements for architects. Rule Chapters for the Department of Professional and Financial Regulation (Maine)	**Engineers:** **Department of Professional and Financial Regulation; Board of Licensure for Professional Engineers** **Home | Professional Engineers (maine.gov)**	**Claims/Settlements** **Engineers:** Maine has no claim/settlement reporting requirements for engineers. Laws & Rules | Professional Engineers (maine.gov) **Land Surveyors:** Maine has no claim/settlement reporting requirements for land surveyors. **Board of Licensure for Professional Land Surveyors - Laws & Rules |**

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
ME cont.			**Land Surveyors:** **State of Maine; professional & Financial Regulation** **Board of Licensure for Professional Land Surveyors | Office of Professional and Occupational Regulation (maine.gov)**	**Office of Professional and Occupational Regulation (maine.gov)**
MI	**Licensing of Regulatory Affairs: Architects** **Architects (michigan.gov)**	**Claims/Settlements** Michigan has no claim/settlement reporting requirements for architects. ARS Public - MI Admin Code for Licensing and Regulatory Affairs - Bureau of Professional Licensing (state.mi.us)	**Engineers:** **Licensing of Regulatory Affairs: Professional Engineers** **Professional Engineers (michigan.gov)** **Land Surveyors:** **Licensing of Regulatory Affairs: Surveyors, Professional** **Surveyors, Professional (michigan.gov)**	**Claims/Settlements** **Engineers:** Michigan has no claim/settlement reporting requirements for engineers. ARS Public - MI Admin Code for Licensing and Regulatory Affairs - Bureau of Professional Licensing (state.mi.us) **Land Surveyors:** Michigan has no claim/settlement reporting requirements for land surveyors. ARS Public - MI Admin Code for Licensing and Regulatory Affairs - Bureau of Professional Licensing (state.mi.us)
MN	**Minnesota Board of AELSLAGID** **Home | Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design (mn.gov)**	**Claims/Settlements** Minnesota has no claim/settlement reporting requirements for architects. Other Considerations An applicant, licensee, or certificate holder shall appear before the board, committees of the board, or the attorney general when requested to do so and provide copies of all pertinent records, including handwriting samples, to assist the board in its investigations. An applicant, licensee, or certificate holder shall sign an authorization letter giving the board access to information relating to a board investigation that is held by	**Minnesota Board of AELSLAGID** **Home | Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design (mn.gov)**	**Claims/Settlements** **Engineers:** Minnesota has no claim/settlement reporting requirements for engineers, but same communications compliance requirements as architects. **Land Surveyors:** Same as for engineers above. Statutes & Rules | Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design (mn.gov)

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
MN cont.		any federal, state, or other local government agency or professional organization, the subject matter of which pertains to conduct described in Minnesota Statutes, sections 326.02 to 326.15, when requested to do so by the board or by the attorney general. MN R § 1800.0100 Minnesota Rules 2020, Chapter 1800 (mn.gov)		
MO	**Missouri Division of Professional Registration: Architects** **APEPLSPLA (mo.gov)**	**Claims/Settlements** Missouri has no claim/settlement reporting requirements for architects. Other Considerations (4) Licensees having knowledge of any alleged violation of this Code shall cooperate with the proper authorities in furnishing information or assistance as may be required. 20 CSR 2030-2.010 Code of Professional Conduct Missouri Code of State Regulations: Title 20 - Department of Insurance (mo.gov)	**Engineers:** **Missouri Division of Professional Registration: Professional Engineers** **APEPLSPLA (mo.gov)** **Land Surveyors:** **Missouri Division of Professional Registration: Professional Land Surveyors** **APEPLSPLA (mo.gov)**	**Claims/Settlements** **Engineers:** Missouri has no claim/settlement reporting requirements for engineers. Other Considerations (4) Licensees having knowledge of any alleged violation of this Code shall cooperate with the proper authorities in furnishing information or assistance as may be required. 20 CSR 2030-2.010 Code of Professional Conduct **Missouri Code of State Regulations: Title 20 - Department of Insurance (mo.gov)** **Land Surveyors:** Same as for engineers above.
MS	**Mississippi State Board of Architecture** **Home | Mississippi State Board of Architecture (ms.gov)**	**Claims/Settlements** Mississippi has no claim/settlement reporting requirements for architects. Architect Information and Services | Mississippi State Board of Architecture (ms.gov)	**Mississippi Board of Licensure for Professional Engineers and Surveyors** **Home | Mississippi Board of Licensure for Professional Engineers and Surveyors (ms.gov)**	**Claims/Settlements** **Engineers:** Mississippi has no claim/settlement reporting requirements for engineers. Other Considerations Rule 17.8 Response to Orders and Communications: A licensee's refusal to accept or receive, or a licensee's failure to timely respond to, (a) an order of the Board or (b) a request in writing from the Executive Director, the Board's attorney or a Board member, provided such request is made within the scope of responsibility of the writer, shall be considered misconduct subject to disciplinary action. Miss. Code Ann. §73-13-15

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
MS cont.				Rules & Regulations | Mississippi Board of Licensure for Professional Engineers and Surveyors (ms.gov) **Land Surveyors:** Same as for engineers above.
MT	**Montana Department of Labor & Industry: Montana Board of Architects and Landscape Architects** **Board of Architects and Landscape Architects (mt.gov)**	**Claims/Settlements** Montana has no claim/settlement reporting requirements for architects. Statutes (mt.gov) Administrative Rules (rules.mt.gov)	**Montana Department of Labor & Industry: Montana Board of Professional Engineers and Professional Land Surveyors** **Board of Professional Engineers and Professional Land Surveyors (mt.gov)**	**Claims/Settlements** **Engineers:** Montana has no claim/settlement reporting requirements for engineers. Statutes (mt.gov) Administrative Rules (rules.mt.gov) **Land Surveyors:** Same as for engineers above.
NC	**North Carolina Board of Architecture and Registered Interior Designers** **NC Board of Architecture (ncbarch.org)**	**Claims/Settlements** North Carolina has no claim/settlement reporting requirements for architects. Rules & Laws – NC Board of Architecture (ncbarch.org)	**The North Carolina Board of Examiners for Engineers and Surveyors** **Home - NCBELS**	**Claims/Settlements** **Engineers:** North Carolina has no claim/settlement reporting requirements for engineers. Other Considerations (g) A licensee shall perform services in an ethical manner, as required by the Rules of Professional Conduct (21 NCAC 56 .0701), and in a lawful manner and: (2) If the licensee has knowledge or reason to believe that another person or firm may be in violation of the Board Rules (21 NCAC 56) or of the North Carolina Engineering and Land Surveying Act (G.S. 89C), shall present such information to the Board in writing in the form of a complaint and shall cooperate with the Board in furnishing such further information or assistance as may be required by the Board. The licensee shall timely respond to all inquiries and correspondence from the Board and shall timely claim correspondence from the U. S. Postal Service, or other delivery service, sent to the licensee from the Board. Timely is defined as within the time specified in the correspondence, or if no time is specified, within 30 days of receipt. Certified mail is timely claimed if prior to being returned by the Post Office to the Board office.

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
NC cont.				(h) A Professional Engineer or Professional Land Surveyor who has received a reprimand or civil penalty or whose professional license is revoked, suspended, denied, refused renewal, refused reinstatement, put on probation, restricted, or surrendered as a result of disciplinary action by another jurisdiction is subject to discipline by the Board if the licensee's action constitutes a violation of G.S. 89C or the rules adopted by the Board. 21 NCAC 56 .0701 Rules & Laws - NCBELS **Land Surveyors:** Same as for engineers above.
ND	**North Dakota State Board of Architecture and Landscape Architecture** **North Dakota State Board of Architecture - Home (ndsba.net)**	**Claims/Settlements** North Dakota has no claim/settlement reporting requirements for architects. Other Considerations 8-07-03-06. Duty to report violations. A registered architect or landscape architect possessing knowledge of a violation of the rules of professional conduct shall report such knowledge to the board. ND 8-07-03-06 North Dakota Administrative Code (ndlegis.gov)	**North Dakota State Board of Registration for Professional Engineers and Land Surveyors** **ND PELS Board | North Dakota State Board of Registration for Professional Engineers & Land Surveyors - ND PELS Board**	**Claims/Settlements** **Engineers:** North Dakota has no claim/settlement reporting requirements for engineers. ND PELS Board | Statutes & Rules **Land Surveyors:** Same as for engineers above.
NE	**State of Nebraska Board of Engineers and Architects** **Welcome | State of Nebraska Board of Engineers and Architects**	**Claims/Settlements** Nebraska has no claim/settlement reporting requirements for architects. Other Considerations The licensee possessing knowledge of a violation of the E&A Act or these rules by another licensee shall report such knowledge to the Board. 5.3.3 Disclosure of Professional Relationships or Responsibility **The Nebraska Engineers and Architects Regulation Act | State of Nebraska Board of Engineers and Architects**	**Engineers:** **State of Nebraska Board of Engineers and Architects** **Welcome | State of Nebraska Board of Engineers and Architects** **Land Surveyors:** **Nebraska Board of Examiners: Land Surveyors**	**Claims/Settlements** **Engineers:** Nebraska has no claim/settlement reporting requirements for engineers. Other Considerations The licensee possessing knowledge of a violation of the E&A Act or these rules by another licensee shall report such knowledge to the Board. 5.3.3 Disclosure of Professional Relationships or Responsibility The Nebraska Engineers and Architects Regulation Act | State of Nebraska Board of Engineers and Architects

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
NE cont.			**Nebraska Board of Examiners for Land Surveyors**	**Land Surveyors:** Nebraska has no claim/settlement reporting requirements for land surveyors. Other Considerations The registrant possessing knowledge of a violation of these rules and state statutes by another registrant shall report such knowledge to the Examining Board. Chapter 9 Code of Practice – 001.08 Rules & Regulations - NBELS (nebraska.gov)
NH	**New Hampshire Office of Professional Licensure and Certification: Board of Architects** **Board of Architects | NH Office of Professional Licensure and Certification**	**Claims/Settlements** New Hampshire has no claim/settlement reporting requirements for architects. Board of Architects Laws and Rules | NH Office of Professional Licensure and Certification	**Engineers:** **New Hampshire Office of Professional Licensure and Certification: Board of Professional Engineers** **Board of Professional Engineers | NH Office of Professional Licensure and Certification** **Land Surveyors:** **New Hampshire Office of Professional Licensure and Certification: Board of Land Surveyors** **Board of Land Surveyors | NH Office of Professional Licensure and Certification**	**Claims/Settlements** **Engineers:** New Hampshire has no claim/settlement reporting requirements for engineers. Other Considerations 310-A:22 Investigations and Disciplinary Proceedings. – I. The board may undertake investigations or disciplinary proceedings: (k) Failure to provide, within 30 calendar days of receipt of notice by certified mail, return receipt requested, information requested by the board as a result of any formal complaint to the board alleging a violation of this subdivision. Title XXX Ch. 310-A:22(k) Board of Professional Engineers Laws and Rules | NH Office of Professional Licensure and Certification **Land Surveyors:** New Hampshire has no claim/settlement reporting requirements for land surveyors. Board of Land Surveyors Laws and Rules | NH Office of Professional Licensure and Certification

STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
NJ	**New Jersey Division of Consumer Affairs: New Jersey State Board of Architects** **New Jersey State Board of Architects (njconsumeraffairs.gov)**	**Claims/Settlements** New Jersey has no claim/settlement reporting requirements for architects. New Jersey State Board of Architects (njconsumeraffairs.gov)	**New Jersey Division of Consumer Affairs: State Board of professional Engineers and Land Surveyors** **Pages - State Board of Professional Engineers and Land Surveyors (njconsumeraffairs.gov)**	**Claims/Settlements** **Engineers:** New Jersey has no claim/settlement reporting requirements for engineers. Pages - Statutes and Regulations (njconsumeraffairs.gov) **Land Surveyors:** Same as for engineers above.
NM	**New Mexico Board of Examiners for Architects** **Home (state.nm.us)**	**Claims/Settlements** New Mexico has no claim/settlement reporting requirements for architects. Acts and Rules (state.nm.us)	**New Mexico Board of Licensure for Professional Engineers & Professional Surveyors** **ENGINEERING | New Mexico Board of Licensure for Professional Engineers & Professional Surveyors (state.nm.us)**	**Claims/Settlements** **Engineers:** New Mexico has no claim/settlement reporting requirements for engineers. LAWS RULES & ADVISORIES | New Mexico Board of Licensure for Professional Engineers & Professional Surveyors (state.nm.us) **Land Surveyors:** Same as for engineers above.
NV	**Nevada State Board of Architecture, interior Design and Residential Design** **NSBAIDRD - Nevada State Board of Architecture, Interior Design & Residential Design**	**Claims/Settlements** Nevada has no claim/settlement reporting requirements for architects. Other Considerations Model Rules of Conduct 3.5 If, in the course of an architect's work on a project, the architect becomes aware of a decision made by the architect's employer or client, against the architect's advice, which violates applicable federal, state, or local building laws and regulations and which will, in the architect's judgment, materially and adversely affect the health and safety of the public, the architect shall: (a) refuse to consent to the decision, and	**Nevada Board of Professional Engineers & Land Surveyors** **NVBPELS – Nevada Board of Professional Engineers and Land Surveyors**	**Claims/Settlements** **Engineers:** Nevada has no claim/settlement reporting requirements for engineers. Statutes & Regulations – NVBPELS **Land Surveyors:** Same as for engineers above.

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
NV cont.		(b) report the decision to the official charged with enforcement of building laws and regulations; and (c) in circumstances where the architect reasonably believes that other such decisions will be taken notwithstanding the architect's objection, terminate the provision of services with reference to the project unless the architect is able to cause the matter to be resolved by other means. 3.9 An architect possessing knowledge of a violation of the jurisdiction's laws or rules governing the practice of architecture by another shall report such knowledge to the Board. It is the professional duty of the architect to do so. LAWS AND RULES | NSBAIDRD - Nevada State Board of Architecture, Interior Design and Residential Design		
NY	**New York State Education Department - Office of the Professions** NYS Licensed Professions (nysed.gov)	**Claims/Settlements** New York has no claim/settlement reporting requirements for architects. **NYS Architecture: Laws, Rules & Regulations (nysed.gov)**	**New York State Education Department – Office of the Professions** NYS Professional Engineering & Land Surveying (nysed.gov)	**Claims/Settlements** **Engineers:** New York has no claim/settlement reporting requirements for engineers. **Land Surveyors:** Same as for engineers above. NYS Professional Engineering & Land Surveying: Laws, Rules & Regulations (nysed.gov)
OH	**Ohio Architects Board** **Ohio Architects Board | Architects Board**	**Claims/Settlements** Ohio has no claim/settlement reporting requirements for architects. Other Considerations If a registered architect is found guilty of a felony in any jurisdiction or has been disciplined by another jurisdiction, during the current renewal period, the registered architect shall notify the board in writing within sixty days. If a registered architect is registered with the "Ohio Civil Child Sexual Abuse Registry" pursuant to Chapter 3797 of the Revised Code, the registered architect shall notify the board in writing within sixty days.	**Ohio Board of Engineers and Surveyors** **Professional Engineers and Surveyors | Ohio Board of Engineers and Surveyors**	**Claims/Settlements** **Engineers:** Ohio has no claim/settlement reporting requirements for engineers. Other Considerations If a professional engineer or professional surveyor is found guilty of a felony or had his or her registration revoked or suspended by another jurisdiction, the professional engineer or professional surveyor shall notify the board in writing within sixty days. Ohio Admin. Code § 4733-35-07(D) Laws & Rules | Ohio Board of Engineers and Surveyors

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
OH cont.		Ohio Admin. Code §§ 4703-3-07(C)(7) and (C)(8) Laws and Rules | Architects Board (ohio.gov)		**Land Surveyors:** Same as for engineers above.
OK	**Oklahoma Board of Architects, Landscape Architects and Registered Commercial Interior Designers** Oklahoma Board of Architects, Landscape Architects, & Interior Designers - Architects, Landscape Architects and Registered Commercial Interior Designers Homepage	**Claims/Settlements** Oklahoma has no claim/settlement reporting requirements for architects. Other Considerations 55:10-11-5 (c) If, in the course of their work on a project, the Licensee…becomes aware of a decision taken by their employer or client, against such Licensee's…advice, which violates applicable State or municipal building laws, code or regulations, and which will, in the Licensee's…judgment, materially and adversely affect the health, welfare and safety to the public of the finished project, the Licensee…shall: (1) report the decision to the local building inspector or other public official charged with the enforcement of the applicable State or municipal building laws, code or regulations; (2) refuse to consent to the decision; (3) in circumstances where the Licensee…reasonably believes that other such decisions will be taken, notwithstanding their objection, terminate services with respect to the project. Oklahoma Board of Architects, Landscape Architects, & Interior Designers - Oklahoma Act & Rules	**Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors** **Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors - Home**	**Claims/Settlements** **Engineers:** Oklahoma has no claim/settlement reporting requirements for engineers. Other Considerations Section 475.19. Allegations of violations – Notice and hearing - Appeal A. Investigations and inquiries concerning the professional licensed activities of licensees, or any person or entity who may be in violation of the Board's statutes and rules, may be initiated pursuant to the request of the Investigative Committee or the public. In the event of such an investigation, all licensees have a duty to provide all information requested by the Board within thirty (30) days or a later time if agreed to by the licensee and the Board. All allegations shall be timely investigated by the Board and, unless determined unfounded or trivial by the Board, or unless settled by mutual accord, shall be filed as a formal notice of charges by the Board. TITLE 59, SECTIONS 475.19(A) Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors - Statutes **Land Surveyors:** Same as for engineers above.
OR	**Oregon State Board of Architect Examiners** **ORBAE Portal Home (oregon.gov)**	**Claims/Settlements** Oregon has no claim/settlement reporting requirements for architects. Statutes, Administrative Rules & Reference Manual for Building Officials (oregon.gov)	**Oregon State Board of Examiners for Engineering & Land Surveying** **Oregon State Board of Examiners for Engineering & Land Surveying : Oregon State Board of**	**Claims/Settlements** **Engineers:** Chapter 820, Division 20, Rule 45(4), Obligation Not to Engage in Unprofessional Behavior: (4) An applicant or registrant must give written notification to the Board of any disciplinary action or sanction related to the practice of engineering, land surveying, or photogrammetric mapping

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
OR cont.			**Examiners for Engineering & Land Surveying : State of Oregon**	imposed by any licensing agency within 45-days of the final order being issued. ORS 670.310 & 672.255, Ch. 820, Division 20, Rule 45 Oregon Secretary of State Administrative Rules **Land Surveyors:** Same as for engineers above.
PA	**Pennsylvania Department of State: State Architecture Licensure Board** **Home (pa.gov)**	**Claims/Settlements** Pennsylvania has no claim/settlement reporting requirements for architects. Other Considerations **§ 9.93. Reporting of disciplinary actions, criminal convictions and other licenses.** (a) An applicant for a license issued by the Board shall apprise the Board of the following: (1) A license, certificate, registration or other authorization to practice a profession issued, denied or limited by another state, territory or possession of the United States, a branch of the Federal government or another country. (2) Disciplinary action instituted against the applicant by a licensing authority of another state, territory or possession of the United States, a branch of the Federal government or another country. (3) A finding or verdict of guilt, an admission of guilt or a plea of nolo contendere with respect to a felony offense or an offense involving moral turpitude. (b) After the Board has issued a license, the licensee shall report any disciplinary action or criminal convictions, or both, to the Board in writing within 90 days after its occurrence or on the biennial renewal application, whichever occurs first. Architects Licensure Law (63 P. S. § 34.11, Title 49, § 9.93) 49 Pa. Code Chapter 9. State Architects Licensure Board (pacodeandbulletin.gov)	**Pennsylvania Department of State: Professional Engineers, Land Surveyors and Geologists** **Home (pa.gov)**	**Claims/Settlements** **Engineers:** Pennsylvania has no claim/settlement reporting requirements for engineers. 49 Pa. Code Chapter 37. State Registration Board For Professional Engineers, Land Surveyors And Geologists (pacodeandbulletin.gov) **Land Surveyors:** Same as for engineers above.

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
RI	**State of Rhode Island Design Professionals: Architects** **Architects | Division of Design Professionals (ri.gov)**	**Claims/Settlements** If, in the course of his/her work on a project, a registered architect becomes aware of a decision taken by his/her employer or client against such architect's advice that violates applicable state or municipal building laws and Regulations and which will, in the registered architect's judgment, materially and adversely affect the safety to the public, the architect shall: a. Report the decision to the local building inspector or other public official charged with the enforcement of the applicable State or municipal building laws; b. Refuse to consent to the decision; and c. In circumstances where the registered architect reasonably believes that other such decisions will be taken notwithstanding his/her objection, terminate his/her services with respect to the project unless the registered architect is able to cause the matter to be resolved by other means. In the case of a termination in accordance with § 1.12(C)(3)(c) of this Part, the registered architect shall have no liability to his/her client or employer on account of such termination. Rules and Regulations for Architects, 415-RICR-00-00-1.12(C)(3) Laws, Rules and Regulations: Architects | Division of Design Professionals (ri.gov)	**Engineers:** **State of Rhode Island Design Professionals: Professional Engineers** **Professional Engineers | Division of Design Professionals (ri.gov)** **Land Surveyors:** **State of Rhode Island Design Professionals: Land Surveyors** **Land Surveyors | Division of Design Professionals (ri.gov)**	**Claims/Settlements** **Engineers:** Rhode Island has no claim/settlement reporting requirements for engineers. Other Considerations 10. Registrants having knowledge of possible violations of any of these "Rules of Professional Conduct" must provide the Board with the information necessary for the Board to render a final determination of the propriety of the conduct of any Registrant. 430-RICR-00-00-1.8(C)(10) Rules and Regulations for Professional Engineering - Rhode Island Department of State **Land Surveyors:** Rhode Island has no claim/settlement reporting requirements for land surveyors. **Rules and Regulations for Professional Land Surveying - Rhode Island Department of State (ri.gov)**
SC	**South Carolina Board of Architectural Examiners** SCLLR	**Claims/Settlements** South Carolina has no claim/settlement reporting requirements for architects. Other Considerations South Carolina does require licensed architects to report any threat of illegal or unsafe projects. Specifically, South Carolina Administrative Code 11–12(B)(3) provides: if in the course of work on a project, the architect or firm becomes aware of a decision taken by the	**South Carolina State Board of Registration for Professional Engineers and Surveyors** SCLLR	**Claims/Settlements** **Engineers:** South Carolina has no claim/settlement reporting requirements for engineers. Other Considerations Engineers/Surveyors are also bound to S.C. Code Ann. § 40-22-2, et seq. and architects are bound to S.C. Code Ann. § 40-3-5, et seq. - creates the licensing boards and makes it unlawful for unlicensed practice.

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
SC cont.		employer or client, against the architect's or firm's advice, which violates applicable state or municipal building laws and regulations and which will materially affect adversely the safety to the public of the finished project, the architect or firm shall: (a) report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations; and (b) refuse to consent to the decision; and (c) terminate services with reference to the project in circumstances where the architect or firm reasonably believes that other such decisions will be taken notwithstanding the architect's or firm's objections. SC Admin. R. 11-12(B)(3); SC Code § 40-1-10 (2012) Chapter 11.pdf (scstatehouse.gov)		Engineers/Surveyors: S.C. Code Regs. § 49-301 states that in performance of their professional duties, if the judgment of the engineer or surveyor is overruled under circumstances where the safety, health, and welfare of the public are endangered, they shall inform their employer of the possible consequences and notify other proper authority of the situation, as may be appropriate. SC Code § 40-1-10 (2012) SCLLR **Land Surveyors:** Same as for engineers above.
SD	**South Dakota Board of Technical Professions** SD Board of Technical Professions - Information for Architects	**Claims/Settlements** South Dakota has no claim/settlement reporting requirements for architects. Other Considerations All licensees under the South Dakota Board of Technical Professions must report to the Board for investigation any the violation of the rules of professional conduct by another licensee. S.D. Admin. R. 20:38:36:01; SD Code § 36-18A-2 (2012) Administrative Rule 20:38:36 | South Dakota Legislature (sdlegislature.gov)	**Engineers:** **South Dakota Board of Technical Professions** SD Board of Technical Professions - Information for Engineers **Land Surveyors:** **South Dakota Board of Technical Professions** SD Board of Technical Professions - Information for Land Surveyors	**Claims/Settlements** **Engineers:** South Dakota has no claim/settlement reporting requirements for engineers. Other Considerations All licensees under the South Dakota Board of Technical Professions must report to the Board for investigation any the violation of the rules of professional conduct by another licensee. S.D. Admin. R. 20:38:36:01; SD Code § 36-18A-2 (2012) Administrative Rule 20:38:36 | South Dakota Legislature (sdlegislature.gov) **Land Surveyors:** Same as for engineers above.

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
TN	**Tennessee Board of Architectural and Engineer Examiners** Architects & Engineers (tn.gov)	**Claims/Settlements** Tennessee has no claim/settlement reporting requirements for architects. Other Considerations A Tennessee architect may commit a reporting violation for failing to report a criminal or disciplinary action against him or her. Under Administrative Rule 0120-02-07, a registered architect or engineer may be deemed by the Board to be guilty of misconduct in the registrant's professional practice if: (a) The registrant has pleaded guilty or nolo contendere to or is convicted in a court of competent jurisdiction of a felony or fails to report such action to the Board in writing within sixty (60) days of the action; (b) The registrant's license or certificate of registration to practice architecture, engineering or landscape architecture in another jurisdiction is revoked, suspended or voluntarily surrendered as a result of disciplinary proceedings or the registrant fails to report such action to the Board in writing within sixty (60) days of the action; (c) The registrant fails to respond to Board requests and investigations within thirty (30) days of the mailing of communications, unless an earlier response is specified. Tenn. Admin. R. 0120-02-07; T.C.A.. § 62-2-203 (2016) 0120 - Architectural and Engineering Examiners (tnsosfiles.com)	**Tennessee Board of Architectural and Engineer Examiners** Architects & Engineers (tn.gov)	**Claims/Settlements** **Engineers:** Tennessee has no claim/settlement reporting requirements for engineers. Other Considerations A Tennessee engineer may commit a reporting violation for failing to report a criminal or disciplinary action against him or her. Under Administrative Rule 0120-02-07(5): [a] registered architect or engineer may be deemed by the Board to be guilty of misconduct in the registrant's professional practice if: (a) The registrant has pleaded guilty or nolo contendere to or is convicted in a court of competent jurisdiction of a felony or fails to report such action to the Board in writing within sixty (60) days of the action; (b) The registrant's license or certificate of registration to practice architecture, engineering or landscape architecture in another jurisdiction is revoked, suspended or voluntarily surrendered as a result of disciplinary proceedings or the registrant fails to report such action to the Board in writing within sixty (60) days of the action; (c) The registrant fails to respond to Board requests and investigations within thirty (30) days of the mailing of communications, unless an earlier response is specified. Tenn. Admin. R. 0120-02-07; T.C.A.. § 62-2-203 (2016) 0120 - Architectural and Engineering Examiners (tnsosfiles.com) **Land Surveyors:** Tennessee has no claim/settlement reporting requirements for land surveyors.

STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
TX	**Texas Board of Architectural Examiners** Texas Board of Architectural Examiners	**Claims/Settlements** Texas has no claim/settlement reporting requirements for architects. Other Considerations A Texas architect commits a violation of the Administrative Rule 1.174(j) if the architect fails to respond to a Board inquiry. Tex. Admin. R. 1.174(j)(4)(C); TX Occ. Code § 1051.001 Texas Administrative Code (state.tx.us)	**Texas Board of Professional Engineers and Land Surveyors** PELS (texas.gov)	**Claims/Settlements** **Engineers:** Texas has no claim/settlement reporting requirements for engineers. Other Considerations Texas engineers and land surveyors may be obligated to report other licensees to the board if they believe a licensee is engaging in misconduct or incompetent practice. Under Rule 137.55, an engineer must first notify involved parties of any engineering decisions or practices that might endanger the health, safety, property or welfare of the public. When, in an engineer's judgment, any risk to the public remains unresolved, that engineer shall report any fraud, gross negligence, incompetence, misconduct, unethical or illegal conduct to the board or to proper civil or criminal authorities. Tex. Admin. R. 137.55; TX Occ. Code § 1001.405 Texas Administrative Code (state.tx.us) **Land Surveyors:** Same as for engineers above.
UT	**Utah Department of Commerce, Division of Occupational and Professional Licensing** DOPL - Landscape Architecture (utah.gov)	**Claims/Settlements** Utah has no claim/settlement reporting requirements for architects. UT Code 58-3a-101 (2010) DOPL - Architecture (utah.gov)	**Utah Department of Commerce, Division of Occupational and Professional Licensing** DOPL - Engineering (utah.gov)	**Claims/Settlements** **Engineers:** Utah has no claim/settlement reporting requirements for engineers. UT Code 58-22-101 (1996) DOPL - Engineering (utah.gov) **Land Surveyors:** Same as for engineers above.
VA	**Department of Professional and Occupational Regulation** Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers	**Claims/Settlements** Virginia has the same reporting requirements for Architects, Engineers and Land Surveyors. Virginia does not explicitly require reporting of all claims and settlements. Other Considerations An applicant and regulant need to be of "good moral character" and could face	**Department of Professional and Occupational Regulation** Board for Architects, Professional Engineers, Land Surveyors,	**Claims/Settlements** **Engineers:** Virginia has the same reporting requirements for Architects, Engineers and Land Surveyors. *See* Architect Section.

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
VA cont.		sanctions for failing to notify the board within 30 days of any disciplinary action by any county, city, town, state, or federal governing body. (*see* https://dpor.virginia.gov/Boards/APELS) Pursuant to 18 Va. Admin. Code § 10-20-20, an applicant and regulant need to be of "good moral character", which may be established if the applicant or regulant, among other things, has not committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, negligence, or incompetence reasonably related to [area of practice]. 18VAC10-20-20. General application requirements. (virginia.gov) 18VAC10-20-10. Definitions. (virginia.gov) Pursuant to 18 Va. Admin. Code § 10-20-790, [t]he board may discipline or sanction any regulant if the board finds, among other things, that: 9. The regulant has been disciplined by any county, city, town, state, or federal governing body. For purposes of this section "discipline" means reprimand; civil or monetary penalty; probation, suspension, or revocation of a license; or cease and desist order. The board will review such discipline before taking any disciplinary action of its own; or 10. The regulant fails to notify the board within 30 days of having been disciplined by any county, city, town, state, or federal governing body as stipulated in subdivision 9 of this section. 18VAC10-20-790. Sanctions. (virginia.gov) Additionally, architects, engineers, and land surveyors must be responsive to inquiries from the Board regarding potential claims. Pursuant to Rule 10-20-740(E), upon request by the board or any of its agents, the regulant shall produce any plan, plat, document, sketch, book, record, or copy thereof concerning a transaction covered by this chapter and shall cooperate in the investigation of a	Certified Interior Designers	**Land Surveyors:** Virginia has the same reporting requirements for Architects, Engineers and Land Surveyors. *See* Architect Section.

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
VA cont.		complaint filed with the board against a regulant. 18VAC10-20-740. Professional responsibility. (virginia.gov)		
VT	**Vermont office of Professional Architects** Vermont Secretary of State - Office of Professional Regulation Architects Section	**Claims/Settlements** Title 26, Chapter 3 (Architects), Section 210 (unprofessional conduct) is the only section regarding reporting and it makes the following failure to report a violation: (15) failing to report to the Board knowledge of a violation of these rules by another licensee. (16) failing to report to the public official charged with enforcement of applicable state or municipal building laws and regulations any decision taken by the licensee's employer or client, against the licensee's advice, which violates applicable state or municipal building laws and regulations and which will, in the licensee's judgment, materially affect adversely safety to the public or the finished project. https://legislature.vermont.gov/statutes/section/26/003/00210h	**Engineers:** **Vermont Office of Professional Architects** Vermont Secretary of State - Office of Professional Regulation Engineering Section **Land Surveyors:** **Vermont Office of Professional Land Surveyors** Vermont Secretary of State - Office of Professional Regulation Land Surveyors Section	**Claims/Settlements** **Engineers:** Title 26, Chapter 20 (Professional Engineering), Subchapter 4 (discipline), section 1191 (unprofessional conduct) is the only section regarding reporting: (12) failing to report to the Board knowledge of a perceived violation of this statute or the Board's rule by another professional engineer licensed in this State. (Added 1983, No. 188 (Adj. Sess.), § 2; amended 1989, No. 250 (Adj. Sess.), § 34; 1997, No. 145 (Adj. Sess.), § 37; 2013, No. 27, § 15.) **Land Surveyors:** Title 26, Chapter 45 (Land Surveyors) does not mandate any reporting.
WA	**Washington State Board for Architects** WA State Licensing (DOL) Official Site: Washington State Board for Architects	**Claims/Settlements** Washington has no claim/settlement reporting requirements for architects. Other Considerations Washington does require licensed architects to report any threat of illegal or unsafe projects. Under Washington Administrative Rule 308-12-330, if, in the course of his or her work on a project, a registered architect becomes aware of a decision made by his or her employer or client, against his or her advice, which violates applicable state or municipal building laws and rules or ordinances which will, in the registered architect's judgment, materially and adversely affect the	**Board of Registration for Professional Engineers & Surveyors** Engineers | Board of Registration for Professional Engineers & Land Surveyors (wa.gov)	**Claims/Settlements** **Engineers:** Washington has no claim/settlement reporting requirements for engineers. Other Considerations Washington engineers and land surveyors must cooperate with Board investigations which may require disclosing claims or settlements. Under Washington Administrative Rule 196-09-110, in the course of an investigation and request by the board, a licensee or registrant must provide access to any papers, records, or documents in their possession or accessible to them that pertain to the allegations in a complaint or investigation,

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
WA cont.		safety to the public of the finished project, the registered architect must report the decision to the local building inspector or other public official charged with the enforcement of the applicable state, county, or municipal building laws and regulations, refuse to consent to the decision, and terminate services on the project when you reasonably believe decisions will be made against your objection. WA Admin. R. 308-12-330; WA Rev Code § 18.08.235 (2019) WA State Licensing (DOL) Official Site: Laws, rules, and rulemaking activity for architects		and may provide a written explanation addressing such complaint/ investigation or other information requested by the board. WA Admin. R. 196-09-110 Under Washington Administrative Rule 196-27A-020, Washington engineers and land surveyors must also inform their clients or employers of the harm that may come to the life, health, property and welfare of the public at such time as their professional judgment is overruled or disregarded. If the harm rises to the level of an imminent threat, the registrant is also obligated to inform the appropriate regulatory agency. WA Admin R. 196-27A-020; WA Rev Code § 18.43.010 (2016) Laws and Rules | Board of Registration for Professional Engineers & Land Surveyors (wa.gov) **Land Surveyors:** Same as for engineers above.
WV	**West Virginia Board of Architects** WV Board of Architects	**Claims/Settlements** West Virginia has no claim/settlement reporting requirements for architects. Other Considerations West Virginia does require licensed architects to report any threat of illegal or unsafe projects. Under West Virginia Administrative Rule 9.3.3, if, in the course of his or her work on a project, a registered architect becomes aware of a decision made by his or her employer or client, against his or her advice, which violates applicable state or municipal building laws and rules or ordinances which will, in the registered architect's judgment, materially and adversely affect the safety to the public of the finished project, the registered architect shall . . . report the decision to the local building inspector or other public official charged with the enforcement of the applicable state, county, or municipal building laws and rules and ordinances. WV Admin. R. 9.3.3	**Engineers:** **West Virginia State Board of Registration for Professional Engineers** West Virginia Engineering Law (wvpebd.org) **Land Surveyors:** **West Virginia Board of Professional Surveyors** WV Board of Professional Surveyors	**Claims/Settlements** **Engineers:** West Virginia has no claim/settlement reporting requirements for engineers. Other Considerations West Virginia law does require that the engineer report any disciplinary actions against them to the Board. Under Administrative Rule § 7-1-12.6, a registered professional engineer "must report any disciplinary action by other jurisdictions via a renewal form. A registered professional engineer "who has been fined, received a reprimand, or had his or her registration revoked, suspended or denied in another jurisdiction for reasons or causes which this Board finds would constitute a violation of the law governing the practice of engineering in this state or any rule promulgated by this Board, is sufficient cause for the Board to levy a fine, reprimand, or deny, revoke or suspend a registration to practice engineering by the registrant in this state." "Another jurisdiction" means any other governing

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STATE	ARCHITECT STATE REGULATORY BOARD	ARCHITECTS	ENGINEER/LAND SURVEYOR STATE REGULATORY BOARD	ENGINEERS/LAND SURVEYORS
WV cont.		Further, a registered architect possessing knowledge of a violation of the provision set forth in subdivisions 9.1 through 9.7 of this rule by another registered architect shall report that knowledge to the Board [of Architects]. These rules by subject matter include: 9.1 (Competence); 9.2 (Conflict of Interest); 9.3 (Full Disclosure); 9.4 (Compliance with Laws); 9.5 (Professional Practices); 9.6 (Design and Use of Architect's Seal); 9.7 (Amendments to Rules). WV Admin. R. 9.3.6; WV Code § 30-12-1 Rules & Laws - Rule Changes Effective July 1, 2020 (wv.gov)		entity, including a licensing board for another profession. Under Rule 7.3(h) registered engineers must also report the loss or theft of his or her seal to the Board as soon as practical after the loss or theft. Additionally, under Rule 12.3 ("Registrant's Obligations to Society"), (c) Registrants shall notify their employer or client and other appropriate authority when their professional judgment is overruled under circumstances where the life, health, property, or welfare of the public is endangered. Under Rule 12.6 ("Actions brought against applicants"), a registered PE who has been fined, received a reprimand, or had his or her registration revoked, suspended or denied in another jurisdiction for reasons or causes which this Board finds would constitute a violation of the law governing the practice of engineering in this state or any rule promulgated by this Board, is sufficient cause for the Board to levy a fine, reprimand, or deny, revoke or suspend a registration to practice engineering by the registrant in this state. Any such actions by other jurisdictions shall be reported on the renewal form. For purposes of this section. WV Code § 30-13-1 (2014) West Virginia Engineering Law (wvpebd.org) Under WV Code § 30-13-17 (Certificates of authorization required; naming of engineering firms), (h) Every holder of a certificate of authorization has a duty to notify the board promptly of any change in information previously submitted to the board in an application for a certificate of authorization. Under, Rule 6.2(d), registered PEs "shall notify the Board when a certificate of registration is lost, destroyed or mutilated, and, if the registrant is in good standing, the Board shall replace it, upon presentation of a statement of the loss and the prescribed fee in §7-1-13.4" Under Rule 6.5, it is also a PE's [or EI's] responsibility to notify the Board within thirty days of any change in information

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WV cont.				previously submitted to the Board, such as name change, change of address, change of employer, or similar matter requiring current information. WV Code § 7-1-6 **Land Surveyors:** West Virginia has no claim/settlement reporting requirements for land surveyors. Law (wv.gov) W. Va. Code §30-13A-6 West Virginia's Disciplinary and Complaint Procedures for Professional Surveyors, Rule 4.11 provides: a complaint and Notice of alleged violation sent to licensed professional surveyors or applicants for a license are properly served when sent to their last known address. It is the responsibility of the licensed professional surveyor or applicant for a license to keep the Board informed of his or her current address. WV Code §23-3-4 (Disposition of Complaints)
WI	**The Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, Professional Land Surveyors and Registered Interior Designers** DSPS Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, Professional Land Surveyors, and Registered Interior Designers (wi.gov)	**Claims/Settlements** Wisconsin has no claim/settlement reporting requirements for architects. Other Considerations Architects, engineers and land surveyors have other reporting requirements under the Wisconsin Administrative Code. Rule A-E8.08 provides, an architect, landscape architect, professional engineer, designer or professional land surveyor: (1) Shall furnish the board with information indicating that any person or firm has violated provisions in ch. 443, Stats., rules in this chapter or other legal standards applicable to the profession. (2) May not discuss with any individual board member any disciplinary matter under investigation or in hearing. (3) Shall respond in a timely manner to a request by the board, a section of the	**The Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, Professional Land Surveyors and Registered Interior Designers** DSPS Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, Professional Land Surveyors, and Registered Interior Designers (wi.gov)	**Claims/Settlements** **Engineers:** Wisconsin has no claim/settlement reporting requirements for engineers. Wis. Stat. § 15.405(2) DSPS Architects, Landscape Architects, Professional Engineers, Designers, and Professional Land Surveyors (wi.gov) **Land Surveyors:** Same as for engineers above.

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WI cont.		board or the department for information in conjunction with an investigation of a complaint filed against a registrant or licensee. There is a rebuttable presumption that a registrant or licensee who takes longer than 30 days to respond to a request for information has not acted in a timely manner. (4) Shall notify the department in writing if the registrant or licensee has been disciplined for unprofessional conduct in other states where the registrant or licensee holds a credential or has violated federal or state laws, local ordinances or administrative rules, not otherwise reportable under s. SPS 4.09 (2) [criminal convictions], which are related to the practice of an architect, landscape architect, professional engineer, designer or professional land surveyor. The notification shall be submitted within 48 hours of the disciplinary finding or violation of law and shall include copies of the findings, judgments and orders so that the department may determine whether the circumstances are substantially related to the practice of the registrant or licensee. Wis. Admin. R. A-E8.08; Wis. Stat. § 15.405(2) Wisconsin Legislature: A-E 8.08(1)		
WY	**Wyoming State Board of Architects and Landscape Architects** Home (wyo.gov)	**Claims/Settlements** Wyoming has no claim/settlement reporting requirements for architects. Other Considerations Wyoming does require licensed architects to report any threat of illegal or unsafe projects. Under Wyoming Administrative Rules 10.3, if, in the course of his or her work on a project, a licensee becomes aware of a decision taken by his or her employer or client, against such licensee's advice, which violates applicable state or municipal building laws and regulations and which will, in the licensee's judgment materially and adversely affect the safety to the public of the finished project, the licensee shall (A) report the decision to the local	**Wyoming Board of Professional Engineers and Professional Land Surveyors** Professional Engineers (wyo.gov)	**Claims/Settlements** **Engineers:** Wyoming has no claim/settlement reporting requirements for engineers or land surveyors. Other Considerations Under Wyoming Administrative Rule 037-5-7, a licensed engineer or land surveyor must report threats of misconduct to the Board. If a Licensee's professional judgment is overruled or not adhered to under circumstances where a serious threat to the public health, safety, or welfare results or would result, the Licensee shall immediately notify the client or employer. If the client or employer does not take appropriate remedial action within a reasonable amount of time under the

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WY cont.		building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations; (B) refuse to consent to the decision; and (C) In circumstances where the licensee reasonably believes that other such decisions will be taken, notwithstanding his or her objection, terminate his or her services with respect to the project. WY Admin. R. 10.3; WY Stat. § 33-4-115 Rules and Practice Act (wyo.gov)		circumstances, the Licensee shall also notify the Board of the specific nature of the public threat. WY Admin. R. 037-5-7; WY Stat. § 33-29-305(a)(i) Professional Engineers - Rules and Regulations (wyo.gov) **Land Surveyors:** Same as for engineers above.

50 State Legal Matrix – Bad-Faith Cause of Action 2024

An insured's right to a bad-faith case of action against their insurer, varies by state. In some states, courts have held that an insurer's bad faith is considered to be a kind of tort. In other states, the insured only has a cause of action under a theory of breach of contract. This distinction is particularly important because in the jurisdictions that permit tort action, an insured can recover both compensatory and punitive damages. Few states allow an insured to have the decision of their choice of recourse. Some state preclude recovery of extra contractual relief by statute. Additionally, states vary on whether the right to a claim for bad-faith exists in the context of first-party or third-party claims. The following legal matrix analyzes an insured's right to bring a bad-faith cause of action against their insurer in all 50 states and the District of Columbia.

Please be advised that hyperlinks were added to the statutory and case citations. By clicking on the citation hyperlinks, you will be brought to the webpage containing the statutes and case law that will provide the relevant information.

STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
Alabama	Tort	**Statute**: The right to bring a bad-faith cause of action against an insurer is not provided for by statute. **Case Law:** The Alabama Supreme Court recognized a bad faith cause of action in tort when an insurer refuses to pay it's insured for a loss that is within its policy coverage. Chavers v. Nat'l Sec. Fire & Cas. Co., 405 So. 2d 1 (Ala. 1981). The Court decided that in regards to first party insurance actions, the proper recourse is the intentional tort of bad faith. Id. At 4. In Gulf Atl. Life Ins. Co. v. Barnes, 405 So. 2d 916 (Ala. 1981), Alabama Supreme Court defined bad-faith as "not simply bad judgment or negligence. It imports a dishonest purpose and means a breach of known duty, i.e., good faith and fair dealing, through some motive of self-interest or ill will." In Nat'l Sec. Fire & Cas. Co. v. Bowen, 417 So. 2d 179 (Ala. 1982), the Supreme Court of Alabama determined that, for a Plaintiff to succeed on a claim for bad faith, they have the burden of proving: "(a) an insurance contract between the parties and a breach thereof by the defendant; (b) an intentional refusal to pay the insured's claim; (c) the absence of any reasonably legitimate or arguable reason for that refusal (the absence of a debatable reason); (d) the insurer's actual knowledge of the absence of any legitimate or arguable reason; (e) if the intentional failure to determine the existence of a lawful basis is relied upon, the plaintiff must prove the insurer's intentional failure to determine whether there is a legitimate or arguable reason to refuse to pay the claim." However, if there is a lawful basis for the insurer's denial of coverage, as a matter of law, the insurer "cannot be held liable in an action based upon the tort of bad faith." Important to note, in Alabama, the Supreme Court made a distinction between first-party and third-party bad-faith claims, holding, "In third party actions involving liability coverage… this Court has consistently allowed recovery against the insurer in situations where the insurer wrongfully refuses, either negligently or intentionally, to settle[a] third party claim[;] in the third-party context, therefore, counts based upon either negligence or bath faith are actionable." Chavers v. Nat'l Sec. Fire & Cas. Co., 405, *5 So. 2d 1 (Ala. 1981)
Alaska	Tort	**Statute:** When liability is clear, an insurer may not "(6) fail to attempt in good faith to make prompt and equitable settlement of claims in which liability is reasonably clear; (7) engage in a pattern or practice of compelling insureds to litigate for recover of amounts due under insurance policies by offering substantially less than the amounts ultimately recovered in actions brought by those insureds; and (8) compel an insured or third-party claimant in a case in which liability is clear to litigate for recovery of an amount due under an insurance policy by offering an amount that does not have an objectively reasonable basis in law and fact that has not been documented in the insurer's file…" Alaska Stat. Ann. § 21.36.125 (West).

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STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
Alaska cont.		**Case Law:** In State Farm Fire & Cas. Co. v. Nicholson, 777 P.2d 1152 (Alaska 1989), the Supreme Court of Alaska held that bad-faith conduct on the part of the insurer "may give ride to a cause of action in tort for breach of an implied covenant of good faith and fair dealing." The Supreme Court of Alaska held that "while the tort of bad faith in the first-party insurance cases may or may not require conduct which is fraudulent or deceptive, it necessarily requires that the insurance company's refusal to honor a claim be made without a reasonable basis. Hillman v. Nationwide Mut. Fire Ins. Co., 855 P.2d 1321, 1324 (Alaska 1993) (footnotes omitted). The Court went on to say, "our position is merely that where the insurer established that no reasonable jury could regard its conduct as unreasonable, the question of bad faith need not and should not be submitted to the jury." Id. Even though the Alaskan Supreme Court has denied to delineate the elements of a bad-faith claim, it has reiterated that "a plaintiff must show that the defendant-insurer lacked a reasonable basis for denying benefits of the policy and that the defendant-insurer had knowledge that no reasonable basis existed to deny the claim or acted in reckless disregard for the lack of a reasonable basis for denying the claim." United States v. CNA Fin. Corp., 168 F. Supp. 2d 1125, 1131-1132 (D. Alaska 2001) (footnotes omitted) When it comes to third-party claims for bad faith, the Supreme Court of Alaska held that a third-party may also bring a cause of action for bad faith against an insurer. Ennen v. Integon Indem. Corp., 268 P.3d 277, 283 (Alaska 2012). However, the Court does make the distinction that "the policyholder of an insurance contract and intended third-party beneficiaries of an insurance contract, such as additional insureds, have a case of action for bad faith; incidental third-party beneficiaries do not. Id
Arizona	Tort	**Statute**: In Arizona, a person may not: "4. [refuse] to pay claims without conducting a reasonable investigation based upon all available information…6. Not [attempt'] in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. 7. As a property or casualty insurer, failing to recognize a valid assignment of a claim… 8. [Compel] insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds. 9. [Attempt] to settle a claim for less than the amount to which a reasonable person would have believed he was entitled be reference to written or printed advertising material accompanying or made part of an application… " Ariz. Rev. Stat. Ann. § 20-461 **Case Law:** In *Noble,* the Arizona Supreme Court concluded that an insurer has an implied duty, as a result of an insurance contract, that it must have in good faith and fair dealing with its insured, and a failure to act in accord with that duty of good faith is a tort. Noble v. Nat'l Am. Life Ins. Co., 128 Ariz. 188, 624 P.2d 866, 868 (1981). The tort of bad-faith has two elements in Arizona, as outlined by the State's Supreme Court, "the initial inquiry consists of an objective finding, i.e., whether the insurer acted unreasonably, the second inquiry focuses on the insurer's conduct and whether the insurer knew that its conduct was unreasonable or acted with such reckless disregard that such knowledge could be imputed to it." Deese v. State Farm Mut. Auto. Ins. Co., 172 Ariz. 504, 838 P.2d 1265, 1268 (1992). See also Rawlings v. Apodaca, 151 Ariz. 149, 726 P.2d 565 (1986) (negligence is not a sufficient standard to determine bad-faith, an insurer has to have the intent to commit the bad-faith act or omission "and must form that intent without reasonable or fairly debatable grounds"); Trus Joist Corp. v. Safeco Ins. Co. of Am., 153 Ariz. 95, 735 P.2d 125 (Ct. App. 1986) (a plaintiff does not have claim for bad faith if the defendant insurer acted reasonably). When it comes to third-party claims, the Arizona Supreme Court has made clear that the standard to determine if an insured has breached the duty of good faith and fair dealing is different from that of first-party actions. Clearwater v. State Farm Mut. Auto. Ins. Co., 164 Ariz. 256, 792 P.2d 719 (1990). In the case of third-party plaintiff's, the Arizona Supreme Court has said that an insurer must think about protecting both the insured's and its own interests, and "if an insurance company fails to settle, and does so in bad faith, it is liable to the insured for the

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Arizona cont.		full amount of the judgment. Hartford Acc. & Indem. Co. v. Aetna Cas. & Sur. Co., 164 Ariz. 286, 792 P.2d 749 (1990) (citation omitted). In *Clearwater*, the Arizona Supreme Court reiterated the eight factors it had determined previously in *Little* to be considered in a third-party bad faith claim: "(1) the strength of the injured claimant's case on the issues of liability and damages; (2) attempts by the insurer to induce the insured to contribute to a settlement; (3) failure of the insurer to properly investigate he circumstances so as to ascertain the evidence against the insured; (4) the insurer's rejection of advice of its own attorney or agent; (5) failure of the insurer to inform the insured of a compromise offer; (6) the amount of financial risk to which each party is exposed in the event of a refusal to settle; (7) the fault of the insured in inducing the insurer's rejection of the compromise offer by misleading it as to the facts; and (8) any other factors tending to establish or negate bad faith on the part of the insurer." Clearwater v. State Farm Mut. Auto. Ins. Co., 164 Ariz. 256, 792 P.2d 719 (1990) (citing Gen. Acc. Fire & Life Assur. Corp. v. Little, 103 Ariz. 435, 443 P.2d 690 (1968) Additionally, there is a two-year statute of limitations for a plaintiff to bring a tort action for bad faith against their insurer. See Taylor v. State Farm Mut. Auto. Ins. Co., 185 Ariz. 174, 913 P.2d 1092 (1996)
Arkansas	Tort	**Statute:** According to Arkansas state law, there is a limited private cause of action available to a plaintiff if their insurer fails to pay the loss within the specified time in their policy after the demand is made. If this occurs, the insurer "shall be liable to pay the holder of the policy or his or her assigns, in addition to the amount of the loss, twelve percent (12 percent) damages upon the amount of the loss, together with all reasonable attorney's fees for the prosecution and collection of loss. Ark. Code Ann. § 23-79-208 (West) **Case Law:** The Arkansas Supreme Court has held that an insurance company "commits the tort of bad faith when it affirmatively engages in dishonest, malicious, or oppressive conduct in order to avoid a just obligation to its insured." Switzer v. Shelter Mut. Ins. Co., 362 Ark. 419, 208 S.W.3d 792, 801 (2005). In addition, the Court in *Switzer* reiterated, "We have defined 'bad faith' as dishonest, malicious, or oppressive conduct carried out with a state of mind characterized by hatred, ill will, or a spirit of revenge." Id.; see also S. Farm Bureau Cas. Ins. Co. v. Allen, 326 Ark. 1023, 934 S.W.2d 527 (1996) (where an insurance agent lying by stating there was no insurance coverage did amount to bad faith); Viking Ins. Co. of Wisconsin v. Jester, 310 Ark. 317, 836 S.W.2d 371 (1992) (where a claims representatives abusive, aggressive, and coercive behavior, including their conversion of the insured's wrecked car did amount to bad faith); Emps. Equitable Life Ins. Co. v. Williams, 282 Ark. 29, 665 S.W.2d 873 (1984) (where an employee intentionally altered insurance records in order to avoid a bad risk amounted to bad faith). In Arkansas, the Supreme Court has held over and over that an insurer's mistake, negligence, confusion, or bad judgement is not sufficient to substantiate a bad faith claim. State Auto Prop. & Cas. Ins. Co. v. Swaim, 338 Ark. 49, 991 S.W.2d 555 (1999) The Arkansas Supreme Court has stated, "The third party tort of bad faith is the negligent failure of an insurer to settle a third party claim within the policy limits." Emps. Equitable Life Ins. Co. v. Williams, 282 Ark. 29, 665 S.W.2d 873, 874 (1984)
California	Tort	**Statute:** California law specifically delineates prohibited acts of insurers. Cal. Ins. Code § 790.03 (West). This section of the California insurance code is long, please visit the hyperlink to see what actions or omissions are prohibited by law. **Case Law:** The California Supreme Court has held that insurers have an absolute duty of good faith and fair dealing, and if this duty is breached, an insured has a cause of action in tort for the breach of this implied covenant. Gruenberg v. Aetna Ins. Co., 9 Cal. 3d 566, 510 P.2d 1032 (1973)

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STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
California cont.		Furthermore, "In first party cases, the implied covenant of good faith and fair dealing obligates the insurer to make a throughout investigation of the insured's claim for benefits, and not to unreasonably delay or withhold payment of benefits. If the insurer 'without proper cause' (i.e., unreasonably) refuses to timely pay what is due under the contract, the conduct is actionable as a tort." Major v. W. Home Ins. Co., 169 Cal. App. 4th 1197, 87 Cal. Rptr. 3d 556 (2009), as modified on denial of reh'g (Jan. 30, 2009) (citing Gruenburg, 510 P.2d at 1037) When it comes to third-party bad faith claims, the implied covenant "obligated the insurance company, among other things, to make reasonable efforts to settle a third party's lawsuit against the insured. If the insurer breaches the implied covenant by unreasonably refusing to settle the third party suit, the insured may sue the insurer in tort to recover damages proximity cause by the insurer's breach." PPG Indus., Inc. v. Transamerica Ins. Co., 20 Cal. 4th 310, 975 P.2d 652 (1999). Furthermore, in order to hold an insurer liable for a claim of bad faith when it comes to third-party claims, "the evidence must establish that the failure to settle was unreasonable." Pinto v. Farmers Ins. Exch., 61 Cal. App. 5th 676, 276 Cal. Rptr. 3d 13 (2021), as modified (Mar. 18, 2021), reh'g denied (Mar. 30, 2021), review denied (June 23, 2021). However, an insurer's failure to accept a reasonable settlement offer does not in itself necessarily constitute bad faith, but "the crucial issue is… the basis for the insurer's decision to reject an offer of settlement." Id. (citing Walbrook Ins. Co. v. Liberty Mut. Ins. Co., 5 Cal. App. 4th 1445, 7 Cal. Rptr. 2d 513 (1992))
Colorado	Tort	**Statute:** In 2008, the General Assembly of Colorado enacted COLO. REV. STAT. § 10-3-1115 (improper denial of claims) and 10-3-1116 (unreasonable delay or denial of benefits). According to Colorado statute, "A person engaged in the business of insurance shall not unreasonably delay or deny payment of a claim for benefits owed to or on behalf of any first-party claimant…for the purposes of an actions brought pursuant to this section and section 10-3-1116, an insurer's delay or denial was unreasonably if the insurer delayed or denied authorizing payment of a covered benefit without a reasonable basis for that action." Colo. Rev. Stat. Ann. § 10-3-1115 (West) Under § 10-3-1116, "(1) A first-party claimant as defined in…10-3-1115 whose claim for payment of benefits has been unreasonably delayed or denied may bring an action in a district court to recover reasonably attorney fees and court costs and two times the covered benefit… (4) The action authorized in this section is in addition to, and does not limit or affect, other actions available by statute or common law, now or in the future. Damages awarded pursuant to this section shall not be recoverable in any other action or claim." Colo. Rev. Stat. Ann. § 10-3-1116 (West) **Case Law:** The Supreme Court of Colorado held that a first party insured may bring a claim for bad faith under the tort of a breach of the duty of good faith and fair dealing. Goodson v. Am. Standard Ins. Co. of Wisconsin, 89 P.3d 409 (Colo. 2004) (en banc). In *Goodson*, the Court stated, "In addition to proving that the insurer acted unreasonably under the circumstances, a first-party claimant must prove that the insurer either knowingly or recklessly disregarded the validity of the insured's claim. This standard of care reflects a reasonable balance between the right of an insurance carrier to reject a non-compensable claim submitted by its insured and the obligation of such carrier to investigate and ultimately approve a valid claim." Id. (citation and internal quotation omitted). When it comes to third-party bad faith claims, the Colorado Supreme Court has stated, "we are persuaded that the standard of conduct of an insurer in relation to its insured in a third party context must be characterized by the general principles of negligence…the standard applicable to establish the tort of bad faith remains one of reasonableness under the circumstances." Farmers Grp., Inc. v. Trimble, 691 P.2d 1138, 1141 (Colo. 1984)

STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
Connecticut	Contract	**Statute:** Connecticut does have a statue which expressly defines unfair practices. Please see Conn. Gen. Stat. Ann. § 38a-816 (West), specifically, section (6) which outlines prohibited unfair claim settlement practices. **Case Law:** The Connecticut Supreme Court held that "To constitute a breach of [the implied covenant of good faith and faith dealing], the acts by which a defendant allegedly impeded the plaintiff's right to receive benefits that he or she reasonably expected to receive under the contract must have been taken in bad faith…Bad faith in general implies both actual and constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interest or sinister motive… Bad faith means more than mere negligence; it involves a dishonest purpose." Capstone Bldg. Corp. v. Am. Motorists Ins. Co., 308 Conn. 760, 67 A.3d 961 (2013) (internal quotation marks omitted). Additionally, an express duty must be violated on order to maintain a cause of action for bad faith. Id. Additionally, the Connecticut appellate court stated that while a complete list of the types of bad faith an insurer may commit is impossible, the following have been recognized in judicial decisions: "evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of power to specify terms, and interference with or failure to cooperate in the other party's performance." Elm St. Builders, Inc. v. Enter. Park Condo. Ass'n, Inc., 63 Conn. App. 657, 778 A.2d 237 (2001) (internal quotations omitted). The Connecticut appellate court has yet to address third-party claims of bad faith.
Delaware	Contract	**Statute:** The right to bring a bad-faith cause of action against an insurer is not provided for by statute. **Case Law:** The Supreme Court of Delaware has held that a claim of bad faith against an insurer shall be grounded in contract, not tort. Enrique v. State Farm Mut. Auto. Ins. Co., 142 A.3d 506 (Del. 2016). An insured has a claim for breach of the implied covenant of good faith and fair dealing "when the insurer refuses to honor its obligations under the policy and clearly lacks reasonable justification for doing so. A mere delay in paying benefits is insufficient to constitute bad faith, but delays attributed to a get tough policy, i.e., general business practice of claims denial without a reasonable basis, may subject the insurer to a bad faith claim." (Id. (internal quotations and citations omitted). An insured's claim against their insurer for a breach of the implied covenant of good faith and fair dealing is subject to three years statute of limitations. Connelly v. State Farm Mut. Auto. Ins. Co., 135 A.3d 1271 (Del. 2016)
District of Columbia (Washington D.C.)	N/A	**Statute:** The right to bring a bad-faith cause of action against an insurer is not provided for by statute. **Case Law:** According to a District of Columbia District Court, **a tort for bad faith breach of contract is not recognized u**nder District Columbia Law. Fireman's Fund Ins. Co. v. CTIA, 480 F. Supp. 2d 7 (D.D.C. 2007). Appellate courts in the District of Columbia have affirmed the *Fireman's* court's decision, stating that a "tort must exist in its own right independent of the contract, and any duty upon which the tort is based must flow from considerations other than the contractual relationship." Choharis v. State Farm Fire & Cas. Co., 961 A.2d 1080 (D.C. 2008). There is no instructive authority for third-party bad faith claims, but D.C. courts will often look to Maryland common law when D.C. law is silent on an issue.

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STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
Florida	N/A	**Statute:** The right to bring an action against an insurer for bad faith is provided for by statute in Florida for "1. Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests; 2. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or 3. Except as to liability coverages, failing to promptly settle claims, when the obligation to settle a claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage." Fla. Stat. Ann. § 624.155 (West) **Case Law:** Bad faith claims in Florida may be brought by a first-party insured or by an injured third party. See Farinas v. Florida Farm Bureau General Ins. Co., 850 So.2d 555, 558 (Fla. 4th DCA 2003). Florida Statute Section 624.155 allows any person to bring a statutory bad faith claim against an insurer who fails to attempt "in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interest…" See Fla. Stat. § 624.155(1)(b)(1). The insurer is "required to investigate the facts, give fair consideration to a settlement offer that [is] not unreasonable under the facts, and settle, if possible, when a reasonably prudent persons, faced with the prospect of paying the total recover, would do so." Clauss v. Fortune Ins. Co., 523 So.2d 1177, 1178 (Fla. 5th DCA 1988), citing Boston Old Colony Ins. Co. v. Gutierrez, 386 So.2d 783, 785 (Fla. 1980) The standard for evaluating bad faith claims against insurers for first and third-party claims is whether the insurer acted fairly and honestly towards its insured and with due regard for its insured's interests under a totality-of-the-circumstances approach. See State Farm Mutual Automobile Insurance Co. v. Laforet, 658 So.2d 55 (Fla. 1995). If the insurer is found to have acted fairly and honestly toward its insured and with due regard for its insured's interests, the insurer would only be liable for the value of the insured's claim, as determined by litigation or arbitration in the underlying action, up to the policy limits. See McLeod v. Continental Insurance Co., 573 So.2d 864 (Fla. 2d DCA 1990). If the insurer is found to have acted in bad faith toward its insured, the insurer would be liable for the value of the insured's claim, as determined by litigation or arbitration in the underlying action, including any excess judgment beyond the policy limits, and all other damages proximately caused by the insurer's bad faith including interest on unpaid benefits, attorney's fees, and costs of pursuing the first-party bad faith action. Id. at 867; see Hollar v. International Bankers Insurance Co., 572 So.2d 937 (Fla. 3d DCA 1991)
Georgia	Contract	**Statute**: Georgia recognizes a statutory cause of action for bad faith **against a first-party insurer** under Ga. Code § 33-4-6. To succeed in a bad faith claim, the insured must demonstrate: (1) that the claim is covered by the policy, (2) a demand for payment was made within 60 days before filing suit, and the insurer's failure to pay was motivated by bad faith. 50_State_Insurance_Bad_Faith_Reference_Guide.pdf (iadclaw.org) **Case Law:** To bring a bad faith claim, an insured must allege a breach of the first-party insurance contract. Tiller v. State Farm Mut. Auto. Ins. Co., CIVIL ACTION FILE NO. 1:12-CV-3432-TWT (N.D. Ga. Feb. 5, 2013) For third-party bad faith claims, the insurer must establish that the insured acted unreasonably in responding to the settlement offer. Southern Gen. Ins. Co. v. Holt, 262 Ga. 267, 416 S.E.2d 274 (Ga. 1992)

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STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
Hawaii	Tort	**Statute**: Hawai'i Recognizes a cause of action for bad faith against first-party insurers. Hawaii Revised Statutes § 431:13-103 (2021) - Unfair methods of competition and unfair or deceptive acts or practices defined. :: 2021 Hawaii Revised Statutes :: US Codes and Statutes :: US Law :: Justia. Hawai'i categorizes bad faith insurance claims as torts. Hawaii Revised Statutes § 663-1 (2017) - Torts, who may sue and for what. :: 2017 Hawaii Revised Statutes :: US Codes and Statutes :: US Law :: Justia **Case Law:** To establish a first party bad faith claim under Hawai'i law, the insured must demonstrate two key elements: 1. Benefits due under the policy were wrongfully withheld and 2. The reason for withholding the benefits was unreasonable or without proper cause. Best Place, Inc. v. Penn America Ins. Co., 82 Haw. 120, 920 P.2d 334 (Haw. 1996) For third-party claims, the focus is on whether the insurer's actions were reasonable. Tran v. State Farm Mut. Auto. Ins. Co., 999 F. Supp. 1369, 1372 (D. Haw. 1998) This is for determining whether an insurer, who does not accept a reasonable settle offer within policy limits has violated its duty to act in good faith regarding the interests of the insured. (Id.)
Idaho	Tort And Contract	**Statute**: An insurer's Unfair Claim Settlement Practices are addressed in Idaho Code, § 41-1329. These regulations cover various claims handling practices such as promptly acknowledging communications, promptly investigating claims, affirming or denying coverage for claims within a reasonable time, settling claims reasonably promptly, and accurately representing insurance policy provisions. Idaho Code, § 41-1329A addresses the penalty for violations of § 41-1329, which includes an administrative penalty not to exceed $10,000 and may, in addition to the fine, or in the alternative to the fine, include the suspension or revocation of an insurer's certificate of authority. The Unfair Claims Settlement Practices Act does not give rise to a private right of action whereby an insured can sue an insurer for statutory violations committed in connection with settlement of an insured's claim. However, violations of the Act's provisions may be relevant to a finding of bad faith. **Case Law:** Idaho courts have held that there is a common law duty on the parts of the insurers to their insureds to settle first party claims in good faith and that a breach of this duty will give rise to an action in tort. White v. Unigard Mut. Ins. Co., 112 Idaho 94, 730 P.2d 1014 (Idaho 1986) An insured may recover extra-contractual damages attributable to an insurer's bad faith conduct, including emotional distress. Weinstein v. Prudential Property & Casualty Insurance, 149 Idaho 299, 233 P.3d 1221 (Idaho 2010) For first party claims, a plaintiff must prove "(1) the insurer intentionally and unreasonably denied or withheld payment, (2) the claim was not fairly debatable; (3) the denial or failure to pay was not the result of a good faith mistake, and (4) the resulting harm is not fully compensable by contract damages." Lakeland True Value Hardware, LLC v. Hartford Fire Ins. Co., 153 Idaho 716, 291 P.3d 399 (Idaho 2012) In third-party bad faith claims, courts in Idaho use the "equality of consideration" test to ascertain whether an insurer, who rejected a settlement offer made by a third party, breached its duty of good faith. Truck Ins. Exchange v. Bishara, 128 Idaho 550, 916 P.2d 1275 (Idaho 1996)

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Illinois	Contract	**Statute**: 215 Ill. Comp. Stat. 5/155 ("Section 155")), determines the rights and remedies for victims of bad faith actions by an insurance company where the carrier drags its heels about settling the case. **Case Law:** There is no tort claim for bad faith insurance causes of action. Cramer v. Ins. Exchange Agency, 174 Ill. 2d 513, 675 N.E.2d 897, 904 (Ill. 1996) . Plaintiffs are limited to a breach of contract action with a right to recover extra-contractual damages set out in 215 ILC 5/155 For third-party bad faith claims., "[t]he duty of an insurance provider to settle arises when a claim has been made against the insured and there is a reasonable probability of recovery in excess of policy limits and a reasonable probability of a finding of liability against the insured." Haddick v. Valor Ins, 198 Ill. 2d 409, 763 N.E.2d 299 (Ill. 2001) In determining whether an insurer acted in bad faith, courts looks at a number of factors including "(1) potential for an adverse verdict, (2) potential for damages in excess of policy limits, (3) refusal to negotiate, (4) communication with the ***insured***, (5) adequate investigation and defense, and (6) advice of the insurance company's own adjusters and defense counsel." Rogers Cartage Co. v. Travelers Indem. Co. , 103 N.E.3d 504, 2018 Ill. App. 5th 160098 (Ill. App. Ct. 2018)
Indiana	Tort	**Statute**: There is no statute on point. **Case Law:** Indiana recognizes a bad faith cause of action in tort. Freidline v. Shelby Insurance, 774 N.E.2d 37 (Ind. 2002) To establish a bad faith claim, a plaintiff must prove "that the insurer had knowledge that there was no legitimate basis for denying liability." Freidline v. Shelby Insurance, 774 N.E.2d 37 (Ind. 2002) As for third-party claims, there is a split in Indiana law over the standard to apply to third-party bad faith claims. CATT v. AFFIRMATIVE INSURANCE COMPANY, Case No. 2:08-CV-243 JVB (N.D. Ind. Feb. 3, 2010). Even so, the court in Catt v. Affirmative Insurance Co., showed support for a standard that an insured must establish that the insurer acted with a "dishonest, moral obliquity, furtive design, or ill will." (Id.) Further, the court in Catt also showed support for the: fiduciary duty standard" or "negligence and/or bad faith standard. (Id.)
Iowa	N/A	**Statute**: There is no statute on point. **Case Law:** In order to recover on a bad faith claim, the insured must prove: "(1) The insurer had no reasonable basis for denying the plaintiff's claim; and (2) The insurer knew or had reason to know that its denial or refusal was without reasonable basis. Dolan v. Aid Ins. Co., 431 N.W.2d 790 (Iowa 1988) For third-party bad faith claims, the Iowa court looks at the "reasonableness of an insurer's rejection of a settlement offer within policy limits must be judged from the point of view of one who is exposed to the entire risk. That standard differs from the first-party bad faith test whether a claim is fairly debatable." Walter v. Grinnell Mut, 734 N.W.2d 486 (Iowa Ct. App. 2007)

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STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
Kansas	Contract	**Statute**: Kansas has enacted Kan. Stat. §40-256, which permits an insured to recover extra contractual damages for first-party claims under certain circumstances. **Case Law:** Kansas does not recognize a tort cause of action for a bad faith insurance claim. Spencer v. Kansas Dept. of Rev, 36 Kan. App. 2 149, 158 (Kan. Ct. App. 2006) For third-party claims, the court adopts a more stringent standard by requiring an insurer to prove "both due care and good faith" in rejecting a settlement offer. Bollinger v. Nuss, 202 Kan. 326, 449 P.2d 502 (Kan. 1969)
Kentucky	N/A	**Statute**: There is no statute on point. **Case Law:** For first-party bad faith claims, a plaintiff must prove: "(1) the insurer must be obligated to pay the claim under the terms of the policy; (2) the insurer must lack a reasonable basis in law or fact for denying the claim; and (3) it must be shown that the insurer either knew there was no reasonable basis for denying the claim or acted with reckless disregard for whether such a basis existed. ... [A]n insurer is ... entitled to challenge a claim and litigate it if the claim is debatable on the law or the facts." Wittmer v. Jones, 864 S.W.2d 885, 890 (Ky. 1993) For third-party claims when an insurer fails to accept a settlement, there are various factors the court considers such as: "(1) whether the plaintiff offered to settle for the policy limits or less, (2) whether the ***insured*** made a demand for settlement on the insurer, and (3) the probability of recovery and of a jury verdict which would exceed the policy limits." Motorists Mutual Ins. Co. v. Glass, 996 S.W.2d 437, 451 (Ky. 1999)
Louisiana	N/A	**Statute**: La. Rev. Stat. Ann. § 22:1973(A)-Louisiana's "Good Faith law," creates a statutory right of recovery against an insurance company that acts in bad faith. (Id.) The statute mandates that insurers must act in good faith, fairly handling and promptly settling claims with their insureds. (Id.) Failing to do so results in liability for damages. (Id.)) Specific actions that breach these duties are outlined in. Any insurer who breaches these duties shall be liable for any damages sustained as a result of the breach. (Id.) **Case Law:** For third-party insured claims, the Supreme Court of Louisiana asserts that if an insurer conducts a thorough investigation and finds evidence suggesting varying opinions on an insured's liability, the insurer can opt for litigation, unless significant differences between policy limits and the insured's exposure suggest otherwise. Smith v. Audubon Ins. Co., 679 So. 2d 372, 377 (La. 1996). The court weighs factors such as the likelihood of insured's liability, damage amount, policy limits, the quality of the insurer's investigation, and communication between both parties. (Id.) Additionally, Kelly v. State Farm Fire & Cas. Co., 169 So. 3d 328 (La. 2015) states that an insurer can be held liable for not settling in bad faith, even without a solid settlement offer. The insurer's duty to act in good faith arises from understanding the situation, which they must actively gather during the claims process. As further highlighted in Richard v. USAA Cas. Ins. Co., 2019 U.S. Dist. LEXIS 3703 (M.D. La. Jan. 8, 2019), simply conducting a "thorough investigation" is the starting point. If other factors, as outlined in *Kelly*, are present, the court might determine the insurer shouldn't have opted for litigation.

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STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
Maine	Contract	**Statute**: Maine does permit an insured to bring a claim against its insurer under the state's unfair claims settlement practices law. Me. Rev. Stat. Tit. 24-A §2436-A **Case Law:** Maine does recognize a common law cause of action for an insurer's breach of its contractual duty to act in good faith. Marquis v. Farm Family Mut. Ins. Co., 628 A.2d 644 (Me. 1993). Further, the court in Maine has noted that a violation of good faith and fair dealing cannot be an independent cause of action. Perry v. Hanover Ins. Grp., No. 1:20-cv-301-LEW (D. Me. Feb. 8, 2021) For third-party claims, "[t]he existence of a cause of action in Maine for damages for an insurer's ***bad faith*** failure to settle within policy limits is unsettled." State Fire and Cas. Co. v. Haley, 916 A.2d 952, 2007 Me. 42 (Me. 2007)
Maryland	N/A	**Statute**: Maryland's statutes provide, "a plaintiff can recover expenses and litigation costs, including reasonable attorneys' fees, as well as interest on those costs, in an action seeking 'to determine coverage that exists under [an] insurance policy,' if the plaintiff can show that 'the insurer failed to act in good faith' with respect to the insurance claim." MD. CODE ANN., INS. § 27-1001(e)(2)(ii); MD. CODE ANN., CTS. & JUD. PROC. § 3-1701(d)(1)–(2) **Case Law:** To determine if an insurer acted in good faith, we must review how they gathered and assessed loss-related information and supported their coverage decisions with evidence. Essentially, the insurer must demonstrate: (1) A reasonable investigation, (2) Honest evaluation, and (3) Clear reasoning for their conclusion. Charter Oak Fire Co. v. Am. Capital Ltd., Civil Action No. DKC 09-0100 (D. Md. Aug. 3, 2017).Three key factors are examined: (1) The insurer's actions to timely resolve disputes and prevent potential harm to insureds, (2) The depth of the coverage disagreement or the strength of legal support on the issue, and (3) The insurer's efforts in thoroughly investigating the facts directly related to coverage. (Id.) For third-party claims, an insurer will not be held liable for bad faith if the insurer's actions in refusing to settle consisted of an "informed judgment based on honesty and diligence." Mesmer v. the Maryland Automobile Insurance Fund, 353 Md. 241, 725 A.2d 1053 (Md. 1999). Thus, the insurer's negligence (if any) is relevant to whether or not the insurer acted in good faith. State Farm v. White, 248 Md. 324, 236 A.2d 269 (Md. 1967)
Massachusetts	N/A	**Statute**: Massachusetts law prohibits certain unfair claim settlement practices. Specifically, insurers are forbidden from refusing claim payments without a reasonable investigation or from failing to ensure prompt and fair settlements when liability is clear. (MASS. ANN. LAWS ch. 176D, § 3(9)(d), (f)). The Massachusetts Consumer Protection Act (Mass. Ann. General Laws c. 93A) safeguards against unfair business practices, and while Mass. Ann. Laws ch. 176D, § 3 highlights unfair insurance practices, it doesn't offer a direct right of action. Instead, claimants must use ch. 93A, § 9 or § 11 for claims against insurers. **Case Law:** In Hopkins v. Liberty Mut. Ins. Co., 434 Mass. 556, 750 N.E.2d 943 (Mass. 2001), the court addressed the requirements in MASS. ANN. LAWS ch. 176D, § 3(9)(d), (f). Another case, Gore v. Arbella Mutual Insurance Company, 77 Mass. App. Ct. 518, 932 N.E.2d 837 (Mass. App. Ct. 2010), emphasized the statute's intent to deter insurers from forcing claimants into unnecessary litigation. Chery v. Metro. Prop. & Cas. Ins. Co., highlighted that claimants aren't required to prove quantifiable damage but only need to show a loss caused by the insurer's actions. Graf v.

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STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
Massachusetts cont.		Hospitality Mut. Ins. Co. reiterated the insurer's obligation to promptly provide reasonable offers when liability and damages are evident. Silva v. Norfolk & Dedham Mut. Fire Ins. Co. clarified the objective test to determine when an insurer's liability becomes "reasonably clear." The court in River Farm Realty Trust v. Farm Family Cas. Ins. Co., stated that differences between initial and final offers alone do not determine bad faith. In Massachusetts, when evaluating third-party bad faith related to an insurer's failure to settle within policy limits, the standard is whether "no reasonable insurer would have failed to settle the case within the policy limits." Hartford Casualty Ins. Co. v. New Hampshire Ins. Co., 417 Mass. 115, 628 N.E.2d 14, 18 (Mass. 1994). As cited in Hartford Cas. Ins. Co. v. N.H. Ins. Co., the insurer's liability isn't based on possible reasonable settlement actions but rather on unreasonable failure to settle actions. Later cases like Anderson v. American International Group, Inc., No. MICV2003-01212-B (Mass. Super. Apr. 8, 2014), highlighted the need for proof that the initial plaintiff would've settled within policy limits and that no sensible insurer would have declined the offer. In Boyle v. Zurich American Insurance Company, the court differentiated between negligent misjudgment and deceitful actions, noting that the latter requires a more severe penalty. In Williamson-Green v. Interstate Fire & Cas. Co., the court stated that an insurer could be responsible for all predictable losses from their failure to settle, not just the damages from the initial lawsuit. Lastly, Rawan v. Continental Cas. Co., clarified that the state statute prioritizes good faith efforts over actual settlements.
Michigan	N/A	**Statute**: There is no statute that creates a private cause of action for an insured against an insurer for bad faith. However, the Michigan legislature enacted the Uniform Trade Practices Act, which penalizes certain actions by insurers amounting to bad faith. Such penalties include, but are not limited to, a 12% per year statutory fee in cases where insurance benefits were withheld or not made in a timely manner to the insured or a third party tort claimant. See M.C.L.A. § 500.2001, et. seq. **Case Law:** Generally speaking, Michigan does not recognize a tort claim for bad faith causes of action. Casey v. Auto-Owners Ins. Co., 273 Mich. App. 388, 729 N.W.2d 277 (Mich. Ct. App. 2006). Michigan does, however, recognize "an insured's claim against its insurer for bad faith in refusing to settle." J & J Farmer Leasing, Inc. v. Citizens Ins. Co. of Am., 472 Mich. 353, 356, 696 N.W.2d 681, 683 (2005), n 3. "[A] claim of bad faith typically arises when the insurer fails to settle a claim within the limits of the insurer's policy, causing the insured or an excess carrier to be liable for a judgment in excess of the insurer's policy limits." Stryker Corp. v. XL Ins. Am., Inc., 2018 WL 3950899, at *6 (W.D. Mich. Aug. 17, 2018). See also City of Wakefield v. Globe Indem. Co., 246 Mich. 645, 648, 225 N.W. 643, 644 (1929), holding modified by Com. Union Ins. Co. v. Liberty Mut. Ins. Co., 426 Mich. 127, 393 N.W.2d 161 (1986) (stating that the "insurer is liable to the insured for an excess of judgment over the face of the policy when the insurer, having exclusive control of settlement, fraudulently or in bad faith refuses to compromise a claim for an amount within the policy limit.") While no state court has decided the issue, a District Court addressed the issue— applying Michigan law— in Meijer, Inc. v. General Star Indem. Co., 826 F. Supp. 241 (W. D. Mich. 1993). The Court held that "Michigan law permits insurance coverage for punitive damage awards." Id. at 247. The Court placed emphasis on the fact that an insurer is free to limit the risks it assumes in the contract, but "they must clearly express limitations on coverage and any failure to do so is construed against the drafting insurer and in favor of finding coverage under the policy." Id. Essentially, "[t]o hold that punitive damages are not recoverable would create, in effect, an exclusion for which the parties did not negotiate and allow insurance companies to collect premiums for coverage of a risk that they voluntarily assumed and then escape their obligation to pay on a claim by a mere judicial declaration that the contract is void by reason of public policy." Id

STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
Minnesota	Contract	**Statute**: In 2008, Minnesota adopted Sec. 604.18 MN Statutes which provides, in general, that an insured may be awarded one-half of the amount of its claim recovery that is in excess of the amount offered by the insurer at least 10 days prior to trial (up to $250,000), if the insured can show the absence of a reasonable basis for denying the benefits of the insurance policy and that the insurer knew of a lack of a reasonable basis or acted in reckless disregard of the lack of a reasonable basis. (Id.) **Case Law:** Further, the insured may also be awarded its reasonable attorney's fees, not to exceed $100,000, to prove such violation. Friedberg v. Chubb & Son, Inc., 800 F. Supp. 2d 1020 (D. Minn. 2011) ("The first prong is an objective standard that asks whether a reasonable insurer would have denied or delayed payment of the claim under the facts and circumstances. Under this prong, courts consider whether the claim was properly investigated and whether the results of the investigation were subjected to reasonable evaluation and review. Whether an insurer has acted reasonably in good or bad faith is measured against what another reasonable insurer would have done in a similar The second prong is subjective and turns on what the insurer knew and when. Knowledge of the lack of a reasonable basis may be inferred and imputed to an insurer where there is reckless indifference to facts or proofs submitted by the ***insured***. But when a claim is fairly debatable, the insurer is entitled to debate it, whether debate concerns a matter of fact or law. Whether a claim is fairly debatable implicates the question whether the facts necessary to evaluate the claim are properly investigated and developed or recklessly ignored and disregarded.") When applying that standard, ""the factfinder should consider the level of investigation a *reasonable insurer* would have conducted under the circumstances of the case and how [it] would have evaluated the claims in light of that investigation." Peterson v. W. Nat'l Mut. Ins. Co., 946 N.W.2d 903, 910 (Minn. 2020). The insurance company must assess the claim of the policyholder impartially. (Id.) This implies a thorough examination that takes into account all pertinent details and situations, as any reasonable insurer would deem appropriate. (Id.)
Mississippi	Tort	**Statute**: There is no statute on point. **Case Law:** The Mississippi Supreme Court ruled that punitive damages cannot be imposed when an insurance carrier has simply made an incorrect decision in denying a claim. Amer. Income Life Ins. Co. v. Hollins, 830 So. 2d 1230, 1999 CA 528 (Miss. 2002). Punitive damages should only be considered by the jury if the trial court finds that there are factual disputes regarding: 1) Whether the insurer had a reasonable and legitimate basis for denying the claim, and 2) Whether the insurer intentionally or maliciously wronged the insured or showed a reckless disregard for the insured's rights. (Id.) To prove a bad faith claim for delaying full payment, the insured must establish three things with clear and convincing evidence: 1. The insured must show that the claim or obligation was legitimately owed. 2. The insured must prove that the insurer had no valid reason to deny the claim or fail to fulfill its contractual obligation. 3. The insured must demonstrate that the insurer's breach of the insurance contract resulted from intentional wrongdoing, insult, or abuse, or from such gross negligence that it amounts to an intentional tort. G&B Invs., Inc. v. Henderson (In re Evans), 460 B.R. 848 (Bankr. S.D. Miss. 2011) In third-party bad faith claims in Mississippi, the standard set by the state's Supreme Court is clear: When a lawsuit covered by a liability insurance policy seeks damages exceeding the policy limits and a settlement offer within those limits is made, the insurer has a fiduciary duty to protect the insured's interests just as diligently as its own. Hartford Acc. Indem. Co. v. Foster,

STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
Mississippi cont.		528 So. 2d 255, 265 (Miss. 1988). The insurer must also conduct a thorough, honest, and intelligent assessment of the claim, commensurate with its capabilities. Failure to fulfill this duty makes the insurer liable for all resulting damages (Id.) In Lexington Insurance v. Hattiesburg Med. Park Manage, CIVIL ACTION NO. 2:07CV26KS-MTP (S.D. Miss. Jul. 6, 2007), which addressed the insurer's obligation to make a reasonable settlement offer even without a demand from the claimant. In Hemphill v. State Farm Mutual Automobile Insurance Co., 805 F.3d 535 (5th Cir. 2015), it was clarified that Mississippi courts have not required insurers to make a settlement offer without one from the claimant. Furthermore, Heritage Props., Inc. v. Ironshore Specialty Ins. Co., CIVIL ACTION NO. 3:17-CV-637-DPJ-FKB (S.D. Miss. Jan. 22, 2018) emphasized that in third-party insurance claims, there is no duty to investigate beyond the allegations in the underlying complaint unless presented with facts warranting such an investigation.
Missouri	N/A	**Statute**: Missouri does not directly provide an independent action for bad faith claims but Missouri does allow plaintiffs to recover damages for vexatious refusal to pay and attorney's fees . Mo. Rev. Stat. § 375.420 **Case Law:** Missouri has not yet recognized a cause of action for bad faith first-party insurance claims. Millman v. Provident Life & Accident Ins. Co., Case No. 3:14-cv-05073-MDH (W.D. Mo. Sep. 17, 2015). Further, T\the Supreme Court of Missouri has had the opportunity to adopt such a common law cause of action but declined to do so." (Id.) For third party claims, Missouri recognizes a bad faith cause of action when an insurer fails to settle a claim within the policy limits. Ganaway v. Shelter Mut. Ins. Co., 795 S.W.2d 554, 556 (Mo. Ct. App. 1990). "To succeed on [a] ***bad faith*** failure to settle claim, Plaintiff must prove the following elements: (1) liability insurer has assumed control over negotiation, settlement, and legal proceedings brought ***against*** the ***insured***; (2) the ***insured*** has demanded that the insurer settle the claim brought ***against*** the ***insured***; (3) the insurer refuses to settle the claim within the liability limits of the policy; and (4) in so refusing, the insurer acts in ***bad faith***, rather than negligently. Purscell v. TICO Ins. Co., 959 F. Supp. 2d 1195, 1200 (W.D. Mo. 2013
Montana	No	**Statute**: Mont. Code Ann. § 33-18-201(1), (4)-(6), (9), (13), provides that "1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's violation of Mont. Code Ann. § 33-18-201(1), (4)-(6), (9), (13) [(Unfair claim settlement practices)]. (2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice. (3) An insured who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim. (4) In an action under this section, the court or jury may award such damages as were proximately caused by the violation of Mont. Code Ann. § 33-18-201(1), (4)-(6), (9), (13)" **Case Law:** For third party insurance claims, Montana recognizes a bad faith cause of action for an insurer's failure to settle a claim within policy limits. Fowler v. State Farm Mut. Auto. Ins. Co., 454 P.2d 76, 78–79 (Mont. 1969

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STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
Nebraska	Tort	**Statute**: There is no statute on point. **Case Law:** Nebraska recognizes a bad faith claims in tort in the context of first-party claims. Braesch v. Union Ins. Co., 464 N.W.2d 769, 777 (Neb. 1991). "To show a claim for bad faith, a plaintiff must show the absence of a reasonable basis for denying benefits of the [insurance] policy and the defendant's knowledge or reckless disregard of the lack of a reasonable basis for denying the claim. It is apparent, then, that the tort of bad faith is an intentional one. 'Bad faith' by definition cannot be unintentional." (Id.) In the third-party context, Nebraska recognizes a bad faith cause of action when an insurer fails to settle a claim within the policy limits. Olson v. Union Fire Ins. Co., 118 N.W. 2d 318, 323 (Neb. 1962) ("If the insurer has exercised good faith in all of its dealings under its policy, if the settlement which it has rejected has been fully and fairly considered and has been based on an honest belief that the insurer could defeat the action or keep the judgment within the limits of the policy, and if its determination is based on a fair review of the evidence after reasonable diligence in ascertaining the facts, accompanied by competent legal advice, a court will not subject the insurer to liability in excess of policy limits if it ultimately turns out that its determination is a mistaken one.")
Nevada	Tort	**Statute**: There is no statute on point. **Case Law:** Nevada recognizes both common-law against a first-party insurer in tort. U.S. Fidelity & Guaranty Co. v. Peterson, 540 P.2d 1070 (Nev. 1975); Pioneer Chlor Alkali Co., Inc. v. Nat'l Union Fire Ins. Co., 863 F. Supp. 1237, 1242 (D. Nev. 1994). To establish a first-party bad faith claim in Nevada, an insured must prove: "(1) The insurance company had no reasonable basis for disputing coverage or denying benefits under the insurance policy; and (2) The insurance company knew or recklessly disregarded the fact that there was no reasonable basis for disputing coverage or denying benefits under the insurance policy." Falline v. GNLV Corp., 823 P.2d 888 (Nev. 1991) For third-party claims, "the litmus test is whether the insurer, in determining whether to settle a claim, [gave] as much consideration to the welfare of its ***insured*** as it [gave] to its own interests." Landow v. Med. Ins. Exch. of Cal., 892 F. Supp. 239, 240–41 (D. Nev. 1995)
New Hampshire	N/A	**Statute**: NH RSA 417 **Case Law:** New Hampshire does not recognize a first-party bad faith tort action. Bennett v. ITT Hartford Grp., Inc., 846 A.2d 560, 564 (N.H. 2004) ("A breach of contract standing alone does not give rise to a tort action; however, if the facts constituting the breach of the contract also constitute a breach of duty owed by the defendant to the plaintiff independent of the contract, a separate tort claim will lie.") For third-party claims, "an insurer owes a duty to its insured to exercise due care in defending and settling claims against the insured, and that a breach of that duty will give rise to a cause of action by the insured." Allstate Ins. Co. v. Reserve Ins. Co., 373 A.2d 339, 340 (N.H. 1976).
New Jersey	N/A	**Statute**: There is no statute on point. **Case Law:** New Jersey recognizes an independent common law cause of action for bad faith against a first party insurer. Pickett v. Lloyds, 621 A.2d 445, 457 (1993). To establish a bad faith claim in New Jersey, an insured must prove: "(1) That the insurance company had no valid reasons to deny or delay processing the claim; and (2) That the insurance company knew or recklessly disregarded the fact that no valid reason existed for denying or delaying the processing of the claim." Pickett, 621 A.2d at 45

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STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
New Jersey cont.		For third-party claims, "an insurer, having contractually restricted the independent negotiating power of its insured, has a positive fiduciary duty to take the initiative and attempt to negotiate a settlement within the policy coverage." Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 323 A.2d 495, 507 (N.J. 1974). The only exception is if the insurer, " by some affirmative evidence, demonstrates there was not only no realistic possibility of settlement within policy limits, but also that the ***insured*** would not have contributed to whatever settlement figure above that sum might have been available." (Id.)
New Mexico	Tort	**Statute**: There is no statute on point. **Case Law:** New Mexico recognizes an independent tort claim for first-party insurance bad faith. Sloan v. State Farm Mut. Auto. Ins. Co., 85 P.3d 230, 236–37 (N.M. 2004). Under New Mexico law, an insurer who fails to pay a first-party claim acts in bad faith "where its reasons for denying or delaying payment of the claim are frivolous or unfounded." State Farm Gen. Ins. Co. v. Clifton, 527 P.2d 798, 800 (N.M. 1974). In order to recover damages for first-party insurance bad faith, the plaintiff must produce evidence of bad faith or a fraudulent scheme. (Id.) For third-party claims, New Mexico recognizes a common law bad faith claim, however, it does not recognize a claim for negligent failure to settle. Sloan v. State Farm Mut. Auto. Ins. Co., 85 P.3d 230, 236–37 (N.M. 2004). meaning that the insurer has failed to honestly and fairly balance its own interests and the interests of the insured. Sloan, 85 P.3d at 237. "In caring for the insured's interests, the insurer should place itself in the shoes of the insured and conduct itself as though it alone were liable for the entire amount of the judgment." Id. (quoting Dairyland Ins. Co. v. Herman, 954 P.2d 56, 61 (N.M. 1997)
New York	N/A	**Statute**: There is no statute on point. **Case Law:** New York does not recognize an independent common law cause of action in tort for bad faith against a first-party insurer. Acquista v. New York Life Ins. Co., 730 N.Y.S.2d 272, 278 (N.Y. App. Div. 2001);. New York adheres to the stance that the responsibilities and commitments of the parties involved in an insurance policy are fundamentally contractual in nature. (Id.) In cases where an insurer breaches its duties related to investigating, negotiating, and settling claims in good faith, the recoverable damages are not confined to the policy limits specified in the policy document. N Y Univ v. Continental Ins Co., 87 N.Y.2d 308, 639 N.Y.S.2d 283, 662 N.E.2d 763 (N.Y. 1995). When the insurer's behavior is exceptionally wrongful, it may give rise to a tort claim for fraud or a tortious breach of the duty of care. (Id.) However, insured individuals do have the option to initiate legal action under a statute if an insurer's conduct has a significant impact on consumers at large, such as engaging in deceptive business practices. (Id.) The Court of Appeals of New York rejected the insurer's proposed "sinister motive" standard for third-party bad faith cases. Pavia v. State Farm Mut. Auto. Ins. Co., 626 N.E.2d 24, 27–28 (N.Y. 1993). Instead, they established that to prove a prima facie case of bad faith, the plaintiff must show that the insurer's actions demonstrated a "gross disregard" for the insured's interests. (Id.) Thus, a plaintiff alleging bad faith must demonstrate that the insurer consistently exhibited behavior that showed a conscious or knowing indifference to the likelihood that the insured would face personal liability for a substantial judgment if they didn't accept a settlement offer within the policy limits. (Id.)

STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
North Carolina	Yes	**Statute**: North Carolina acknowledges a private right to take legal action against unfair business practices affecting commerce under N.C. Gen. Stat. § 75-1.1(a). However, it's important to note that there isn't a private right of action against insurance companies for engaging in unfair competition or deceptive practices related to insurance, which would be in violation of N.C. Gen. Stat. § 58-63-15 (Unfair Claim Settlement Practices). Nevertheless, a court may refer to N.C. Gen. Stat. § 58-63-15(11) as a source of specific behaviors that can be used to support a finding of liability under the broader scope of the law. In order to establish a violation of N.C. Gen. Stat. § 75-1.1, a plaintiff must show: (1) an unfair or deceptive act or practice, (2) in or affecting commerce, and (3) which proximately caused injury to plaintiffs; a court may look to the types of conduct prohibited by N.C. Gen. Stat. § 58-63-15(11) for examples of conduct which would constitute an unfair and deceptive act or practice **Case Law:** In a case regarding third-party bad faith, a District Court in North Carolina ruled that when an insurer exercises its contractual right to settle a pending liability claim or lawsuit, it is obligated to do so with diligence and good faith. ." Coca-Cola Bottling Co. of Asheville, N.C. v. Md. Cas. Co., 325 F. Supp. 204, 206 (W.D.N.C. 1971). This includes making efforts to settle within the policy limits and, if required to achieve that goal, paying the entire policy amount. (Id.)
North Dakota	N/A	**Statute**: There is no statute on point. **Case Law:** In North Dakota, a legal cause of action for bad faith arises when an insurer unreasonably mishandles an insured's claim by refusing, without proper justification, to provide compensation for a covered loss as outlined in the policy. Hanson v. Cincinnati Life Ins. Co., 571 N.W.2d 363, 369–70 (N.D. 1997). As a result of a bad faith act by the insurer, an insured can make a claim for exemplary/punitive damages where there is clear and convincing evidence of oppression, fraud, or malice. Additionally, Because primary consideration in purchasing insurance is peace of mind and security it will provide, insured may recover for any emotional distress resulting from insurer's bad faith. Ingalls v. Paul Revere Life Ins. Grp., 1997 ND 43, ¶ 50, 561 N.W.2d 273, 286 For third-party claims, North Dakota has not definitively established a standard for determining an insurer's liability in cases where they fail to settle a lawsuit within policy limits, resulting in an excess verdict. Fetch v. Quam, 623 N.W.2d 357 (N.D. 2001)
Ohio	Tort	**Statute**: There is no statute on point. **Case Law:** In Ohio, a legal cause of action for bad faith in tort exists when an insurer fails to act in good faith while handling an insured's claim, provided that their refusal to pay the claim is not based on circumstances that reasonably justify such a refusal. Importantly, intent has never been a requirement under the reasonable justification standard. Zoppo v. Homestead Ins. Co., 71 Ohio St. 3d 552, 644 N.E.2d 397, 400 (Ohio 1994). There are two types of bad faith claims: "(1) when an insurer breaches its duty of good faith by intentionally refusing to pay an insured's claim where there is no lawful basis for the refusal coupled with actual knowledge of that fact; and (2) when an insurer breaches its duty of good faith by intentionally refusing to pay an insured's claim where the insurer intentionally failed to determine whether there was any lawful basis for such refusal." Ballard v. Nationwide Ins. Co., 46 N.E.3d 170 (Ohio Ct. App. 2015)

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STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
Ohio cont.		In Ohio, a t**hird-party has no cause of action for bad faith** against the tortfeasor's insurance company. Ohio law does not permit an injured third-party to directly sue an insurance company without first obtaining a judgment against the tortfeasor. Chitlik v. Allstate Ins. Co., 34 Ohio App.2d 193 (8th Dist. 1973)
Oklahoma	Yes	**Statute**: The right to bring a bad-faith cause of action against an insurer is not provided for by statute. **Case Law:** Bad-faith in the insurance context, also known as the breach of the duty of good faith and fair dealing, it a tort claim that arises from the contractual relationship between the insured and the insurer. An insurer has an "implied-in-law duty to act in good faith and deal fairly with the insured to ensure that the policy benefits are received." *Christian v. American Home Assurance Co.*, 1977 OK 141, 577 P.2d 899, 901. "An insurer may not treat its own insured in the manner in which an insurer may treat third-party claimants to whom no duty of good faith and fair dealing is owed." *Newport v. USAA*, 2000 OK 59, ¶ 15, 11 P.3d 190, 196. In dealing with third parties, however, the insured's interests must be given faithful consideration and the insurer must treat a claim being made by a third party against its insured's liability policy "as if the insurer alone were liable for the entire amount" of the claim. *American Fidelity & Casualty Co. v. L.C. Jones Trucking Co.*, 1957 OK 287, 321 P.2d 685, 687 The essence of an action for breach of the duty of good faith and fair dealing "is the insurer's unreasonable, bad-faith conduct ... and if there is conflicting evidence from which different inferences may be drawn regarding the reasonableness of insurer's conduct, then what is reasonable is always a question to be determined by the trier of fact by a consideration of the circumstances in each case." *McCorkle v. Great Atlantic Ins. Co.*, 1981 OK 128, 637 P.2d 583, 587.6 A central issue in any analysis to determine whether breach has occurred is gauging whether the insurer had a good faith belief in some justifiable reason for the actions it took or omitted to take that are claimed violative of the duty of good faith and fair dealing. *Buzzard v. McDanel*, 1987 OK 28, 736 P.2d 157, 159 The elements for breach of insurer's duty of good faith and fair dealing are: (1) the insured was covered under the insurance policy issued by the insurer and that the insurer was required to take reasonable actions in handling the claim; (2) the actions of the insurer were unreasonable under the circumstances; (3) the insurer failed to deal fairly and act in good faith toward the insured in their handling of the claim; and (4) the breach or violation of the duty of good faith and fair dealing was the direct cause of any damages sustained by the insured. *Badillo v. Mid Century Ins. Co.*, 2005 OK 48, ¶ 25, 121 P.3d 1080, 1093
Oregon	Contract	**Statute**: There is no statute on point. **Case Law:** For first-party bad faith claims, Oregon does not recognize a tort action. Emp'rs' Fire Ins. Co. v. Love It Ice Cream Co., 670 P.2d 160, 165 (Or. Ct. App. 1983). ("[A]n insurer's ***bad faith*** refusal to pay policy benefits to its ***insured*** sounds in contract and is not an actionable tort in Oregon.") For third-party bad faith claims, the Supreme Court of Oregon adopted a negligence standard. Georgetown Realty, Inc. v. Home Ins. Co., 831 P.2d 7, 14 (Or. 1992) (en banc) ("The insurer is negligent in failing to settle, where an opportunity to settle exists, if in choosing not to settle it would be taking an unreasonable risk—that is, a risk that would involve chances of unfavorable results out of reasonable proportion to the chances of favorable results. Stating the rule in terms of 'good faith' or 'bad faith' tends to inject an inappropriate subjective element—the insurer's state of mind—into the formula. The insurer's duty is best expressed by an objective test: Did the insurer exercise

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STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
Oregon cont.		due care under the circumstances?")
Pennsylvania	N/A	**Statute**: 42 Pa. Cons. Stat. § 8371, provides that, "In an action arising under an insurance policy, if the court finds that the insurer has acted in ***bad faith*** toward the ***insured***, the court may take all of the following actions: (1) [award interest (as specified in the statute)]. (2) Award punitive damages ***against*** the insurer. (3) Award court costs and attorney fees ***against*** the insurer." Under 42 Pa. Cons. Stat.§ 8371, a plaintiff must demonstrate, "by clear and convincing evidence, (1) that the insurer did not have a reasonable basis for denying benefits under the policy and (2) that the insurer knew or recklessly disregarded its lack of a reasonable basis in denying the claim." **Case Law:** To recover on a claim for bad faith in Pennsylvania, a plaintiff pursuing such a claim against an insurer must meet a two prong test and prove by "clear and convincing evidence" that (1) the insurer did not have a reasonable basis to deny insurance coverage under the policy and (2) that the insurer knew or recklessly disregarded its lack of a reasonable basis in denying the claim. ***Terletsky v. Prudential Prop. & Cas. Ins. Co.,*** 437 Pa. Super. 108, 649 A.2d 680 (1994). In ***Rancosky v. Washington National Insurance Company***, 145 A.3d 727 (Pa. 2017), the Pennsylvania Supreme Court adopted the ***Terletsky*** two-prong test for proving a "bad faith" claim under Pennsylvania's bad faith statute (42 Pa. C.S.A. Section 8371). The Pennsylvania Supreme Court further ruled in ***Rancosky*** that proof of an insurer's "subjective motive of self-interest or, ill will" while probative of the "second prong" of the ***Terletsky*** test, is **not** a requirement to prevail under Pennsylvania's bad faith statute. Evidence of an insurer's "knowledge or reckless disregard for its lack of a reasonable basis" for denying a claim alone, is sufficient even in those cases where the insured is seeking punitive damages against the insurer. ***Id***
Rhode Island	N/A	**Statute**: R.I. Gen. Laws § 9-1-33, permits an action against an insurer that "wrongfully and in bad faith refused to pay or settle a claim made pursuant to the provisions of the policy, or otherwise wrongfully and in bad faith refused to timely perform its obligations under the contract of insurance." **Case Law:** Before a Rhode Island court even considers a bad-faith claim, a plaintiff must prove "that the insured breached is obligation under the insurance contract." New York Life Ins. Co. v. Ortiz, 2015 U.S. Dist. LEXIS 134097 (D.R.I. Sept. 30, 2015). "Although an insurer is obligated to consider reasonable settlement offers, they are not obligated to search out and encourage adversaries when they rationally conclude that their insured was not at fault." Summit Ins. Co. v. Stricklett, 2017 R.I. Super. LEXIS 26 (R.I. Super. Ct. Jan. 19, 2017) For third-party bad faith claims, a plaintiff must establish that the insurer declined to settle the case within the policy limits, "it does so at its peril in the event that a trial results in a judgment that exceeds the policy limits, including interest. If such a judgment is sustained on appeal or is unappealed, the insurer is liable for the amount that exceeds the policy limits, unless it can show that the insured was unwilling to accept the offer of settlement. The insurer's duty is a fiduciary obligation to act in the best interests of the insured. Even if the insurer believes in good faith that it has a legitimate defense against the third party, it must assume the risk of miscalculation if the ultimate judgment should exceed the policy limits." Asermely v. Allstate Ins. Co., 728 A.2d 461, 464 (R.I. 1999.)

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STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
South Carolina	Tort and Contract for Frist-Party claims	**Statute**: There is no statute point. **Case Law:** South Carolina recognizes a first-party bad faith claim in both tort and contract. The Supreme Court of South Carolina noted that "if an insured can demonstrate bad faith or unreasonable action by the insurer in processing a claim under their mutually binding insurance contract, he can recover consequential damages in a tort action. Actual damages are not limited by the contract. Further, if he can demonstrate the insurer's actions were willful or in reckless disregard of the insured's rights, he can recover punitive damages." Duncan v. Provident Mut. Life Ins. Co. of Phila., 427 S.E.2d 657 (S.C. 1993). To succeed, a plaintiff must establish: "(1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant; (2) refusal by the insurer to pay benefits due under the contract; (3) resulting from the insurer's ***bad faith*** or unreasonable action in breach of an implied covenant of good ***faith*** and fair dealing arising on the contract; (4) causing damage to the ***insured***." BMW of N. Am., LLC v. Complete Auto Recon Servs., Inc., 731 S.E.2d 902, 907 (S.C. Ct. App. 2012) For third-party bad faith claims, "a liability insurer owes its ***insured*** a duty to settle a personal injury claim covered by the policy, if settlement is the reasonable thing to do. An insurer who unreasonably refuses or fails to settle a covered claim within the policy limits is liable to the ***insured*** for the entire amount of the judgment obtained ***against*** the ***insured*** regardless of the limits contained in the policy." Doe v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n, 557 S.E.2d 670, 674 (S.C. 2001)
South Dakota	Tort and Contract	**Statute**: There is no statute on point. **Case Law:** South Dakota recognizes a first-party bad faith claim in both tort and contract. Stene v. State Farm Mut. Auto. Ins. Co., 583 N.W.2d 399, 403 (S.D. 1998). To prove bad faith, there must be (1) absence of a reasonable basis for denial of policy limits or for failure to comply with a duty and (2) the knowledge or reckless disregard of a reasonable for denial. (Id.) For third-party bad faith claims, there are factors that the Supreme Court of South Dakota considers in determining whether an insurer's refusal to settle is a breach of its good faith duty: "(1) the strength of the injured claimant's case on the issues of liability and damages; (2) attempts by the insurer to induce the insured to contribute to a settlement; (3) failure of the insurer to properly investigate the circumstances so as to ascertain the evidence against the insured; (4) the insurer's rejection of advice of its own attorney or agent; (5) failure of the insurer to inform the insured of a compromise offer; (6) the amount of financial risk to which each party is exposed in the event of a refusal to settle; (7) the fault of the insured in inducing the insurer's rejection of the compromise offer by misleading it as to the facts; and (8) any other factors tending to establish or negate bad faith on the part of the insurer." Helmbolt v. LeMars Mut. Ins. Co., Inc., 404 N.W.2d 55, 57 (S.D. 1987)
Tennessee	Yes	**Statute**: The Tennessee Unfair Claims Settlement Act (Tenn. Code. Ann. § 56-8-105) contains a list of acts that constitute unfair competition or deceptive acts in the insurance business. The list is intended as a guide to help courts determine whether the insurance company committed bad faith. However, the act doesn't provide a private right of action. In other words, you can't sue the insurance company simply because it violated the Tennessee Unfair Claims Settlement Act. Rather, the insurance commissioner can use the act to penalize an insurance company. **Case Law:** To succeed a first-party claim, a plaintiff must establish: (1) 'the policy of insurance must, by its terms, have become due and payable,' (2) 'a formal demand for payment must have been made,' (3) 'the insured must have waited 60 days after making [its] demand before filing suit (unless there was a refusal to pay prior to the expiration of the 60 days),' and (4) 'the refusal to

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STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
Tennessee cont.		pay must not have been in good faith.'" Burge v. Farmers Mut. of Tenn., No. M2016-01604-COA-R3-CV (Tenn. Ct. App. Apr. 13, 2017) Tennessee does not recognize a claim for third party bad faith. The Johnson v. Tenn. Farmers Mut. Ins. Co., 205 S.W.3d 365, 371 (Tenn. 2006) case involved an insured who was sued as the result of an automobile accident, and he had a lawsuit of his own regarding the auto accident as well. But in the lawsuit that was filed against him, he filed the lawsuit against his insurance company based on his insurer's failure to settle the plaintiff's claims, so it was actually a first party action, as opposed to a situation where the insured assigned his rights to the plaintiff, who then sued the insurer for bad faith.
Texas	Tort	**Statute**: TEX INS. CODE § 541.151. Subchapter B includes Section 541.060 (Unfair Settlement Practices), This provision states that it is considered an unfair and deceptive practice within the insurance industry to partake in the following unjust settlement practices concerning a claim made by an insured or beneficiary: neglecting to genuinely strive to resolve a claim when the insurer's responsibility promptly, fairly, and justly for it has become reasonably apparent. In USAA Tex. Lloyds Co. v. Menchaca, 545 S.W.3d 479 (Tex. 2018), the Texas Supreme Court reaffirmed the five principles, which were designed to address the interplay between contractual claims based on an insurance policy and tort claims based on the Insurance Code. In its ruling, the court emphasized that "since an insurer's statutory violation allows an insured to recover only those 'actual damages' directly 'caused by' the violation, we clarify and uphold the general rule that an insured cannot seek policy benefits as actual damages resulting from an insurer's statutory violation if the insured does not possess a valid entitlement to those benefits under the policy." (Id.) **Case Law:** Under Texas law, a plaintiff must prove "that a carrier failed to attempt to effectuate a settlement after its liability has become reasonably clear." Universe Life Ins. Co. v. Giles, 950 S.W.2d 48, 55 (Tex. 1997). As long as an insurer has a reasonable basis to deny payment of a claim, even if that basis is eventually determined to be erroneous, the insurer is not liable for the tort of bad faith. Columbia Lloyds Ins. Co. v. Mao, 2011 Tex. App. LEXIS 2180 (Tex. Ct. App. Mar. 24, 2011). But insurers do have a duty to conduct a reasonable investigation of a claim and cannot insulate themselves from bad faith liability by investigating a claim in a manner calculated to construct a pretextual basis for denial. (Id.) In third-party bad faith cases, the Texas Supreme Court ruled that three conditions must be met: there should be coverage for the third-party's claim, a settlement offer within policy limits, and reasonable terms that a reasonable insurer would accept, taking into account the insured's potential exposure to an excess judgment. Phillips v. Bramlett, 288 S.W.3d 876, 879 (Tex. 2009). When these conditions align, and the insurer's negligent refusal to settle leads to an excess judgment against the insured, the insurer is responsible under the Stowers Doctrine for the entire judgment amount, even if it exceeds the insured's policy limits.(Id; see citing G.A. Stowers Furniture Co. v. Am. Indem. Co., 15 S.W.2d 544 (Tex. Comm'n App. 1929))
Utah	Contract	**Statute**: There is no statute on point. **Case Law:** The Utah Supreme Court ruled that when an insurer violates its duty to negotiate or settle in good faith under an insurance contract, it results in a breach of contract claim, not a tort claim. Beck v. Farmers Ins. Exch., 701 P.2d 795, 798 (Utah 1985). In Beck v. Farmers Ins. Exch., 701 P.2d 795, 798 (Utah 1985), the court clarified that the implied obligation of good faith performance includes the insurer diligently investigating facts to assess the claim's validity, fairly evaluating the claim, and then promptly and reasonably handling the claim, whether accepting or rejecting it. Additionally, the duty of good faith requires the insurer to treat

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STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
Utah cont.		policyholders as laypersons rather than experts in law and underwriting and to avoid actions that harm the insured's ability to receive contract benefits. (Id.) In the context of third-party bad faith, the Utah Supreme Court held that the insurer is required to act in good faith and prioritize the interests of its insured with the same diligence as it would its own interests. Ammerman v. Farmers Ins. Exch., 430 P.2d 576, 579 (Utah 1967). Whether the insurer fulfills this duty may depend on factors such as the certainty or uncertainty regarding liability, injuries, and damages. (Id.) This emphasizes the importance of giving effect to the contract's provisions and allowing the company reasonable discretion in deciding whether to accept a proposed settlement. (Id.) Without this discretion, the policy limit would lose its meaning, making it extremely challenging to determine appropriate premiums and reserves for potential losses. (Id.)
Vermont	Tort	**Statute**: There is no statute on point. **Case Law:** Vermont recognizes a bad faith tort claim against a first-party insurer when an insurer "not only errs in denying coverage but does so unreasonably." Peerless Ins. Co. v. Frederick, 869 A.2d 112, 116 (Vt. 2004). A plaintiff must show that "(1) the insurer had no reasonable basis to deny the insured the benefits of the policy, and (2) the company knew or recklessly disregarded the fact that it had no reasonable basis for denying the insured's claim." (Id.) In the context of third-party bad faith, the Supreme Court of Vermont articulated that the insurer's fiduciary duty to act in good faith when managing a claim against the insured entails considering the insured's interests.." Myers v. Ambassador Ins. Co. Inc., 508 A.2d 689, 691 (Vt. 1986). This duty requires the insurer to conduct a thorough investigation into the facts and associated risks of the claim, relying on individuals reasonably qualified for such assessments. (Id.) If a settlement demand is presented, the insurer is obliged to conduct an honest evaluation of its validity, considering the assessment of risks involved. (Id.)
Virginia	Contract	**Statute**: Va. Code Ann. § 38.2-209, permits an insured individual to seek reimbursement for their expenses and reasonable attorney fees when they initiate a declaratory judgment lawsuit against the insurer. This entitlement arises if the trial court finds that the insurer's denial of coverage or refusal to make a payment under the policy was not conducted in good faith. (Id.) **Case Law:** Virginia law classifies first-party bad faith claims as a matter of contract and not tort law, thus allowing plaintiffs to recover foreseeable consequential damages. A&E Supply Co., Inc. v. Nationwide Mut. Fire Ins. Co., 798 F.2d 669, 676 (4th Cir. 1986). In Great Am. Ins. Co. v. GRM Mgmt., LLC, Civil Action No. 3:14CV295 (E.D. Va. Nov. 24, 2014), the court held "[O]ur district has identified that the Fourth Circuit held that, in a first-party Virginia insurance relationship, liability for ***bad faith*** conduct is a matter of contract, with the contract itself and general contract law governing the measure of recovery. Although Virginia law on the implied duty of good ***faith*** and fair dealing is not exceptionally clear, the Fourth Circuit and this district court clearly recognize such a duty. This Court cannot find a Virginia ***case*** repudiating such a duty[.]") (citations and internal quotes omitted.) In the context of third-party bad faith, the Supreme Court of Virginia established that a decision to decline settlement must be a sincere and unbiased one. Aetna Cas. & Sur. Co. v. Price, 146 S.E.2d 220, 228 (Va. 1966) It should stem from a rational evaluation of probabilities conducted fairly. (Id.) For it to be considered a good faith decision, it must be honest and intelligent, considering the insurer's expertise in the field. If there are reasonable grounds to reject a settlement offer and defend against the damage claim, the insurer's good faith will be upheld. (Id.)

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STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
Washington	Tort	**Statute**: In 2007, Washington introduced the Insurance Fair Conduct Act, which allows first-party claimants who are unreasonably denied coverage to file a legal action. Wash. Rev. Code Ann. § 48.30.015. According to Wash. Rev. Code Ann. § 48.30.015, the aggrieved party can seek actual damages, including the costs of the legal proceedings, including reasonable attorney fees. The court also has the authority to award triple damages under Wash. Rev. Code Ann. § 48.30.015(2). These damages can be pursued if the insurer violates specific regulations outlined in Wash. ADMIN. Code §§ 284-30-330, 284-30-350, 284-30-360, 284-30-370, and 284-30-380. These regulations cover various claims handling practices, such as promptly acknowledging communications, conducting prompt investigations, settling claims promptly, and accurately representing policy provisions. Consequently, the criteria for potentially imposing triple damages are relatively low. Wash. Rev. Code Ann. § 48.30.015(5) **Case Law:** Under Washington law, a claim for first-party bad faith is considered a tort, and to prove bad faith, the insured must demonstrate that the breach of duty was unreasonable, frivolous, or unfounded. St. Paul Fire & Marine Ins. Co. v. Onvia, Inc., 196 P.3d 664, 668 (Wash. 2008) (en banc) In the context of third-party bad faith, an insurer violates its duty to act in good faith when it negligently or intentionally fails to settle a claim against the insured within the policy limits. Smith v. Safeco Ins. Co., 50 P.3d 277, 281 (Wash. Ct. App. 2002). Additionally, Cox v. Cont'l Cas. Co., CASE NO. C13-2288 MJP (W.D. Wash. May. 16, 2014), confirms that an insurer's argument against considering policy limits when settling claims under Washington law is not valid. To limit the insured's personal liability, the insurer must factor in when a settlement or judgment would extend beyond the policy funds and impact the insured's personal assets. Washington law explicitly supports this principle. (Id.)
West Virginia	N/A	**Statute**: In West Virginia, a statute, W. Va. Code Ann. § 33-11-4, outlines various unfair methods of competition and deceptive practices within the insurance industry. Courts have recognized the potential for an implied private cause of action when insurance companies violate the unfair settlement practice provisions of W. Va. Code Ann. § 33-11-4(9) **Case Law:** In United Bankshares, Inc. v. St. Paul Mercury Ins. Co., CIVIL ACTION NO. 6:10-cv-00188 (S.D.W. Va. May. 21, 2010), it's established that for a private action based on alleged violations of W. Va. Code § 33-11-4(9) in the settlement of a single insurance claim, the evidence must show more than a single violation. It should demonstrate that these violations arise from separate, distinct actions or omissions in the claim settlement, and that they stem from a pattern, custom, usage, or business policy of the insurer. (Id.) This extensive pattern of behavior should be pervasive or sufficiently accepted by the insurance company to be considered a 'general business practice,' differentiating it from an isolated event. (https://casetext.com/case/united-bankshares?sort=relevance&p=1&type=case&resultsNav=falseId.) In the context of third-party bad faith, the Supreme Court of Appeals of West Virginia established that when an insurer fails to settle within policy limits, even when the opportunity for such a settlement exists, and this settlement would absolve the insured of personal liability, it constitutes prima facie evidence of the insurer's failure to act in the insured's best interest. Shamblin v. Nationwide Mut. Ins. Co., 396 S.E.2d 766, 776 (W. Va. 1990). This failure is considered prima facie bad faith towards the insured. The Shamblin v. Nationwide Mut. Ins. Co., 396 S.E.2d 766, 776 (W. Va. 1990) decision further outlines that the insurer must prove, with clear and convincing evidence, that it made good faith efforts to negotiate a settlement, that any failure to settle when the opportunity existed was grounded in reasonable and substantial reasons, and that it accorded the interests and rights of the insured at least as much respect as its own interests.

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STATE	ANSWER	BAD-FAITH CAUSE OF ACTION: SUPPORTING AUTHORITY
Wisconsin	Tort	**Statute**: There is no statute on point. **Case Law**: The Supreme Court of Wisconsin has acknowledged the existence of a bad faith claim that is rooted in tort, but emerges from a contractual relationship. Jones v. Secura Ins. Co., 638 N.W.2d 575, 579 (Wis. 2002). To establish a bad faith claim, a plaintiff must demonstrate two key elements: first, the absence of a reasonable basis for denying policy benefits, and second, the defendant's awareness or reckless disregard of this lack of a reasonable basis for claim denial. Jones v. Secura Ins. Co., 638 N.W.2d 575, 579 (Wis. 2002). Furthermore, Eagle Fuel Cells-ETC, Inc. v. Acuity, 838 N.W.2d 866 (Wis. Ct. App. 2013), clarifies that for a successful bad faith claim, the insured must prove three elements: (1) the policy's terms obligated the insurer to pay the claim, (2) the insurer lacked a reasonable legal or factual basis to deny the claim, and (3) the insurer either knew there was no reasonable basis for denial or acted recklessly without regard for the existence of such a basis. In the realm of third-party bad faith, the Supreme Court of Wisconsin has ruled that an insurer possesses the right to exercise its own judgment when deciding whether to settle or contest a claim. Mowry v. Badger State Mut. Cas. Co., 385 N.W.2d 171, 178 (Wis. 1986). However, this right must be exercised in conjunction with principles of good faith. (Id.) To be considered a good faith decision, choosing not to settle a claim must be rooted in a comprehensive assessment of the underlying circumstances of the claim and entail informed communication with the insured. (Id.) Moreover, as demonstrated in Roehl Transp., Inc. v. Liberty Mut. Ins. Co., 784 N.W.2d 542, 555 (Wis. 2010), the courts in Wisconsin have affirmed that an insurance company may be held liable for the tort of bad faith when it fails to act in good faith, thereby exposing the insured to liability beyond policy limits. In Brethorst v. Brethorst, No. ED77314 at 476 (Mo. Ct. App. Oct. 3, 2000), relationships between the parties, it is not a contract action.
Wyoming	Tort	**Statute**: There is no statute on point. **Case Law**: The Supreme Court of Wyoming has ruled that an insurer's breach of the duty of good faith results in an independent tort action. McCullough v. Golden Rule Ins. Co., 789 P.2d 855, 858 (Wyo. 1990). The appropriate criterion for assessing bad faith is an objective one, specifically whether the validity of the denied claim was not reasonably debatable. (Id.) To assert the tort of bad faith, the facts presented must demonstrate, based on an objective standard, the absence of a reasonable basis for denying the claim. In other words, it should establish whether a reasonable insurer, given the circumstances, would have denied or delayed payment of the claim considering the facts and conditions at hand. (Id.) In the context of third-party bad faith, the Supreme Court of Wyoming established that good faith entails "a genuine belief by the insurer that it had a reasonable chance of prevailing in the lawsuit or that the claimant's recovery in the lawsuit would not exceed the insurance policy limits." Gainsco Ins. Co. v. Amoco Prod. Co., 53 P.3d 1051, 1058 (Wyo. 2002). Indeed, it emphasizes that the prevailing standard is whether a prudent insurer would have accepted the settlement offer if it were solely responsible for the entire judgment. (Id.) This standard is objective, focusing on what a reasonable insurer would do rather than subjective beliefs. (Id.)

50 State Legal Matrix – Contractors Licensing & Contract Requirements for 2024

Construction contractors are subject to regulations of the state in which they seek to work. While some states require contractors to be licensed (involving a process to prove reasonable competency) for certain categories of work, others only require contractors to be registered (recording who is performing the work without any guarantee of expertise/competency). Additionally, while some states have licenses that cover all or most kinds of construction work, other states have distinct licensing categories based on whether the project in question is commercial or residential. Furthermore, some states have specific criteria for what must be included in the contracts entered into with/by a contractor as pertaining to their authorization to perform the contracted work within the state. These general requirements and standards are outlined below.

STATE	LICENSING REQUIREMENTS	CONTRACT DISCLOSURE REQUIREMENTS
Alabama	General contractors (and subcontractors) must obtain a **commercial license** for commercial projects **of $50,000 or more**. A **residential license** is required for projects of **$10,000 or more**. Ala. Code 1975 § 34-8-1;34-8-2. A contractor not properly licensed may not enforce (in AL courts) a construction contract exceeding $1,000. KLW Enterprises, Inc. v. West Alabama Commercial Industries, Inc., 31 So. 3d 136, 137 (Ala. Civ. App. 2009)	Any bid for construction projects must include the bidding entity's licensing status within state. Ala. Code 1975 § 34-8-8
Alaska	Contractors may not submit a bid without being registered. AS § 08.18.011. Likewise, a general contractor may not use the bid of an unregistered sub-contractor in preparing a bid, unless the person is registered as a "specialty contractor." *Id.*; *see* AS § 08.18.024. To undertake construction or alteration or take a bid for a privately-owned residential structure of 1 to 4 units, a contractor must have a residential contractor endorsement. AS §08.18.025. Moreover, an unlicensed contractor "may not bring an action in the courts of this state for collection of compensation for the performance of work or for breach of contract for which the registration is required." AS § 08.18.151	Any contract (for the contracting business) must include the contractor's name, mailing address, address of the contractor's principal place of business, and state registration number. AS § 08.18.051
Arizona	A license is required for a contractor to bid on any job exceeding $1,000 in value. A.R.S. § 32-1152; A.R.S. § 32-1123. An entity who submits such a bid without being licensed may be prohibited from obtaining a state license for one year from the date of the bid. A.R.S. § 32-1123	Any contract exceeding $1,000 in value must contain the contractor's address and state license number. A.R.S. § 32-1158
Arkansas	Contractors must be licensed to undertake projects of $50,000 or more. A.C.A. § 17-25-101. Subcontractors of properly licensed general contractors need only to register with the Arkansas Contractors Licensing Board. Ark. Admin. Code 033.00.1-224-25-7	No known contract disclosure requirements at state-level. Local or municipal development authorities should be consulted for any such requirements.

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STATE	LICENSING REQUIREMENTS	CONTRACT DISCLOSURE REQUIREMENTS
California	Any entity seeking to undertake a project of $500 or more is required to be licensed by the state licensing board. Cal. B&P Code § 7048	In general, all commercial contracts must include the following statement with respect to the prime contractor: "Contractors are required by law to be licensed and regulated by the Contractors State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, CA 95826." Cal. B&P Code § 7030(a)
Colorado	Colorado does not have any state-level licensing or registration requirements for general contractors. All licensing is regulated, if at all, on the municipal level, and the local development authority should be contacted prior to commencing work on any project.	Colorado does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
Connecticut	Any "major contractor," which covers those engaged in construction projects in excess of the threshold limits provided under C.G.S.A. § 29-276b, must be properly registered with the state.	Connecticut does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
Delaware	While the state does not have any specific licensing requirements for general contractors, certain categories of work (e.g., digging a well, installing a pump, etc.) may require a specific license from the Division of Revenue. *See* https://dpr.delaware.gov/infoguide/	Delaware does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
Florida	A general contractor license is required for most categories of construction work, and requires the applicant to pass an examination. F.S.A. § 489.105; 489.111. However, there are sub-categories of licenses for **"building contractors"** (limited to construction/repair work on buildings that do not exceed 3 stories) and **"residential contractors"** (limited to construction/repair work on residential buildings not exceeding 2 stories). *Id.*	Contracts exceeding $2,500 in value must contain statement of the consumer's rights on the Florida Homeowner's Construction Recovery Fund. F.S.A. § 489.1425. For certain residential contracts exceeding $2,500 in value, must contain a specified notice pertaining to state lien law provisions. F.S.A. § 713.015
Georgia	All construction projects must be undertaken by a state-licensed general contractor. GA ST § 43-41-2(5)	No known construction contract disclosure requirements at state-level. Local or municipal development authorities should be consulted for any such requirements.

STATE	LICENSING REQUIREMENTS	CONTRACT DISCLOSURE REQUIREMENTS
Hawaii	A state-issued license is required for all general contractors working in the state, including all general engineering contractors, general building contractors, and specialty contractors. Haw. Rev. Stat. § 444-7; 444-9	Any contracts with homeowners must contain written disclosures about relevant lien rights of the respective parties, bond options, and notice of the right to resolve construction defects prior to commencing litigation. Haw. Rev. Stat. § 444-25.5
Idaho	Subject to limited exemptions, any general contractor undertaking a project in excess of $2,000 must be properly registered with the state. Id. Stat. § 54-5205	Any residential contract must advise the homeowner of their right to require lien waivers from subcontractors, the right to require general liability insurance be carried by the general contractor, the right to purchase an extended policy coverage of certain unfiled or unrecorded liens, the right to require (at the homeowner's expense) a surety bond in an amount up to the value of the construction project, and information concerning the subcontractor(s), materialmen, and rental equipment. Id. St. § 45-525
Illinois	Aside from **plumbing** and **roofing**, the state of Illinois doesn't issue contractor licenses. Under the Illinois Plumbing License Law (225 ILCS 320), the Illinois Department of Public Health ("IDPH") licenses **plumbers**, plumbing contractors, plumbers' apprentices, irrigation contractors and retired plumbers. All plumbing contractors must register with the state and pay an annual fee. Plumbing contractors must maintain minimum general liability insurance, bodily injury insurance, property damage insurance, and worker's compensation insurance. Pursuant to Illinois' Roofing Law (225 ILCS 335), r**oofing contractors** seeking licensure and additional information can go to the Illinois Department of Financial and Professional Regulation ("IDFPR").	Any **roofing contracts** over $1,000 must provide a "Consumer Rights Brochure" with disclosure language specified by the IDFPR. Illinois does not have any other construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
Indiana	The only construction contractors licensed by the State of Indiana are **plumbers**. All other licensing is regulated, if at all, on the municipal level, and the local development authority should be contacted prior to commencing work on any project.	Indiana does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
Iowa	Any entity performing construction work within the state and earning at least $2,000 annually must register with the Iowa Division of Labor. I.C.A. § 91C.1; I.C.A. § 91C.2. Specialty trades including mechanical, plumbing, HVAC, refrigeration, sheet metal, and hydronic contractors need an active license for each discipline by the Department of Health and Iowa Plumbing and Mechanical Systems Board. Iowa Admin. Code § 641-23.3. Electrical contractor licenses are the duty of the State Fire Marshal. Iowa Admin. Code § 661-500.1(103)	Iowa does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements. However, disclosure of records can be requested including estimates, prices and negotiations of a contract unless disclosure would hinder further competition. Iowa Admin Code 761-4.9(22)

STATE	LICENSING REQUIREMENTS	CONTRACT DISCLOSURE REQUIREMENTS
Kansas	Kansas does not have any state-level licensing or registration requirements. All licensing is regulated, if at all, on the municipal level, and the local development authority should be contacted prior to commencing work on any project.	Kansas does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
Kentucky	Kentucky does not require a license for general contractors, however, it does require a license for certain specific categories of work (e.g., electric, HVAC, plumbing, etc.). *See* https://dhbc.ky.gov/new_docs.aspx?cat=150 for full list of state-issued licenses.	Kentucky does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
Louisiana	Generally, a commercial license is required for all contractors (general and sub) engaging in commercial projects of $50,000 or more. Exceptions apply for certain specialty subcontractors (Electrical, Mechanical, Plumbing, Asbestos, Hazardous Waste) and require licensure at lower contract values. A residential license is required for residential building contractors when the cost of the undertaking exceeds $75,000. Residential subcontractors who bid or perform work in one of the residential specialties (Pile Driving; Foundations; Framing; Roofing; Masonry/Stucco; or Swimming Pools) must have a valid residential license for that specialty when the work exceeds $7,500, including all labor and materials. *See* Contractors Licensing Law and Rules and Regulations	Residential construction contracts must include a disclosure providing notice of the lien rights of the respective parties. La. Rev. Code. § 9:4852
Maine	Maine does not require a license for general contractors, however, it does require licenses for certain specific categories of work (e.g., plumbing, electric work, etc.). *See* https://www.maine.gov/pfr/professionallicensing/professions for a full list of state-issued licenses.	Any home construction contract for more than $3,000 in materials or labor must be in writing and must be signed by both the home construction contractor and the homeowner or lessee. The contract must also contain the names of the parties, location of the project, the work dates, the contract price, method of payment and price, description of the work, a warranty, etc. *See* ME St. T. 10 § 1487
Maryland	A state-issued license (from the Maryland Home Improvement Commission) is required for all **home improvement contractors**. Md. Code Ann., Bus. Reg. § 8-301. Furthermore, Maryland requires a license for plumbers, electricians, and HVAC professionals. *See* https://www.dllr.state.md.us/license/	Home improvement contractors must include their MHIC License number in any contract, among other requirements. Md. Code Ann., Bus. Reg. § 8-501

STATE	LICENSING REQUIREMENTS	CONTRACT DISCLOSURE REQUIREMENTS
Massachusetts	Massachusetts requires a Construction Supervisor License ("CSL") to be held for certain categories of construction work. Mass. G.L. c. 143, § 94; *see also* https://www.mass.gov/construction-supervisor-licensing. Additionally, a Home Improvement Contractor ("HIC") must also be registered in the Commonwealth. *See gen.* Mass. G.L. c. 142A. Unless a contractor is performing "ordinary repairs" on a structure, both a CSL and an HIC registration may be required.	All contracts for residential construction exceeding $1,000 in value shall be in writing, and shall include, *inter alia*, the contractor's registration number. *See* Mass. G.L. c. 142A, § 2
Michigan	General contractors must obtain either a **Residential Builders License** or a **Maintenance & Alterations Contractors License** prior to conducting work that includes repair, construction, alterations, or upgrades residential buildings or mixed-use buildings. Mich. Comp. Laws Ann. § 339.2403; *see also* https://aca-prod.accela.com/LARA/Default.aspx	Any entity licensed by the state must include, as part of any contract, their licensing information. Mich. Comp. Laws Ann. § 339.2404a
Minnesota	Minnesota requires all general contractors to be licensed and registered with the state. Minn. Stat. Ann. § 326b.805; 326b.701	Minnesota does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
Mississippi	Mississippi generally requires a license for any contractor working in the state. Miss. Code Ann. § 31-3-1. Further, contractors must have a Certificate of Responsibility from the State Board of Public Contractors. Miss. Code Ann. § 31-3-15. *See also* Miss. Code Ann. § 73-59-1, et seq	Any contract should include relevant information about the contractor's Certificate of Responsibility. Miss. Code Ann. § 31-3-15
Missouri	Missouri does not have any state-level licensing or registration requirements. All licensing and/or registration is regulated, if at all, on the municipal level, and the local development authority should be contacted prior to commencing work on any project. However there are some additional state licensing options such as, Lead Abatement contractors obtain licensing from the Office Lead Licensing and Accreditation (OLLA). Mo. Code Regs. Ann. Tit. 19, § 30-70.120. There is also an Office of Statewide Electrical Contractors through the Missouri Division of Professional Registration that can grant a license that disregards local licensing requirements. Mo. Code Regs. Ann. Tit. 20, § 2117-1.010	Missouri does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
Montana	Montana requires each construction contractor to register. Mont. Code Ann. § 39-9-201; *see* https://erd.dli.mt.gov/work-comp-regulations/montana-contractor/construction-contractor-registration for more information about registration.	Each residential construction contract must set out the contractor's general liability policy, worker's compensation policy, payment plan, and a statement of all inspections and tests that the general contractor will perform upon completion of construction, among other requirements. Mont. Code § 28-2-2201

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STATE	LICENSING REQUIREMENTS	CONTRACT DISCLOSURE REQUIREMENTS
Nebraska	Nebraska does not require a license for construction projects, however, any entity performing construction work must first register with the Department of Labor if the entity earns more than $5,000 annually for construction work. Neb. Rev. Stat. § 48-2104	Nebraska does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
Nevada	Nevada requires any entity performing construction or alteration work to obtain a state-issued license. *See gen.* Nev. Rev. Stat. § 624.140, et seq Contractor must post surety bond or cash deposit with Board. NRS 624.270(1) (exemption may be requested after 5 years). Nev. Rev. Stat. § 624.275	Any single-family residential contracts must disclose the name and license number(s) of all contractors who work on the project, and must provide notice of lien rights. Nev. Rev. Stat. § 624.600 A residential recovery fund disclosure must be on all residential contracts. Nev. Rev. Stat. § 624.520 License number must be on all business advertisements, including vehicles, business cards, letterhead, signage, directories, newspapers, website, etc. Nev. Rev. Stat. § 624.720 License number and monetary limit must be on all contracts or bids. Nev. Admin. Code § 624.640
New Hampshire	New Hampshire does not require a license for general contractors, however, it does require a license for certain specific categories of work (e.g., electric work, plumbing, etc.). *See* https://www.oplc.nh.gov/professional-licensing	New Hampshire does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements. For public construction projects, however, contractors may need to disclose their requisite insurance information. *See* NH St. § 21-I:80
New Jersey	New Jersey does not require a license for general contractors, but contractors conducting residential work must register with the NJ Division of Consumer Affairs (N.J. Stat. Ann. § 56:8-136, et seq), and builders that engage in the business of constructing new homes must be registered with the NJ Dept. of Community Affairs (N.J. Stat. Ann. § 46:3B-5, et seq). Additionally, contractors performing plumbing, electrical, and HVAC work must obtain a license. *See* https://www.njconsumeraffairs.gov/Pages/Applying-For-A-License.aspx. *See also* Contractors' Registration Act (N.J. Stat. Ann. § 56:8-136, et seq), New Home Warranty and Builders' Registration Act (N.J. Stat. Ann. § 46:3B-1, et seq), and the Home Improvement Contractor Registration (N.J. Admin Code 13:45A-17.1, et seq) for further detail and exemptions	New Jersey does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.

STATE	LICENSING REQUIREMENTS	CONTRACT DISCLOSURE REQUIREMENTS
New Mexico	New Mexico requires all general contractors working in the state to be licensed. N.M. Stat. Ann. § 60-13-3	New Mexico does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
New York	New York does not have any state-level licensing or registration requirements. All licensing and/or registration is regulated, if at all, on the municipal level, and the local development authority should be contacted prior to commencing work on any project.	New York does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
North Carolina	North Carolina requires general contractors to have a state-issued license for any project exceeding $30,000. N.C. Gen. Stat. Ann. § 87-1	North Carolina does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
North Dakota	North Dakota requires general contractors to have a state-issued license for any project exceeding $4,000. N.D. Cent. Code Ann. § 43-07-02	North Dakota does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
Ohio	Ohio does not require a license for general contractors, however, it does require a license for certain specific categories of work (e.g., plumbing, electric work, etc.). *See* https://com.ohio.gov/DICO/ocilb/LicenseQualificationProcess.aspx	Ohio does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
Oklahoma	Oklahoma does not have any state-level licensing or registration requirements for general contractors. The Oklahoma Construction Industries Board, however, does require licensure for certain specialty trades, including electrical, plumbing and mechanical contractors. All licensing and/or registration for specific industries is managed by the Oklahoma Construction Industries Board. *See* https://cib.ok.gov/forms. Additional municipal level or local development authority licensure may be required and those entities should be contacted prior to commencing work on any project.	Oklahoma does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
Oregon	Oregon requires general contractors to have a license issued by the Oregon Construction Contractors Board. Ore. Rev. Stat. Ann. § 701.021	Oregon requires all construction contracts for projects over $2,000 to be in writing. Ore. Rev. Stat. Ann. § 701-305
Pennsylvania	Any contractor performing **home improvement work in excess of $5,000** must be registered and licensed with the state's Attorney General's office. 73 Pa. Stat. Ann. § 517.3	Pennsylvania does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.

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STATE	LICENSING REQUIREMENTS	CONTRACT DISCLOSURE REQUIREMENTS
Rhode Island	Rhode Island does not require general contractors to be licensed, however, any all contractors must be properly registered with the state. 5 R.I. Gen. Laws Ann. § 5-65-3	Any contract must contain a "Notice of Possible Mechanic's Lien" with formal language provided by statute. 5 R.I. Gen. Laws Ann. § 5-653(o)
South Carolina	South Carolina requires a state-issued license for any project in excess of $5,000. S.C. Code § 40-11-30	South Carolina does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
South Dakota	South Dakota does not require a license for general contractors, however, it does require a license for certain specific categories of work (e.g., plumbing, HVAC, etc.). *See* https://dlr.sd.gov/	South Dakota does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
Tennessee	Tennessee requires a license before negotiating or bidding on any project exceeding $25,000. Tenn. Code Ann. tit. 62, Ch. 6, et seq	Tennessee does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
Texas	The state of Texas does not require a license for general contractors, however, it does require a license for certain specific categories of work (e.g., HVAC, plumbing, etc.). *See* https://www.tdlr.texas.gov/licenses.htm. However, many cities in Texas require general contractors to register and obtain a local license in order to perform work in the city. Go to Search by City - TML City Officials Directory, search for the city, and you will be taken to the city's website where you can search for "contractor license requirements."	Written contracts subject to the Texas Residential Construction Act (Chapter 27 of the Texas Property Code) must include the required disclosure statement set forth in section 27.007. Tex. Prop. Code § 27.007. In addition, Section 53.255 sets forth thirteen required disclosures that a contractor must provide in a residential construction contract. Tex. Prop. Code § 53.255. Local or municipal development authorities should be consulted for any such requirements.
Utah	Utah requires general contractors to obtain a state issued license prior to commencing work on any project. Uta. Code Ann. § 58-55-301	Utah does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
Vermont	Vermont does not have any state-level licensing or registration requirements. All licensing and/or registration is regulated, if at all, on the municipal level, and the local development authority should be contacted prior to commencing work on any project.	Vermont does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
Virginia	Virginia requires general contractors to obtain a state-issued license prior to commencing construction work. Va. Code Ann. § 54.1-2902	Virginia does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.

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STATE	LICENSING REQUIREMENTS	CONTRACT DISCLOSURE REQUIREMENTS
Washington	Washington does not require general contractors to be licensed by the state, however, all contractors must enroll with the Department of Labor and Industries. RCW § 18.27.010, 18.27.020(1). A contractor who performs work without such registration is a *per se* unfair or deceptive act or practice under Washington's Consumer Protection Act. RCW §19.86, et seq. General contractors are required to hold a surety bond with minimum of $12,000, and specialty contractors with a minimum of $6,000. RCW § 18.27.040	Contracts must include a Notice to Customer concerning applicable lien rights. Wash. Rev. Code. Ann. § 18.27.114.
West Virginia	West Virginia requires general contractors to obtain a state-issued license for all projects. W. Va. Code R. § 28-2-3	A licensee must have a written contract prior to performing contracting work on a construction project with an aggregate value of $10,000 or more. W. Va. Code §30-42-10(b). The contract must contain a statement requiring the licensee and owner to confirm licensee's disclosure regarding whether licensee has a valid and current general liability insurance policy. W. Va. Code R. § 28-4-4
Wisconsin	General contractors must obtain a Dwelling Contractor Qualifier certifications for any residential project exceeding $1,000. Wis. Admin. Code § 305.315. Per Wis. Admin. Code § SPS 305.31, no person may obtain a building permit for a one-and two-family dwelling unless the person holds a Dwelling Contractor certification issued by the Department of Safety and Professional Services ("DSPS") or engages, as an employee, a person who holds such certification. *See also* Wis. Stats. § 101.654(1)(b) and (1)(c)(2). In addition, the State of Wisconsin imposes licensing and registration requirements on plumbing, electrical, HVAC, elevator and automatic fire sprinkler contractors.	Wisconsin does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.
Wyoming	Wyoming does not require a license for general contractors, however, it does require a license for electricians. *See* http://wsfm.wyo.gov/electrical-safety/license-and-exam-applications	Wyoming does not have any construction contract disclosure requirements at the state level. Local or municipal development authorities should be consulted for any such requirements.

50 State Legal Matrix – Directly Assessed Punitive Damages for 2024

This matrix identifies each state's laws governing whether punitive damages directly assessed against an insured based on its own conduct is insurable or not. The ability to insure directly assessed punitive damages varies from state to state and can depend on both state law and policy language. In many states, directly assessed punitive damages may be insured. In other states, insurance recovery for directly assessed punitive damages are not condoned. Additionally, some states have held that punitive damages may not be insured as a matter of public policy, as it does not allow the defendant to suffer the consequences of their actions. Ultimately, state courts seem split fairly evenly when determining if directly assessed punitive damages may be insured or not. The following legal matrix analyzes an insured's ability to have their directly assessed punitive damages covered by their insurer in all 50 states and the District of Columbia.

Please be advised that hyperlinks were added to the statutory and case citations. By clicking on the citation hyperlinks, you will be brought to the webpage containing the statutes and case law that will provide the relevant information.

STATE	INSURABLE/UNINSURABLE	DIRECTLY ASSESSED PUNITIVE DAMAGES: SUPPORTING AUTHORITY
Alabama	Insurable	**Statute**: No statute. **Case Law:** Punitive damages assessed directly against a policyholder are insurable. Am. Fidelity Cas. Co. v. Werfel, 230 Ala. 552, 162 So. 103 (Ala. 1935). Moreover, under Alabama law, an automobile liability coverage policy can exclude coverage for punitive or exemplary damages, but only so long as the exclusion does not apply to claims for wrongful death (which in Alabama is a purely punitive damages claim). *See*, *e.g.*, Hill v. Campbell, 804 SO. 2d 1107 (Ala. Civ. App. 2001)
Alaska	Insurable	**Statute:** No statute. **Case Law:** Alaska permits punitive damages to be covered by insurance. Providence Washington Ins. v. City of Valdez, 684 P.2d 861 (Alaska 1984)
Arizona	Insurable	**Statute**: No statute. **Case Law:** Absent an express provision to exclude punitive damages, the insurer must meet its contractual obligation to pay punitive damages. State Farm Mut. Auto. Ins. Co. v. Wilson, 162 Ariz. 247, 782 P.2d 723 (Ct. App.), approved as modified, 162 Ariz. 251, 782 P.2d 727 (1989)
Arkansas	Insurable	**Statute: Ark. Code Ann. § 23-79-307** (West) **Case Law:** The Supreme Court of Arkansas held that the state's public policy does not prevent an insurer from indemnifying its insured against punitive damages. S. Farm Bur. Cas. Ins. v. Daniel, 246 Ark. 849, 440 S.W.2d 582 (1969)

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STATE	INSURABLE/UNINSURABLE	DIRECTLY ASSESSED PUNITIVE DAMAGES: SUPPORTING AUTHORITY
California	Uninsurable	**Statute:** "An insurer is not liable for a loss caused by the willful act of the insured; but he is no exonerated by the negligence of the insured, or of the insured's agents or others." **Cal. Ins. Code § 533** (West) **Case Law:** Punitive damages are not insurable under California law, based on a public policy rationale. PPG Indus. Inc. v. Transamerica Ins. Co., 56 Cal. Rptr. 2d 889 (Ct. App.), review granted and opinion superseded, 927 P.2d 1174 (Cal. 1996), and aff'd, 20 Cal. 4th 310, 975 P.2d 652 (1999)
Colorado	Uninsurable	**Statute:** No statute. **Case Law:** Colorado public policy prohibits insurers from providing coverage for punitive damages. Lira v. Shelter Ins. Co., 913 P.2d 514 (Colo. 1996)
Connecticut	Likely insurable. Old case law indicates uninsurable, but recent case law imposed punitive damages.	**Statute:** No statute. **Case Law:** In the past, Connecticut courts held that a tortfeasor may not protect himself from liability by seeking indemnity from his insurer for punitive damages. Bodner v. United Services Automobile Ass'n, 222 Conn. 480, 610 A.2d 1212 (Conn. 1992). The Supreme Court of Connecticut rejected this broad statement in a recent case and distinguished Bodner to a specific category of uninsured motorist coverage. See Nationwide Mut. Ins. Co. v. Pasiak, 327 Conn. 225, 173 A.3d 888 (2017). The Court in Pasiak held that insurer was "bound to keep the bargain they struck, which includes coverage for common-law punitive damages…." *Id*
Delaware	Insurable	**Statute:** No statute. **Case Law:** Delaware's public policy does not prohibit the insurability of a provision that covers punitive damages. Whalen v. On-Deck, Inc., 514 A.2d 1072 (Del. 1986)
District of Columbia	Undecided	**Statute:** No statute. **Case Law:** There have been no formal decisions determining whether punitive damages may be covered under an insurance policy. However, case law suggests that it would be contrary to public policy if punitive damages awarded as a result of an intentional act would not be covered under an insurance policy. Salus Corp. v. Cont'l Cas. Co., 478 A.2d 1067 (D.C. 1984)
Florida	Uninsurable	**Statute:** No statute. **Case Law:** Public policy precludes an insurer to insure against liability for directly assessed punitive damages. U.S. Concrete Pipe Co. v. Bould, 437 So. 2d 1061 (Fla. 1983)

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STATE	INSURABLE/UNINSURABLE	DIRECTLY ASSESSED PUNITIVE DAMAGES: SUPPORTING AUTHORITY
Georgia	Insurable	**Statute**: Ga. Code Ann. § 33-7-3 (West) **Case Law:** Punitive damages is included in coverage against "legal liability," which is expressly authorized by the Georgia legislature. Greenwood Cemetery v. Travelers c. Co., 238 Ga. 313, 232 S.E.2d 910 (1977)
Hawaii	Insurable	**Statute**: When the policy specifically includes coverage for punitive damages for such conduct, the policy will be upheld. **Haw. Rev. Stat. Ann. § 431:10-240** (West) **Case Law:** When an insurance policy does not specifically include coverage for punitive damages, the insurer will not be responsible for the punitive damages. Allstate Ins. Co. v. Takeda, 243 F. Supp. 2d 1100 (D. Haw. 2003)
Idaho	Insurable	**Statute**: No statute. **Case Law:** There is no public policy violation for an insurer to provide coverage of punitive damages. Abbie Uriguen Olds. Buick v. United States F.I, 95 Idaho 501, 511 P.2d 783 (1973)
Illinois	Uninsurable	**Statute**: No statute. **Case Law:** Public policy prohibits insurance coverage for punitive damages arising out of one's own conduct. Beaver v. Country Mutual Insurance Co., 95 Ill. App. 3d 1122, 420 N.E.2d 1058 (1981)
Indiana	Uninsurable	**Statute**: No statute. **Case Law:** Indiana public policy makes it impermissible for insurance to cover an actor's own misconduct, which constitutes the basis for punitive damages. Com. Union Ins. Co. v. Ramada Hotel Operating Co., 852 F.2d 298 (7th Cir. 1988)
Iowa	Insurable	**Statute**: No statute. **Case Law:** Iowa court's decided to "elevate the public policy of freedom to contract for insurance coverage above the public policy purposes of punitive damages." Skyline Harvestore Sys. v. Centennial Ins. Co., 331 N.W.2d 106 (Iowa 1983). "The insurer, having affirmatively expressed coverage through broad promises, assumes a duty to define any limitations or exclusionary clause in clear and explicit terms. Zenti v. Home Ins. Co., 262 N.W.2d 588 (Iowa 1978)

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STATE	INSURABLE/UNINSURABLE	DIRECTLY ASSESSED PUNITIVE DAMAGES: SUPPORTING AUTHORITY
Kansas	Uninsurable	**Statute**: The Kansas statute only covers vicarious liability, not directly assessed punitive damages. Kan. Stat. Ann. § 40-2,115 (West). **Case Law:** An insurance policy that allows the wrongdoer to shift punitive damages to the insurer would violate Kansas's public policy. Koch v. Merchants Mut. Bonding Co., 507 P.2d 189 (Kan. 1973)
Kentucky	Insurable	**Statute**: No statute. **Case Law:** "[W]e do not deem it against public policy to allow liability therefor to be insured against when the punitive damages are imposed for grossly negligent acts of the insured rather than an intentional wrong of the insured." Cont'l Ins. Companies v. Hancock, 507 S.W.2d 146, 151-52 (Ky. 1973)
Louisiana	Insurable	**Statute**: No statute. **Case Law:** Public policy does not preclude insurance coverage of punitive damages. Creech v. Aetna Cas. Sur. Co., 516 So. 2d 1168 (La. Ct. App. 1987), writ denied, 519 So. 2d 128 (La. 1988). However, it is against public policy to obtain insurance coverage for voluntary and intentional wrongful acts. Vallier v. Oilfield Const. Co., Inc., 483 So. 2d 212 (La. Ct. App.), writ denied, 486 So. 2d 734 (La. 1986)
Maine	Undecided	**Statute**: No statute. **Case Law:** In one opinion, a court prohibited insurance coverage of punitive damages. "Allowing punitive damages to be awarded against an insurance company can serve no deterrent function because the wrongdoer is not the person paying the damages." Braley v. Berkshire Mut. Ins. Co., 440 A.2d 359 (Me. 1982). Alternatively, other courts in Main have permitted liability policies to include an obligation to pay punitive damages. Concord General Mutual Insurance Company v. Hills, 345 F. Supp. 1090 (D. Me. 1972)
Maryland	Insurable	**Statute**: No statute. **Case Law:** It is not contrary to Maryland's public policy to insure against liability for punitive damages awarded. Bailer v. Erie Insurance, 344 Md. 515, 687 A.2d 1375 (1997)
Massachusetts	Depends on context	**Statute**: An insurance company may insure any person against legal liability for causing injury, other than bodily injury, by his deliberate or intentional crime or wrongdoing. Mass. Gen. Laws Ann. Ch. 175, § 47 (West)

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STATE	INSURABLE/UNINSURABLE	DIRECTLY ASSESSED PUNITIVE DAMAGES: SUPPORTING AUTHORITY
Massachusetts cont.		**Case Law:** An insurer can be liable for punitive damages based on gross negligence or recklessness. Williamson-Green v. Interstate Fire & Casualty Co., 1684 CV 03141-BLS2 (Mass. Super. May. 26, 2017)
Michigan	Insurable	**Statute**: No statute. **Case Law:** While no state court has decided the issue, a District Court addressed the issue--applying Michigan law—in Meijer, Inc. v. General Star Indem. Co., 826 F. Supp. 241 (W.D. Mich. 1993), aff'd, 61 F.3d 903 (6th Cir. 1995). The Court held that "Michigan law permits insurance coverage for punitive damage awards." *Id*. at 247. The Court placed emphasis on the fact that an insurer is free to limit the risks it assumes in the contract, but "they must clearly express limitations on coverage and any failure to do so is construed against the drafting insurer and in favor of finding coverage under the policy." *Id*. Essentially, '[t]o hold that punitive damages are not recoverable would create, in effect, an exclusion for which the parties did not negotiate and allow insurance companies to collect premiums for coverage of a risk that they voluntarily assumed and then escape their obligation to pay on a claim by a mere judicial declaration that the contract is void by reason of public policy." *Id*
Minnesota	Uninsurable	**Statute**: Minnesota law generally prohibits insurance for punitive damages, with limited exceptions. Minn. Stat. Ann. § 60A.06, subd. 4. (West). **Case Law:** Insurance coverage for punitive damages is contrary to public policy. Wojciak v. Northern Package Corp., 310 N.W.2d 675 (Minn. 1981); Peterson v. W. Nat'l Mut. Ins. Co., 946 N.W.2d 903, 910 (Minn. 2020) ("the factfinder should consider the level of investigation a reasonable insurer would have conducted under the circumstances of the case and how [it] would have evaluated the claims in light of that investigation")
Mississippi	Insurable	**Statute**: No statute. **Case Law:** Directly assessed punitive damages are insurable. Anthony v. Frith, 394 So. 2d 867 (Miss. 1981)
Missouri	Unclear	**Statute**: No statute. **Case Law:** Although the Missouri Supreme Court has not specifically addressed whether an insurer may be liable for punitive damages assessed against an insured, it is unlikely to require coverage. In Missouri, punitive damages may be expressly excluded from coverage and the term

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STATE	INSURABLE/UNINSURABLE	DIRECTLY ASSESSED PUNITIVE DAMAGES: SUPPORTING AUTHORITY
Missouri cont.		"damages," generally does not include punitive damages in the context of insurance policies. Am. Family Mut. Ins. Co. v. Sharon, 596 S.W.3d 135 (Mo. Ct. App. 2020) (citing Schnuck Markets, Inc. v. Transamerica, Ins. Co., 652 S.W.2d 206, 209 (Mo. Ct. App. 1983)). Additionally, Missouri courts have determined it would be against public policy for an insurer to protect the insured from punitive damages. *See, e.g.*, Crull v. Gleb, 382 S.W.2d 17 (Mo. Ct. App. 1964)
Montana	Insurable	**Statute**: An express provision allows punitive damages to be covered. Mont. Code Ann. § 33-15-317 (West) **Case Law:** Providing insurance coverage for punitive damages does not violate public policy. First Bank (N.A.)-Billings v. Transamerica Ins. Co., 209 Mont. 93, 679 P.2d 1217 (1984)
Nebraska	Uninsurable	**Statute**: Punitive damages are prohibited by the Constitution of the State of Nebraska. Nebraska State Constitution Article VII-5 **Case Law:** The Nebraska Constitution provides that punitive damages are not recoverable. Abel v. Conover, 170 Neb. 926, 104 N.W.2d 684 (1960)
Nevada	Insurable	**Statute**: There is no published case precedent. Statute allows for insurability based on vicarious liability absent the insured's intentional acts. NRS 681A.095 **Case Law:** N/A. Statute overrules.
New Hampshire	Insurable	**Statute**: No statute. **Case Law:** Insurers can be liable for coverage of punitive damage in New Hampshire Am. Home Assur. Co. v. Fish, 122 N.H. 711, 451 A.2d 358 (1982)
New Jersey	Uninsurable	**Statute**: No statute. **Case Law:** Public policy does not permit an insurer to cover liability for punitive damages. City of Newark v. Hartford Acc. & Indem. Co., 134 N.J. Super. 537, 342 A.2d 513 (App. Div. 1975)
New Mexico	Insurable	**Statute**: No statute. **Case Law:** New Mexico allows insurance contracts to cover liability for punitive damages. Mid-Continent Cas. Co. v. I&W, Inc., No. CIV-11-0329 WJ/LAM (D.N.M. Feb. 11, 2015); Baker v. Armstrong, 106 N.M. 395, 744 P.2d 170 (1987)

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STATE	INSURABLE/UNINSURABLE	DIRECTLY ASSESSED PUNITIVE DAMAGES: SUPPORTING AUTHORITY
New York	Uninsurable	**Statute**: No statute. **Case Law:** New York courts have consistently held that punitive damages directly assessed against an insured based on its own conduct is uninsurable because it is against public policy. Home Ins. Co. v. Am. Home Prod. Corp., 75 N.Y.2d 196 (N.Y. 1990)
North Carolina	Insurable	**Statute**: No statute. **Case Law:** Public policy of North Carolina does not preclude liability insurance coverage for punitive damages. Mazza v. Med. Mut. Ins. Co., 311 N.C. 621, 319 S.E.2d 217 (1984)
North Dakota	Insurable	**Statute**: No statute. **Case Law:** When an insurance policy expressly provides coverage for punitive damages, the insurer will be obligated to cover up to the policy limits. Cont'l Cas. Co. v. Kinsey, 513 N.W.2d 66 (N.D. 1994)
Ohio	Depends on the context.	**Statute**: Ohio Rev. Code Ann. § 3937.182 (West) states that "no policy of automobile or motor vehicle insurance…issued by an insurance company licensed to do business in this state, and no other policy of casualty or liability insurance…that is so issued shall provide coverage for judgments or claims against an insured for punitive damages or exemplary damages. *See also* Neal-Pettit v. Lahman, 125 Ohio St. 327, 331 (1989) While the statute prohibits insurers from providing coverage for punitive damages, the statute does not mention attorney's fees. So if there is an award of punitive damages against an insured and attorney's fees are awarded, the attorney's fees could be covered as "damages" unless specifically excluded by the policy. The Ohio Supreme Court held that attorney's fees are distinct from punitive damages and public policy does not prevent coverage when the attorney's fees are awarded solely as a result of punitive damages. **Case Law:** "If punitive damages are awarded after a finding of malice, ill will, or other similar culpability, or awarded other than pursuant to statute, Ohio public policy forbids their indemnification. Foster v. D.B.S. Collection Agency, Case No. 01-CV-514 (S.D. Ohio Mar. 20, 2008)

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STATE	INSURABLE/UNINSURABLE	DIRECTLY ASSESSED PUNITIVE DAMAGES: SUPPORTING AUTHORITY
Oklahoma	Uninsurable	**Statute**: No statute. **Case Law:** Public policy generally prohibits insurance coverage of punitive damages in Oklahoma. Dayton-Hudson Corp. v. Am. Mut. Liab. Ins., 526 F. Supp. 730 (W.D. Okla. 1981). However, punitive damages are coverable when the insured's liability is imposed vicariously. *Id*
Oregon	Insurable	**Statute**: No statute. **Case Law:** Public policy does not forbid liability insurance to cover punitive damages. Harrell v. Travelers Indem. Co., 279 Or. 199, 567 P.2d 1013 (1977)
Pennsylvania	Uninsurable	**Statute**: No statute. **Case Law:** Insurance coverage for punitive damage claims arising from direct liability is prohibited in Pennsylvania, as a violation of public policy. Butterfield v. Giuntoli, 670 A.2d 646 (Pa. Super. 1995); Creed v. Allstate Ins. Co., 529 A.2d 10 (Pa. Super. 1987), appeal denied by 517 Pa. 616 (Pa. Jan. 21, 1988)
Rhode Island	Uninsurable	**Statute**: No statute. **Case Law:** "[T]he sounder approach bars the wrongdoer from shifting the punitive damages to the insurer." Allen v. Simmons, 533 A.2d 541 (R.I. 1987). As such, until there is a statutory change in Rhode Island or the Supreme Court revisits the ruling in *Simmons*, coverage for punitive damages will likely not be approved in Rhode Island
South Carolina	Insurable	**Statute**: No statute. **Case Law:** When an insurance policy does not unambiguously exclude punitive damages, the court will construe the language in favor of the insured to include punitive damages. Harleysville Grp. Ins., Corp. v. Heritage Communities Inc., 420 S.C. 321, 803 S.E.2d 288 (2017)
South Dakota	Uninsurable	**Statute**: Under Title 58 of South Dakota Laws, the Division of Insurance regulates insurance companies in South Dakota. The Division of Insurance has found that insurance coverage for punitive damages is a violation of public policy. 97-01 **Case Law:** Public policy prohibits extending insurance coverage to individuals who commit intentional tortious conduct. State Farm Mut. Auto. Ins. Co. v. Wertz, 540 N.W.2d 636 (S.D. 1995)

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STATE	INSURABLE/UNINSURABLE	DIRECTLY ASSESSED PUNITIVE DAMAGES: SUPPORTING AUTHORITY
Tennessee	Insurable	**Statute**: No statute. **Case Law:** Coverage for punitive damages is not precluded on the basis of public policy, unless injury was intentionally inflicted. Lazenby v. Univ. U'wtrs. Ins. Co., 214 Tenn. 639, 383 S.W.2d 1 (1964)
Texas	Depends the context.	**Statute**: No statute. **Case Law:** Depending on the context of the case, public policy will determine whether insurance for punitive damages is permitted. Fairfield Ins. Co. v. Stephens Martin Paving, 381 F.3d 435 (5th Cir. 2004), certified question answered, 246 S.W.3d 653 (Tex. 2008). The Supreme Court of Texas set forth a two-step analysis. First, the court decides whether the plain language of the policy covers the damages sought in the underlying suit against the insured. *Id*. at 655. Second, if the court concludes that the public policy provides coverage, the court determines whether the public policy of Texas allows or prohibits coverage in the circumstances of the underlying suit. *Id*
Utah	Uninsurable	**Statute**: No insurer may insure against punitive damages. Utah Code Ann. § 31A-20-101(4) (West 2010) **Case Law:** The Utah legislature expressly prohibits insurance contractual protection against punitive damages. doTERRA Int'l, LLC v. Kruger, 2021 UT 24, 491 P.3d 939 (2021)
Vermont	Insurable	**Statute**: No statute. **Case Law:** Vermont's public policy does not preclude coverage of punitive damages. State v. Glens Falls Insurance Company, 137 Vt. 313, 404 A.2d 101 (1979)
Virginia	Insurable	**Statute**: An insurer can provide coverage for punitive damages, even for one's own conduct, but excludes intentional acts. Va. Code Ann. § 38.2-227 (West 2021). **Case Law:** When an insurance policy includes language in the agreement "to pay all sums which the insured shall become legally obligated to pay as damages…" includes punitive damages as well. United Servs. Auto. Ass'n v. Webb, 235 Va. 655, 655-57, 369 S.E.2d 196, 197 (1988)
Washington	Insurable	**Statute**: No statute. **Case Law:** Public policy does not preclude punitive damage coverage in the state of Washington. Fluke Corp. v. the Hartford Acc. Indem. Co., 145 Wn. 2d 137, 145 Wash. 2d 137, 34 P.3d 809 (2001)

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STATE	INSURABLE/UNINSURABLE	DIRECTLY ASSESSED PUNITIVE DAMAGES: SUPPORTING AUTHORITY
West Virginia	Insurable	**Statute**: No statute. **Case Law:** Public policy does not prohibit insurance coverage for punitive damages, even assed upon gross, reckless, or wanton negligence. Hensley v. Erie Ins. Co., 168 W. Va. 172, 283 S.E.2d 227 (1981)
Wisconsin	Insurable	**Statute**: No statute. **Case Law**: Insurance coverage for punitive damages is not contrary to public policy. Brown v. Maxey, 124 Wis. 2d 426, 369 N.W.2d 677 (1985)

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50 State Legal Matrix – Employment Record Subpoena Responses for 2024

This matrix identifies each state's laws governing who can access an employee personnel file pursuant to a subpoena or employee request, what types of information must be excluded or redacted, the timeframe by which a response must be provided and other key considerations. State legislatures have adopted different approaches to regulating access to employee personnel files. Employers must comply with their state's laws when responding to current and former employees' requests to examine their personnel records, as well as subpoenas to produce employee personnel files during litigation. Specifically, states impose various requirements governing the maintenance and composition of personnel files, the timing of the response to a file request, and the scope of what is included in each employee's personnel file.

Please be advised that hyperlinks were added to the statutory and regulatory citations. By clicking on the citation hyperlink, you will be brought to the regulatory webpage containing the statutes and rules that will provide the relevant information.

STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
AL	**Employee Personnel File:** Alabama private employers are not legally required to let employees view the contents of their personnel file. However, a person employed by a public school board may, upon request, review all of the contents in his or her personnel file and receive copies of any documents. Al. Code § 16-22-14(c) **Third Party Subpoena:** Parties to a lawsuit may subpoena third parties for records. Al. R. Civ. P. 45	**Employee Personnel File:** Employees employed by the school board have access to the entirety of their personnel file. Al. Code § 16-22-14(c) **Third Party Subpoena:** The subpoena must set forth the items to be produced, inspected, copied, tested, or sampled, either by individual item or by category, and describe each item and category with reasonable particularity. Al. R. Civ. P. 45(a)(3)(C)	**Employee Personnel File:** Alabama law does not specifically address the timing of a personnel file request. Al. Code § 16-22-14(c) **Third Party Subpoena:** The subpoena must specify a reasonable time to comply of no less than 15 days after service unless the court orders otherwise. Al. R. Civ. P. 45(a)(3)(C)	**Employee Personnel File:** A schoolboard employee may object in writing to any material in his or her file and the answer or objection must be attached to the material and added to the file. Al. Code § 16-22-14(c) **Third Party Subpoena:** The employer can serve an objection to the subpoena for production of the personnel record within 10 days of the service of the notice of subpoena. Al. R. Civ. P. 45(a)(3)(B)
AK	**Employee Personnel File:** All current and former employees can inspect and make copies of their personnel file. AK Stat. § 23.10.430(a) An employee may also authorize others to examine the employee's personnel file. AK Stat. § 39.25.080(c). **Third Party Subpoena:** Parties to a lawsuit may subpoena third parties for records. Alaska R. Civ. P. 45	**Employee Personnel File:** Alaska law does not specifically exclude any content from a personnel file request. **Third Party Subpoena:** The subpoena must designate the materials to be produced in the subpoena or in the attached notice. Alaska R. Civ. P. 45(b)	**Employee Personnel File:** Employers must allow employees to inspect their personnel file during regular business hours. AK Stat. § 23.10.430(a) **Third Party Subpoena:** The subpoena must indicate the time and place for compliance. Alaska R. Civ. P. 45(a)	**Employee Personnel File:** An employee may make copies of their file and the employer may require the employee to pay reasonable costs of duplication. AK Stat. § 23.10.430(a) Code sections requiring employers to allow employees to inspect their personnel files do not supersede collective bargaining agreements. AK Stat. § 23.10.430(a)

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STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
AK cont.				State personnel records, including employment applications and examination and other assessment materials, are generally confidential and are not open to public inspection. AK Stat. § 39.25.080(a) **Third Party Subpoena:** A court may void or modify the subpoena if it is unreasonable and oppressive. Alaska R. Civ. P. 45(b) A subpoena may specify the form or forms in which electronically stored information is to be produced. Alaska R. Civ. P. 45(b)
AZ	**Employee Personnel File:** Arizona law does not require employers to give employees access to their personnel files. However, all employers must permit an employee or his or her designated representative to inspect and copy payroll records pertaining to that employee for a period for four years. A.R.S § 23-364(D) **Third Party Subpoena:** Parties to a lawsuit may subpoena third parties for records. Ariz. R. Civ. P. 45	**Employee Personnel File:** Arizona law does not specifically exclude any content from a personnel file request. **Third Party Subpoena:** The party subject to a subpoena may object to certain files being produced on the basis of privilege or work-product. Ariz. R. Civ. P. 45(c)(5)(A)-(B)	**Employee Personnel File:** Arizona law does not regulate the timing of which an employee can request his or her personnel file. **Third Party Subpoena:** The subpoenaed party can object to the subpoena within 14 days after service of the subpoena or before the time specified for compliance if under 14 days. Ariz. R. Civ. P. 45(c)(6)(A)(i)-(ii)	**Employee Personnel File:** Employers must maintain payroll records showing the hours worked for each day worked, wages, and earned paid sick time paid to all employees for 4 years. A.R.S § 23-364(D) **Third Party Subpoena:** A subpoena commanding a person to produce documents must issue from the superior court in the county where the production or inspection is to be made. Ariz. R. Civ. P. 45(c)(1)
AR	**Employee Personnel File:** Arkansas state law does not require private employers to provide employees access their personnel files. However, public employee can request access to their personnel records under Arkansas' Freedom of Information Act. Ark. Code Ann. § 25-19-105(c)(2); Ark. Op. Att'y Gen. 2000-058; Ark. Op. Att'y. Gen. No. 2008-064	**Employee Personnel File:** Arkansas state law does not regulate the contents of employee personnel files. **Third Party Subpoena:** The subpoena must designate the documents that need to be produced. Ark. R. Civ. P. 45(b)	**Employee Personnel File:** The state does not regulate the timing of which an employee can request his or her personnel file. **Third Party Subpoena:** The subpoena must specify the time and date in which the records need to be produced. Ark. R. Civ. P. 45(b)(2)	**Third Party Subpoena:** The party issuing a subpoena that does not command an appearance must promptly provide a copy of all material produced in response to the subpoena to all parties. Ark. R. Civ. P. 45(b)(1)

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STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
AR cont.	**Third Party Subpoena:** Parties to a lawsuit may subpoena third parties to produce records. Ark. R. Civ. P. 45(b)		A third party subpoena must be served by e-mail, facsimile, or hand delivery on all other parties at least 3 business days before the subpoena is served on the person to whom it is directed. Ark. R. Civ. P. 45(b)(1)	
CA	**Employee Personnel File**: Current and former employees and their representatives have a right to inspect and receive a copy of their personnel files. Cal. Labor Code § 1198.5(a) Employees and their representatives are also entitled to inspect and copy any records that relate to the employee's performance or to any grievance concerning the employee. Cal. Labor Code § 1198.5(a) However, Cal. Labor Code § 1198.5 does not apply to employees covered by collective bargaining agreements expressly providing certain conditions. Cal. Labor Code § 1198.5(q) Employers must also provide current and former employees access to payroll records upon specific request. Cal. Lab. Code §226(f) **Third Party Subpoena:** Parties to a lawsuit may subpoena third parties for employment records. Cal. Civ. Proc. § 1985.6	**Employee Personnel File**: Employees do not have access to records relating to the investigation of a possible criminal offense, letters of reference, and ratings, reports, or records that were obtained prior to employment. Cal. Labor Code § 1198.5(h) An employer may redact the name of any non-supervisory employee contained in the record. Cal. Labor Code § 1198.5(g) **Third Party Subpoena:** A copy of an affidavit must be served with the subpoena that shows good cause for the production, specifies the exact things to be produced, sets forth in full detail the materiality of the documents in the case, and states that the witness has the documents in his or her possession. Cal. Civ. Proc. §§ 1985(b);1985.6(b)	**Employee Personnel File**: Employers must respond within 30 calendar days after the date it receives the request. Cal. Labor Code § 1198.5(b)(1) An employer is required to comply with only one request per year by a former employee to inspect or receive a copy of his or her personnel records. Cal Lab. Code § 1198.5(d) However, the employee's right to inspect their personnel file ceases during the pendency of a lawsuit by the employee against the employer relating to a personnel matter. Cal. Labor Code § 1198.5(n) Employers have 21 days to provide payroll records. Cal. Labor Code § 226(c) **Third Party Subpoenas:** The party seeking production must serve the witness with a subpoena in sufficient time to allow the witness a *reasonable time* to locate and produce the records or copies of records. Cal. Civ. Proc. § 1985.6(d) A party seeking employee-related records must also serve the employee with the notice of the subpoena and other required documents at least 10 days before the date scheduled for production of the records, and at least 5 days before serving the witness controlling the records. Cal. Civ. Proc. § 1985.6(b)(2-3)	**Employee Personnel File:** Applicants and employees have a right to a copy of any document he or she signed relating to the obtaining or holding of employment. Cal. Labor Code § 432 If an employee is requesting their own personnel records, the request must be in writing. Payroll requests can be done orally. Cal. Lab. Code § 1198.5(b)(1); Cal. Labor Code § 226(c) The employer may charge the employee for copies of the personnel records, but not more than the actual cost of reproduction. Cal. Lab. Code § 1198.5(b)(1) **Third Party Subpoenas:** The subpoena and affidavit served on an employee must be accompanied by a notice indicating that: (1) employment records about the employee are being sought; (2) the employment records may be protected by a right of privacy; (3) the employee can file a written objection to the production or his or her records; and (4) if the subpoenaing party does not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the employee's interest in protecting his or her rights of privacy. Cal. Civ. Proc. § 1985.6(e)

STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
CO	**Employee Personnel File:** Current employees may inspect personnel files at least once per year. Former employees may inspect files once after termination. Colo. Rev. Stat. Ann. § 8-2-129(1) The employees' right to inspect their personnel file does not apply to financial institutions including banks, trust companies, and credit unions. Colo. Rev. Stat. Ann. § 8-2-129(4) **Third Party Subpoena:** Parties to a lawsuit may subpoena records of parties or non-party witnesses. Colo. R. Civ. P. 45	**Employee Personnel File:** Employees do not have access to records "required to be placed or maintained in a separate file," confidential reports from previous employers, active criminal or disciplinary investigations, investigations by regulatory agencies, and any identifying information of a person who made a confidential accusation against the employee. Colo. Rev. Stat. § 8-2-129(2)(c) **Third Party Subpoena:** An employer may quash subpoena if it calls for privileged documents where no waiver or exception applies. Colo. R. Civ. P. 45(c)(3)	**Employee Personnel File:** The employee may review his or her file at a time convenient to both the employer and the employee. Colo. Rev. Stat. Ann. § 8-2-129(1) **Third Party Subpoena:** Service must occur 14 days before compliance with production of employment record is required. Colo. R. Civ. P. 45(b)(1)(C)	**Employee Personnel File:** An employer may restrict an employee's access to the file to be only in the presence of a person responsible for handling personnel data on behalf of employer. Colo. Rev. Stat. § 8-2-129(1) **Third Party Subpoena:** An employer commanded to produce records need not attend in person at the place of production unless they are also commanded to attend a deposition, hearing, or trial. Colo. R. Civ. P. 45(c)(2)(A)
CT	**Employee Personnel File:** Both current and former employees may access their personnel files. Conn. Gen. Stat. § 31-128a(1) **Third Party Subpoena:** Parties to a lawsuit may subpoena records from parties or non-party witnesses. Conn. Gen. Stat. § 52-148e	**Employee Personnel File:** Personnel files need not include stock option or management bonus plan records, medical records, letters of reference, materials that are used by the employer to plan for future operations, information contained in separately maintained security files, test information, or documents which are being developed or prepared for use in civil, criminal or grievance procedures. Conn. Gen. Stat. § 31-128a(5) **Third Party Subpoena:** A subpoena may not compel the production of matters which are privileged or otherwise protected by law from discovery. Conn. Gen. Stat. § 52-148e(b)	**Employee Personnel File:** An employer must permit a current employee to inspect a copy of his personnel file within 7 days of a written request during regular business hours. Conn. Gen. Stat. § 31-128b(a) An employer must permit a former employee to insect a copy of his personnel file within 10 days of a written request provided the employer receives the written request not later than one year after the termination of such former employee's employment with the employer. Inspection must take place during regular business hours at a mutually agreed upon location. Conn. Gen. Stat. § 31-128b(b) **Third Party Subpoena:** The subpoenaed party can object to the subpoena within 15 days of service of the subpoena or on or before the time specified in the subpoena if under 15 days. Conn. Gen. Stat. § 52-148e(c)	**Employee Personnel File:** Each employer who has personnel files is required to keep any personnel record pertaining to a particular employee for at least one year after the termination of that employee's employment. Conn. Gen. Stat. § 31-128b(a) An employer must provide an employee with a copy of any documentation of any disciplinary action on that employee within one business day after the date of imposing such action. Conn. Gen. Stat. § 31-128b(c) **Third Party Subpoena:** The court may condition denial of the motion to quash the subpoena upon the advancement by the party who requested the subpoena of the reasonable cost of producing the materials which he is seeking. Conn. Gen. Stat. § 52-148e(d)

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STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
DC	**Employee Personnel File:** Private employers are not required to share employee personnel files with their employees. A public employee has a right to inspect their official personnel file in the presence of a representative of the agency having custody of the records. D.C. Code § 1-631.05(a)(1) **Third Party Subpoena:** Parties to a lawsuit may subpoena the records from parties or third-party witnesses. D.C. R. Civ. P. 45	**Employee Personnel File:** The public employee does not have access to information within his personnel file if the information was received on a confidential basis where the identity of the source was agreed to be kept confidential unless redacted in a manner to protect identity of the source; medical information, which, in the judgment of the employee's physician would be injurious to the health of the employee if disclosed; criminal investigative reports, confidential questionnaires; and test and examination materials. D.C. Code § 1-631.05(2)(A-E) **Third Party Subpoena:** The subpoena may command production of documents, electronically stored information, or tangible things stored at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person. D.C. R. Civ. P. 45(c)(2)	**Employee Personnel File:** DC law does not regulate request or response time for personnel record access. **Third Party Subpoena:** The subpoena must designate a reasonable time for the subpoenaed party to comply. D.C. R. Civ. P. 45(d)(3) An objection to the subpoena must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. D.C. R. Civ. P. 45(c)(2)(B)	**Employee Personnel File:** Each public employee has the right to present information immediately germane to any information contained in his or her official personnel record and seek to have irrelevant, immaterial, or untimely information removed from their record. D.C. Code § 1-631.05(b) **Third Party Subpoena:** On timely motion, the court may quash or modify a subpoena that fails to give the subpoenaed party a reasonable time to comply, if the subpoena requires the subpoenaed party to travel over 100 miles, if the subpoena requires disclosure of privileged material, or if the subpoena subjects a person to undue burden. D.C. R. Civ. P. 45(d)(3)
DE	**Employee Personnel File:** Any person currently employed, laid off with employment rights, or on leave of absence can inspect their personnel file. However, applicants for employment or designated agents are not entitled to access a personnel file. 19 DE Code § 731(1) **Third Party Subpoena:** Parties to a lawsuit may subpoena personnel records of parties or witnesses. Del. Civ. R. C. P. 45	**Employee Personnel File:** The employee does not have access to personnel records "relating to the investigation of a possible criminal offense, letters of reference, documents which are being developed or prepared for use in civil, criminal or grievance procedures or materials which are used by the employer to plan for future operations or information available to the employee under the Fair Credit Reporting Act." 19 DE Code § 731(3)	**Employee Personnel File:** An employer must, at a reasonable time, permit the employee to inspect the employee's personnel files. The employer must make the records available during the regular business hours of the office where these records are usually maintained. The employer may require the requesting employee to inspect such records on the free time of the employee. 19 DE Code § 732 **Third Party Subpoena:** The subpoena must indicate the timeframe in which the records need to be produced. Del. Civ. R. C. P. 45(b)	**Employee Personnel File:** At the employer's discretion, the employee may be required to file a written form to request access to the personnel file. 19 DE Code § 732 The employee is permitted to take notes while inspecting their file. 19 DE Code § 732 **Third Party Subpoena:** A court may quash a subpoena for the production of records if it is unreasonable and oppressive or condition the denial based on the cost to produce the records. Del. Civ. R. C. P. 45(b)

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STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
DE cont.		**Third Party Subpoena:** Delaware law does not specify which documents can be subpoenaed and which must be excluded from production. Del. Civ. R. C. P. 45		
FL	**Employee Personnel File:** Florida private employers are not legally required to let employees review the contents of their personnel file. However, law enforcement and correctional officers have the right to review their official personnel files at any reasonable time under the supervision of the records custodian. FL Stat. § 112.533(3) The Florida Sunshine Law (Fla. Stat. § 119.01 et. seq.) governs access to public records in Florida, and public employees (those that work for the county or for the state in some capacity, such as public school teachers or police officers) can gain access to their personnel file by making a Freedom of Information Act (FOIA) request in Florida. To make a FOIA request, the employee can send a letter to the agency holding the records and identifying the information and materials they want to see, being as specific as possible. Upon request, a public school employee, or any person designated in writing by the school employee, may examine their personnel file. FL Stat. § 1012.31 **Third Party Subpoena:** Parties to a lawsuit may subpoena records from parties or non-party witnesses. Fla. R. Civ. P. 1.410(a)	**Employee Personnel File:** Florida law does not impose exemptions for private employee personnel files. **Third Party Subpoena:** The subpoena must designate the documents or electronically stored information to be produced. Fla. R. Civ. P. 1.410(c)	**Employee Personnel File:** Florida legislation does not provide for time limits for personnel file requests. **Third Party Subpoena:** The subpoena must indicate the timeframe in which the records need to be produced. Fla. R. Civ. P. 1.410(c) Any motion to quash or modify the subpoena must be made promptly and within the time for compliance set by the subpoena. Fla. R. Civ. P. 1.410(c)	**Employee Personnel File:** School employees have the right to place appropriate documentation into their personnel files by forwarding the information to Human Resources with a request for the material to be placed in their file. Fla. Admin. Code R. 6C4-10.209 **Third Party Subpoena:** A party may motion the court to quash or modify the subpoena if it is unreasonable and oppressive, or condition denial of the motion on the advancement of the reasonable cost of producing the books, documents, or tangible things. Fla. R. Civ. P. 1.410

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STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
GA	**Employee Personnel File:** Georgia private employers are not legally required to let employees view the contents of their personnel file. However, public employees are entitled to review their employment records upon request. Ga. Comp. R. & Regs. 478-1-.09(7) **Third Party Subpoena:** Parties to a lawsuit may subpoena records from parties or non-party witnesses. GA Code § 9-11-45(a)	**Employee Personnel File:** Georgia law does not specifically exclude any content from a personnel file request. **Third Party Subpoena:** The subpoena may command a third party to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination. GA Code § 9-11-45(a)	**Employee Personnel File:** Georgia law does not impose any time restrictions for personnel file access. **Third Party Subpoena:** A subpoena must be filed with the Court at least 5 calendar days prior to the hearing or deposition at which a witness or document is sought. Ga. Comp. R. & Regs. 616-1-2-.19(b)(2) The subpoenaed party can file an objection to production of documents within 10 days after the service or on or before the time specified in the subpoena if less than 10 days. GA Code § 9-11-45(a)(2)	**Employee Personnel File:** A public employee's review of their personnel file must take place in the presence of a member of the agency's human resources office. An employee cannot remove any contents of the file, but photocopies must be provided within a reasonable time after the employee's review of the file and at the employee's expense. Ga. Comp. R. & Regs. 478-1-.09(7) When a public employee is transferred from one executive branch agency to another, the employee's official personnel file must be transferred to the new employing agency within two weeks of the employee's last day of employment with the previous agency. Ga. Comp. R. & Regs. 478-1-.09(5)(a) **Third Party Subpoena:** The Court may require the party issuing the subpoena to advance the reasonable cost of producing the documents. Ga. Comp. R. & Regs. 616-1-2-.19(f)
HI	**Employee Personnel File:** Hawaii employers are not legally required to let employees review their personnel files. However, government agency employees have a legal right to request and review their personnel files. Haw. Rev. Stat. § 92F-12 **Third Party Subpoena:** Parties to a lawsuit may subpoena records from parties or non-party witnesses. Haw. R. Civ. P. 45(a)	**Employee Personnel File:** Hawaii privacy law does not specifically authorize or prohibit redactions from an employee's personnel file. **Third Party Subpoena:** The subpoenaed party may withhold privileged documents if they expressly claim the privilege and sufficiently describe the nature of the documents to enable the demanding party to contest the claim. Haw. R. Civ. P. 45 (e)(2)	**Employee Personnel File:** Government agencies must respond to an employee request to review their personnel file in a reasonably prompt manner and in a reasonably intelligible form. Haw. Uniform Inf. Prac. Act §92F-21 **Third Party Subpoena:** The subpoena must designate the timeline as to when the documents must be produced. Haw. R. Civ. P. 45 (b)	**Third Party Subpoena:** A party may motion the court to quash or modify the subpoena if it is unreasonable and oppressive, or condition denial of the motion on the advancement of the reasonable cost of producing the books, documents, or tangible things. Haw. R. Civ. P. 45(b)

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ID	**Employee Personnel File:** Idaho private employers are not legally required to let employees view the contents of their personnel file. However, a public official, or their representative, may inspect or copy the official's personnel records. ID Code § 74-106 (1) Also, employees of any Idaho school district have the right to inspect and copy their personnel files. ID Code § 33-518 **Third Party Subpoena:** Parties to a lawsuit may subpoena records from parties and non-party witnesses. Id. R. Civ. P. 45	**Employee Personnel File:** Public officials do not have access to information in their personnel files used to screen and test for employment. ID Code § 74-106 (1) School district employees do not have access to letters of recommendation within their personnel files. ID Code § 33-518 **Third Party Subpoena:** The subpoenaed party may withhold privileged documents if they expressly claim the privilege and sufficiently describe the nature of the documents to enable the demanding party to contest the claim. Id. R. Civ. P. 45(e)(2)	**Employee Personnel File:** Idaho law does not impose timing requirements for employee access to personnel files. **Third Party Subpoena:** Generally, a party must be allowed at least 30 days to comply with the subpoena. Id. R. Civ. P. 45(c)(1) The demanding party must serve a copy of the third party subpoena on parties to the case at least 7 days prior to service on the third party. Id. R. Civ. P. 45(c)(2)	**Third Party Subpoena:** Generally, the party serving the subpoena on a third party must pay the reasonable cost of producing or copying the documents, electronically stored information or tangible things. Id. R. Civ. P. 45(c)(2)(B)
IL	**Employee Personnel File:** Current employees and former employees terminated within the past year are permitted to inspect records unless a collective bargaining agreement provides otherwise. 820 ILCS 40(1-2) An employee involved in a current grievance may also designate an agent to inspect personnel records that may be relevant to resolving the grievance. 820 ILCS 40(5) These provisions only apply to employers with 5 or more employees. 820 ILCS 40(1)(b) **Third Party Subpoena:** A party may subpoena records from a non-party witness or party to the case. Ill. Sup. Ct. R. 204	**Employee Personnel File:** Letters of reference, test documents, staff planning materials, information about a person other than the employee, records subject to a court proceeding, and any records alleging criminal activity are exempted from employee review. 820 ILCS 40(10) **Third Party Subpoena:** The subpoena may command a person to produce documents or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination. Ill. Sup. Ct. R. 204 (a)(4)	**Employee Personnel File:** Employers must make records available within 7 working days after employee makes the request (an employer who cannot meet the deadline may be allowed an additional 7 days). 820 ILCS 40(2) An employee can request inspection of the personnel file twice a year at reasonable intervals. 820 ILCS 40(2) **Third Party Subpoena:** A subpoena may order production of documents in lieu of appearance of a deponent. The notice, order or stipulation to take a deposition may specify that the appearance of the deponent is excused if copies of specified documents are served on the party or attorney 3 days before the date of the deposition specified in the subpoena. Ill. Sup. Ct. R. 204(a)(4)	**Employee Personnel File:** An employer may require a written request to view personnel files. Employers may require use of a form. 820 ILCS 40(2) An employer shall review a personnel record before releasing information to a third party, and, except when the release is ordered to a party in a legal action or arbitration, delete disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than 4 years old. (Effective until 7/1/2023) 820 IL 40(8) **Third Party Subpoena:** Unless otherwise ordered or agreed, reasonable charges for production must be paid by the requesting party. Ill. Sup. Ct. R. 204(a)(4)

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STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
IN	**Employee Personnel File:** Private sector employees do not have a right to inspect their personnel files. Public employees and their representatives have the right to access their personnel file information. IN Code § 5-14-3-4(b)(8)(c) **Third Party Subpoena:** A party may subpoena records from other parties or non-party witnesses. Ind. R. Civ. P. 45	**Employee Personnel File:** Indiana law does not specifically exempt any content from personnel file access. **Third Party Subpoena:** The subpoena must specifically designate the papers or documents to be produced. Ind. R. Civ. P. 45 (B)	**Employee Personnel File:** Indiana law does not impose time limitations on employee personnel record requests. **Third Party Subpoena:** The subpoena must indicate the time and date at which documents must be produced. Ind. R. Civ. P. 45 (A)(1)(c)	**Third Party Subpoena:** A party may motion the court to quash or modify the subpoena if it is unreasonable and oppressive, or condition denial of the motion on the advancement of the reasonable cost of producing the books, documents, or tangible things. Ind. R. Civ. P. 45(B) (1-2)
IA	**Employee Personnel File:** Iowa employees have a right to inspect their personnel files. IA Code § 91B.1 **Third Party Subpoena:** A party may subpoena records from other parties or non-party witnesses. Iowa R. Civ. P. 1.1701	**Employee Personnel File:** Letters of reference written for the employee may be exempted from the personnel file. IA Code § 91B.1(2)(b) **Third Party Subpoena:** The subpoenaed party may withhold privileged documents if they expressly claim the privilege and sufficiently describe the nature of the documents to enable the demanding party to contest the claim. Iowa R. Civ. P. 1.1701(5)(b)	**Employee Personnel File:** The employer and employee must agree on the time that the employee may have access to the personnel file. IA Code § 91B.1(2)(a) **Third Party Subpoena:** The subpoena must indicate the time and date that documents are to be produced. Iowa R. Civ. P. 1.1701(1)(a)(3)	**Employee Personnel File:** The employer's representative may be present during inspection of the file. IA Code § 91B.1(2)(a) An employer may charge a reasonable fee for copies made of the employee's personnel file. IA Code § 91B.1(2)(c) **Third Party Subpoena:** A subpoena for production of documents may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. Iowa R. Civ. P. 1.1701(1)(c)
KS	**Employee Personnel File:** Private and public sector employees do not have a legal right to view their personnel files. **Third Party Subpoena:** A party can subpoena records from non-party witnesses or other parties. K.S.A. § 60-245a	**Employee Personnel File:** Kansas law does not require employers to exempt specific content from a personnel file. **Third Party Subpoena:** The subpoenaed party may withhold privileged documents if they expressly claim the privilege and sufficiently describe the nature of the documents to enable the demanding party to contest the claim. K.S.A. § 60-245(D)(2)	**Employee Personnel File:** Kansas law does not provide any time restrictions for personnel file requests. **Third Party Subpoena:** The subpoena must command a person or company to produce the designated documents at a specified time and place. K.S.A. § 60-245a	**Employee Personnel File:** Public citizens cannot request public officials' personnel files, but they can request basic information such as the names, positions, salaries, and lengths of service of public employees. KS Stat § 45-221 **Third Party Subpoena:** A person commanded to produce designated documents need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing or trial. K.S.A. § 60-245(c)(2)

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STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
KS cont.				A subpoena may designate the form in which electronically stored information is to be produced. K.S.A. § 60-245(a)(1)(iv)
KY	**Employee Personnel File:** Private employees do not have a legal right to inspect their personnel files. However, public employees have a right to access their personnel file. Ky. Rev. Stat. § 18A.020 **Third Party Subpoena:** A party can subpoena personnel records from a witness or another party. Ky. R. Civ. P. 45.01	**Employee Personnel File:** Each public employee personnel file must include, but is not limited to, the employee's name, address, title of positions held, classification, rates of compensation, all changes in status including evaluations, promotions, demotions, lay-offs, transfers, disciplinary actions, commendations, awards, and preliminary and other supporting documentation for each action. Ky. Rev. Stat. § 18A.020 **Third Party Subpoena:** The subpoena must designate the documents or tangible things in that person's possession, custody or control to be produced. Ky. R. Civ. P. 45.02 The command for production of documents can be separate or included in a subpoena for deposition. Ky. R. Civ. P. 45.01	**Employee Personnel File:** Kentucky law does not provide any time restrictions for personnel file requests. **Third Party Subpoena:** The subpoena must specify a time and place for production. Ky. R. Civ. P. 45.02	**Employee Personnel File:** A public employee may comment in writing on any item in his file. These comments must be attached to the specific record or document to which they pertain within the file." Ky. Rev. Stat. § 18A.020 **Third Party Subpoena:** A party may motion the court to quash or modify the subpoena if it is unreasonable and oppressive, or condition denial of the motion on the advancement of the reasonable cost of producing the books, documents, or tangible things. Ky. R. Civ. P. 45.02
LA	**Employee Personnel File:** Generally, employees do not have the right to view their personnel file unless an employee handbook specifically grants that right. However, public school employees have a legal right to access their personnel files. LA Rev Stat § 17:1237 **Third Party Subpoena:** A party can subpoena records from non-party witnesses or other parties via a subpoena duces tecum. LA Code Civ. Pro. 1354	**Employee Personnel File:** The public school employee requesting to see his or her personnel file may be given access to his entire personnel file. LA Rev Stat § 17:1237(B) **Third Party Subpoena:** The subpoena duces tecum must give a reasonably accurate description of documents to be produced. LA Code Civ. Pro. 1354(A)	**Employee Personnel File:** Louisiana law does not provide any time restrictions for requesting access to a personnel file. **Third Party Subpoena:** A subpoenaed person can object to a subpoena duces tecum within 15 days after service or before the time specified in the subpoena if such time is less than 15 days. LA Code Civ. Pro. 1354(B)	**Employee Personnel File:** All Louisiana employees have a right to access records relating to any confirmed positive drug tests and any records relating to the results of any relevant certification, review, or suspension and revocation of certification proceedings. LA Rev Stat § 49:1011 All current and former employees and their representatives have the right to access employer records of employee exposure to potentially toxic materials. LA Rev Stat § 49:1016

STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
LA cont.				**Third Party Subpoena:** A subpoena may specify the form or forms in which electronically stored information is to be produced. LA Code Civ. Pro. 1354(D)
ME	**Employee Personnel File:** All current and former employees, and their representatives, have a right to review and copy their personnel files upon written request. Me. Rev. Stat. Ann. tit. 26, § 631 **Third Party Subpoena:** A party can subpoena files from non-party witnesses or other parties. Me. R. Civ. P. 45	**Employee Personnel File:** A personnel file should include formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits, and non-privileged medical records. Maine law does not provide for any specific exemptions. Me. Rev. Stat. Ann. tit. 26, § 631 **Third Party Subpoena:** The subpoenaed person may withhold privileged documents if they expressly claim the privilege and sufficiently describe the nature of the documents to enable the demanding party to contest the claim. Me. Civ. P. 45. (d)(2)	**Employee Personnel File:** Within 10 days of submitting a written request, the employee, former employee, or authorized representative may view and copy personnel files. If the employer does not comply within 10 days of receiving a written request, the employee may sue for damages and attorney fees. Me. Rev. Stat. Ann. tit. 26, § 631 **Third Party Subpoena:** A person commanded to produce files can file a written objection to production within 14 days after service of the subpoena or before the time specified for compliance if less than 14 days. Me. R. Civ. P. 45(C)(2)(b) On timely motion, the court for which a subpoena was issued must quash or modify the subpoena if it fails to allow a reasonable time for compliance. Me. R. Civ. P. 45. (3)(A)(i)	**Employee Personnel File:** A written request to inspect the personnel file is required. Me. Rev. Stat. Ann. tit. 26, § 631 An employee is entitled to one free copy of personnel file during each calendar year, but the employee must pay for any additional copies of any other material requested during the calendar year. Me. Rev. Stat. Ann. tit. 26, § 631
MD	**Employee Personnel File:** Private employees do not have a legal right to review their personnel files. However, public employees are entitled to access their own personnel files. Md. Code, GP § 4-311 **Third Party Subpoena:** A party can subpoena records from non-party witnesses or other parties. Md. R. Civ. P. Cir. Ct. 2-510	**Employee Personnel File:** Maryland law defines personnel file as including applications, performance ratings, and scholastic achievement information but does not regulate employee access. Md. Code, GP § 4-311 **Third Party Subpoena:** The subpoena must include a description of any documents, electronically stored information, or tangible things to be produced. Md. R. Civ. P. Cir. Ct. 2-510(c)(5)	**Employee Personnel File:** Maryland law does not provide any time restrictions for requesting access to a personnel file. **Third Party Subpoena:** The subpoena must designate the date and time when documents are to be produced. Md. R. Civ. P. Cir. Ct. 2-510(c)(4)	**Employee Personnel File:** An elected or appointed official who supervises the work of an employee also has access to that state employee's personnel file. Md. Code, GP § 4-311 **Third Party Subpoena:** A person responding to a subpoena to produce documents must produce the documents or information as they are kept in the usual course of business. Md. R. Civ. P. Cir. Ct. 2-510(g)(1)(A)

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STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
MD cont.				Records subpoenaed from a records custodian must be accompanied by a certificate of the custodian that they are the complete records requested for the period designated in the subpoena and that the records are maintained in the regular course of business. Md. R. Civ. P. Cir. Ct. 2-510(i)(1)
MA	**Employee Personnel File:** All current and former employees can access their personnel files. Mass. Gen. Laws 149, § 52C **Third Party Subpoena:** A party can subpoena records from third party witnesses. Mass. R. Civ. P. 45	**Employee Personnel File:** Employers of 20 employees or more must include in their personnel records: the employees name, address, date of birth, job title and description; rate of pay and any other compensation; starting date; the job application; resumes; all employee performance evaluations; any documents relating to disciplinary action. Mass. Gen. Laws 149, § 52C A personnel record may not include information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy. Mass. Gen. Laws 149, § 52C **Third Party Subpoena:** The subpoenaed person may withhold privileged documents if they expressly claim the privilege and sufficiently describe the nature of the documents to enable the demanding party to contest the claim. Mass. R. Civ. P. 45(f)(2)	**Employee Personnel File:** The employee or former employee must have the opportunity to review personnel files within 5 business days of submitting the request, but not more than twice a calendar year. Mass. Gen. Laws 149, § 52C **Third Party Subpoena:** The subpoena must designate the date and time when documents are to be produced. Mass. R. Civ. P. 45(a)	**Employee Personnel File:** A written request to inspect a personnel file is required. Mass. Gen. Laws 149, § 52C Employers with 20 or more employees must maintain personnel records for 3 years after termination. Mass. Gen. Laws 149, § 52C An employer must notify an employee within 10 days of placing in the employee's personnel record any information to the extent that the information is, has been, or may be used, to negatively affect the employee's qualification for employment, promotion, transfer, additional compensation, or the possibility that the employee will be subject to disciplinary action. (This notification does not count toward employee's two allotted opportunities to view personnel file.) Mass. Gen. Laws 149, § 52C **Third Party Subpoena:** Counsel does not have to subpoena the deposition of a non-party for the sole purpose of document production. Instead, counsel can subpoena document production on its own. Mass. R. Civ. P. 45, rep's notes (2015)

STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
MI	**Employee Personnel File:** Current and former employees have a legal right to inspect their personnel records unless a collective bargaining agreement provides otherwise. Mich. Comp. Laws § 423.503 **Third Party Subpoena:** A represented party may issue a subpoena to a non-party upon court order or after all parties have had a reasonable opportunity to obtain an attorney. Mich. Ct. R. 2.305(A)(1)	**Employee Personnel File:** The personnel file may not include letters of reference; medical reports; information of a personal nature about a person other than the employee; records that relate to a criminal investigation; records limited to grievance investigations that are kept separately; and education records. Mich. Comp. Laws § 423.501(2)(c)(i)-(viii) **Third Party Subpoena:** Medical records within a personnel file are not discoverable unless mental or physical condition of a party is in controversy. Mich. Ct. R. 2.314	**Employee Personnel File:** An employee must have the opportunity to periodically review their personnel file at reasonable intervals, generally not more than two times in a calendar year. Mich. Comp. Laws § 423.503(3) The review shall take place at a location reasonably near the employee's place of employment and during normal office hours unless such review would require employee to take time off work from that employer. Mich. Comp. Laws § 423.503 **Third Party Subpoena:** The subpoena must provide a minimum of 14 days after service to comply with the command. Mich. Ct. R. 2.305(A)(3)	**Employee Personnel File:** Written request to review the personnel file is required, and the request must describe the record the employee wants to review. Mich. Comp. Laws § 423.501 The employer must notify the employee if the employer discloses an employee's disciplinary record to third party. Mich. Comp. Laws § 423.506 The employer must delete any disciplinary records older than 4 years old before releasing the records to the third party unless the release is ordered in a legal action to a party in that legal action. Mich. Comp. Laws § 423.507 Employees have separate cause of action in circuit court for violations of personnel file requirements by employer. Mich. Comp. Law § 423.510 **Third Party Subpoena:** When the place of compliance is in another state, territory, or country, the subpoenaing party may petition a court of that state, territory, or country for a subpoena. Mich. Ct. R. 2.305(C)
MN	**Employee Personnel File:** Current employees may review files once every 6 month period. Former employee may have access to records once only during the first year after termination. Minn. Stat. Ann. § 181.961 **Third Party Subpoena:** Parties to a lawsuit may subpoena records from third parties. Minn. R. Civ. P. 45	**Employee Personnel File:** References, criminal or civil investigations, education records, results of testing, salary system information, workers' compensation, job performance or misconduct statements, and medical records are exempted from review. Minn. Stat. Ann. § 181.960 **Third Party Subpoena:**	**Employee Personnel File:** An employer must comply with an employee's written request to review their personnel file within 7 working days (14 working days if personnel records are kept out of state). Minn. Stat. Ann. § 181.961 **Third Party Subpoena:**	**Employee Personnel File:** Written request is required for an employee to view their personnel file. Minn. Stat. Ann. § 181.961 **Third Party Subpoena:** A person commanded to produce documents need not appear in person at the place of production unless commanded to appear for deposition, hearing, or trial. Minn. R. Civ. P. 45.03(b)

STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
MN cont.		A subpoena may be quashed or modified if it requires disclosure of privileged or protected information. Minn. R. Civ. P. 45.03(c)	Parties must serve production subpoenas on the subject at least 7 days before the required production. Minn. R. Civ. P. 45.02(a)	
MS	**Employee Personnel File:** Private employees do not have a legal right to review their personnel files. However, state employees are entitled to inspect their own personnel records. MS Code § 25-1-100(1) **Third Party Subpoena:** Parties to a lawsuit may subpoena records from third-party witnesses. Miss. R. Civ. P. 45	**Employee Personnel File:** Mississippi does not impose limitations on personnel file content. **Third Party Subpoena:** The subpoenaed person may withhold privileged documents if they expressly claim the privilege and sufficiently describe the nature of the documents to enable the demanding party to contest the claim. Miss. R. Civ. P. 45(e)(2)	**Employee Personnel File:** Mississippi law does not provide any time restrictions for requesting access to a personnel file. **Third Party Subpoena:** Unless the court finds there is good cause for shortened time, a subpoena for production must allow at least 10 days from the date of service to comply with the subpoena. Miss. R. Civ. P. 45(d)(2)	**Third Party Subpoena:** A command to produce documents may be joined with a command to appear at trial, hearing, or deposition, or it may be issued separately. Miss. R. Civ. P. 45(a)(1)
MO	**Employee Personnel File:** Employers are not required to give employees access to their personnel file. **Third Party Subpoena:** Parties to a lawsuit may subpoena records from non-party witnesses. Mo. R. Civ. P. 57.09	**Employee Personnel File:** Missouri law does not exempt content from employee personnel files. **Third Party Subpoena:** The subpoena must designate the books, papers, documents, or tangible it seeks to produce. Mo. R. Civ. P. 57.09	**Employee Personnel File:** Missouri law does not regulate timing of employee requests for personnel files. **Third Party Subpoena:** A subpoena for the production of documents and things must be served not fewer than 10 days before the time specified for compliance. Mo. R. Civ. P. 57.09(c)	**Third Party Subpoena:** With the agreement of all parties, the subpoenaed person or entity may be excused from appearing at the deposition, and instead produce records to the party issuing the subpoena, who shall then offer all other parties the opportunity to inspect or copy the subpoenaed records. Absent such an agreement, the subpoenaed records can only be produced at the deposition. Mo. R. Civ. P. 57.09(c)
MT	**Employee Personnel File:** Private employers are not required to share personnel files with employees. State employees have access to their personnel files. MT. Admin. R. 2.21.6615(3) **Third Party Subpoena:** Parties to a lawsuit may subpoena records from other parties and non-party witnesses. MT. R. Civ. P. 45(a)(1)	**Employee Personnel File:** A Montana state employee has access to all of their personnel files; there are no specific exemptions. MT. Admin. R. 2.21.6615(3) **Third Party Subpoena:** The subpoena may be modified or quashed if it requires disclosure of privileged or other protected matter, if no exception or waiver applies. MT. R. Civ. P. 45(d)(3)(iii)	**Employee Personnel File:** There are no time restrictions on a request to view personnel records. **Third Party Subpoena:** The subpoena must specify the date and time documents are to be produced. The subpoena must allow a reasonable time to comply or it may be modified or quashed. MT. R. Civ. P. 45(a)(1); (d)(3)	**Employee Personnel File:** A state employee may file a written response to information contained in the employee's personnel records. The employee's response must be filed within ten working days of the date on which the employee is made aware of the information by the agency. The written response becomes a permanent part of the employee's personnel record. MT. Admin. R. 2.21.6615(3)

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STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
NE	**Employee Personnel File:** There is no Nebraska law that grants employees the right to review or obtain a copy of their personnel file. **Third Party Subpoena:** Parties to a lawsuit may subpoena documents from other parties and non-party witnesses. Neb. Ct. R. Disc. § 6-334(A); Neb. Rev. Stat. § 25-1273	**Employee Personnel File:** Nebraska law does not exempt content from employee personnel files. **Third Party Subpoena:** The subpoena must include a "designation of the materials sought to be produced." Neb. Ct. R. Disc. § 6-334(A)(a)(1)(B)(2)	**Employee Personnel File:** Nebraska law does not regulate timing of employee requests for personnel files. **Third Party Subpoena:** A party intending to serve a subpoena must give written notice to every other party to the action at least 10 days before the subpoena will be issued. Neb. Ct. R. Disc. § 6-334(A)(a)(1)(B)(2)	**Third Party Subpoena:** A party can subpoena documents without a deposition. Neb. Ct. R. Disc. § 6-334(A)(a)(1)
NV	**Employee Personnel File:** An employee or person referred by the employee has a right to inspect his or her personnel files. Nev. Rev. Stat. Ann. § 613.075(1) An employer need not provide current or former employees with a copy of their employee records unless the employee has been employed for more than 60 days. Nev. Rev. Stat. Ann. § 613.075(7) **Third Party Subpoena:** Parties to a case may subpoena documents from third-party witnesses. Nev. R. Civ. P. 45(a)(3)	**Employee Personnel File:** The records to be made available do not include confidential reports from previous employers or investigative agencies, or information concerning an investigation, arrest, or a conviction of that employee for a violation of the law. Nev. Rev. Stat. Ann. § 613.075(1)(b) **Third Party Subpoena:** Privileged, confidential or any other protected information must be excluded. Nev. R. Civ. P. 45(a)(4)(B)(i) The subpoenaed party or entity need not provide electronically stored information that is not reasonably accessible because of undue burden or cost. Nev. R. Civ. P. 45(d)(1)(D)	**Employee Personnel File:** Current employees may access their personnel records upon request and during usual business hours. Nev. Rev. Stat. Ann. § 613.075(1)(a) Former employees may inspect their employment records within 60 days of termination. The employer must also provide a copy of the employee records if requested within the 60 days. Nev. Rev. Stat. Ann. §613.075(4) **Third Party Subpoena:** A person commanded to produce documents, electronically stored information, or tangible things, may serve a written objection to the subpoena. The person making the objection must serve it before the earlier of the time specified for compliance or 14 days after the subpoena is served. Nev. R. Civ. P. 45(c)(2)(B)	**Employee Personnel File:** An employer or labor organization must allow an employee to submit a reasonable written explanation in direct response to any written entry in the records of employment regarding the employee or person. Any such written explanation must be reasonable in length, in a format prescribed by the employer and maintained by the employer or labor organization in the records of employment. Nev. Rev. Stat. Ann. § 613.075(2) An employer or labor organization cannot maintain a secret record of employment regarding an employee or person referred. Nev. Rev. Stat. Ann. § 613.075(3) An employer or labor organization may only charge an employee or person referred an amount equal to the actual cost of providing access to and copies of his or her records of employment. Nev. Rev. Stat. Ann. § 613.075(5) The employee or person referred can, if the employee or person contends that any information contained in the records is inaccurate or incomplete, notify his or her employer or the labor organization in writing of that

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STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
NV cont.				contention. If the employer or labor organization finds that the contention of that employee or person is correct, it shall change the information accordingly. Nev. Rev. Stat. Ann. § 613.075(6) **Third Party Subpoena:** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand. Nev. R. Civ. P. 45(d)(1)(A)
NH	**Employee Personnel File:** All employers must provide employees a reasonable opportunity to inspect their own personnel records. N.H. Rev. Stat. Ann. § 275:56(I) **Third Party Subpoena:** Parties to a lawsuit may subpoena the records from third-party witnesses in a subpoena duces tecum. NH R. Civ. P. 26(d)	**Employee Personnel File:** Employers are not required to disclose information in the personnel file of a requesting employee who is the subject of an investigation at the time of request if disclosure of such information would prejudice law enforcement, or information relating to a government security investigation. N.H. Rev. Stat. Ann. § 275:56(III) "Personnel file" is defined as: "any personnel records created and maintained by an employer and pertaining to an employee including and not limited to employment applications, internal evaluations, disciplinary documentation, payroll records, injury reports and performance assessments, whether maintained in one or more locations, unless such records are exempt from disclosure under RSA 275:56, III or are otherwise privileged or confidential by law. The term does not include recommendations, peer evaluations or notes not generated or created by the employer."N.H. Admin. Lab. Code § 802.08 (NH DOL defining "personnel file" as used in RSA 275:56).	**Employee Personnel File:** New Hampshire law requires employers give employees a "reasonable opportunity" to inspect their personnel file after receiving the request. N.H. Rev. Stat. Ann. § 275:56(I) **Third Party Subpoena:** Notice is unreasonable if not providing at least 3 days between date of service and the date of compliance. Generally, 20 days' notice is considered reasonable in all cases. NH R. Civ. P. 26(b)	**Employee Personnel File:** An employer may only charge the employee a fee reasonably related to the cost of supplying the requested documents. N.H. Rev. Stat. Ann. § 275:56(I) If employee disagrees with any of the information in personnel record and cannot reach an agreement with the employer to remove or correct it, employee may submit an explanatory written statement along with supporting evidence. Statement must be maintained as part of personnel file. N.H. Rev. Stat. Ann. § 275:56(II) **Third Party Subpoena:** If a subpoena duces tecum is to be served on the deponent, notice to adverse parties must be served before service of the subpoena. NH R. Civ. P. 26(d)

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NH cont.		**Third Party Subpoena:** The materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. NH R. Civ. P. 26(d)		
NJ	**Employee Personnel File:** There is no specific law providing employees access to their personnel files. **Third Party Subpoena:** Parties to a lawsuit may subpoena records from parties or non-party witnesses. NJ. Ct. R. Disc. § 1:9-2	**Employee Personnel File:** There are no statutes governing what can be exempted from a personnel file. **Third Party Subpoena:** A subpoena may require production of books, papers, documents, electronically stored information, or other objects designated therein. NJ. Ct. R. Disc. § 1:9-2	**Employee Personnel File:** There are no laws regulating timing of personnel file requests. **Third Party Subpoena:** The subpoena must specify a time and place for production. NJ. Ct. R. Disc. § 1:9-1	**Third Party Subpoena:** The court may direct that the objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit them or portions of them to be inspected by the parties and their attorneys. NJ. Ct. R. Disc. § 1:9-2
NM	**Employee Personnel File:** New Mexico does not have a specific law authorizing employee access to his or her personnel file. **Third Party Subpoena:** Parties to a lawsuit may subpoena records from witnesses or other parties. N.M. Dist. Ct. R.C.P. Rule 1-045	**Employee Personnel File:** New Mexico law does not provide for any exemptions related to personnel files. **Third Party Subpoena:** The subpoena must command a person or entity to produce and permit inspection, copying, testing, or sampling of designated documents. N.M. Dist. Ct. R.C.P. Rule 1-045(A)(1)(c)	**Employee Personnel File:** There are no New Mexico laws regulating timing of personnel file requests. **Third Party Subpoena:** The subpoena must designate a reasonable time and place for documents to be produced. N.M. Dist. Ct. R.C.P. Rule 1-045(A)(1)(c) A party objecting to the subpoena shall, within fourteen (14) days after service of the subpoena, serve on the person served with the subpoena and all parties written objection to or a motion to quash. N.M. Dist. Ct. R.C.P. Rule 1-045(C)(2)(b)(ii)	**Third Party Subpoena:** A subpoena to produce documents need not require appearance for a deposition if there is no need for the person to appear in person at the place of production. N.M. Dist. Ct. R.C.P. Rule 1-045(C)(2)(a)(i)
NY	**Employee Personnel File:** New York employees do not have a statutory right to inspect or copy their personnel files. **Third Party Subpoena:** Parties to a lawsuit may subpoena records from witnesses or other parties in a subpoena duces tecum. NY R. Civ. Proc. 5224(a)(2)	**Employee Personnel File:** New York law does not specify whether materials may be exempted from a personnel file. **Third Party Subpoena:** A subpoena duces tecum can require the production of books and papers for examination. NY R. Civ. Proc. 5224(a)(2)	**Employee Personnel File:** There are no New York laws regulating timing of personnel file requests. **Third Party Subpoena:** The subpoena must designate a time and place for documents to be produced. NY R. Civ. Proc. 5224(a)(2)	**Third Party Subpoena:** A subpoena duces tecum may be served on an individual while in New York, or on a corporation, partnership, limited liability company or sole proprietorship doing business, licensed, qualified, or otherwise entitled to do business in New York state. NY R. Civ. Proc. 5224(a-1)

STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
NY cont.			Generally, an examination of books and papers pursuant to a subpoena duces tecum may only occur after 10 days from when the subpoenaed person was noticed of the subpoena. NY R. Civ. Proc. 5224(c)	
NC	**Employee Personnel File:** Private employees do not have a statutory right to inspect or copy their personnel files. However, public employees and their authorized agents have a right to access their personnel files. NC Code § 160A-168(c) **Third Party Subpoena** Parties to a lawsuit may subpoena an employee's personnel records from witnesses or other parties. N.C. Civ. Proc. R. 45	**Employee Personnel File:** Public employees do not have access to letters of reference solicited prior to employment, information concerning a medical disability, investigative reports, and testing or examination materials. NC Code § 160A-168(c) **Third Party Subpoena:** The subpoena must designate the specific documents to be produced and command the person to produce and permit inspection and copying of records. N.C. Civ. Proc. R. 45(a)	**Employee Personnel File:** There are no North Carolina laws regulating timing of personnel file requests. **Third Party Subpoena:** The subpoenaed person can object to the subpoena within 10 days after service or before the time specified by the subpoena if the time is less than 10 days. N.C. Civ. Proc. R. 45(c)(3)	**Employee Personnel File:** Some private employees on federal guest worker visas do have a right to request or inspect their personnel file under federal law, but this is not unique to North Carolina. The personnel files of public employees can also be obtained via a Public Records Act Request under N.C. Gen. Stat. sec. 132 et seq. *See also* N.C. Gen. Stat. sec. 160A-168 **Third Party Subpoena:** The subpoena must be issued from the court in which the action is pending. N.C. Civ. Proc. R. 45(a)(3) A command to produce evidence may be joined with a command to appear at trial or hearing or at a deposition, or any subpoena may be issued separately. N.C. Civ. Proc. R. 45(a)(2)
ND	**Employee Personnel File:** Private employers are not required to share employee personnel files with employees. However, public employees and their representatives have a right to access their personnel files. N.D. Cent. Code § 54-06-21 **Third Party Subpoena:** Parties to a lawsuit may subpoena records from witnesses or other parties. N.D. Civ. Proc. R. 45	**Employee Personnel File:** For public employees, no anonymous letters or materials may be placed in the employee's file. N.D. Cent. Code § 54-06-21(4) **Third Party Subpoena:** The subpoenaed party may withhold privileged documents if they expressly claim the privilege and sufficiently describe the nature of the documents to enable the demanding party to contest the claim. N.D. Civ. Proc. R. 45(d)(2)	**Employee Personnel File:** A public employee or their representative must be permitted to examine the employee's official personnel file by appointment during normal business hours. N.D. Cent. Code § 54-06-21(3) **Third Party Subpoena:** The subpoena must identify a time by which the documents must be produced. N.D. Civ. Proc. R. 45(a)(1)(A)(ii)	**Employee Personnel File:** No documents that address a public employee's character or performance may be placed in the file unless the employee has had the opportunity to read the material. N.D. Cent. Code § 54-06-21(1) **Third Party Subpoena:** A subpoena may specify the form or forms in which electronically stored information is to be produced. N.D. Civ. Proc. R. 45(a)(1)(C)

STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
ND cont.			An objection by the subpoenaed person must be received by the subpoenaing party before the earlier of 24 hours prior to the time specified for compliance or ten days after the subpoena is served. N.D. Civ. Proc. R. 45(c)(2)(B)	A subpoena to produce documents can be included in a subpoena requiring appearance or can be a separate command. N.D. Civ. Proc. R. 45(a)(1)(C)
OH	**Employee Personnel File:** Ohio law does not grant employees the right to access their personnel files aside from two exceptions: medical records from a physical exam required by the employer as a condition of employment or performed due to an injury or disease relating to the employee's job. (Oh. Rev. Code § 4123.651(B)); and wage and hour records upon request. (Oh. Rev. Code § 4111.14(G)) **Third Party Subpoena:** Ohio rules of civil procedure do not prohibit subpoenaing third parties. Ohio Civ. Proc. R. 45	**Employee Personnel File:** If a physician concludes that presentation of all or any part of an employee's medical record directly to the employee will result in serious medical harm to the employee, he shall so indicate on the medical record, and produce the medical record to a physician designated by the employee. **Third Party Subpoena:** The subpoenaed person may withhold privileged documents if they expressly claim the privilege and sufficiently describe the nature of the documents to enable the demanding party to contest the claim. Ohio Civ. Proc. R. 45(D)(4)	**Employee Personnel File:** Ohio law does not regulate the timing of personnel file requests. A compliance deadline might be set forth in a collective bargaining or other contract. **Third Party Subpoena:** The subpoena must specify the time that documents are to be produced. Ohio Civ. R. 45(A)(1)(b)	**Third Party Subpoena:** A command to produce and permit inspection may be joined with a command to attend and give testimony, or may be issued separately. Ohio Civ. R. 45(A)(1)(c)
OK	**Employee Personnel File:** Private employees have no right under Oklahoma law to view their personnel files. However, a public employee (except as may otherwise be made confidential by statute) is entitled to inspect their own personnel file. 51 OK Stat § 51-24A.7(C) ; see also Op.Atty.Gen. Nos. 86-39, 86-69 (June 20, 1986) (while records of Oklahoma State Bureau of Investigation relating to background investigation of an employee may not be disclosed to general public, an employee of the agency is entitled, under this section, to review his or her background investigation as part of his or her own personnel file).	**Employee Personnel File:** Oklahoma law does not specifically exempt any content within an employee personnel file from review by the employee. **Third Party Subpoena:** The subpoenaed person may withhold privileged documents if they expressly claim the privilege and sufficiently describe the nature of the documents to enable the demanding party to contest the claim. 12 OK Stat § 12-2004.1(D)(2)(a);.see also *Hall v. Goodwin*, 1989 OK 88, 775 P.2d 291, 296 (a person objecting to discovery must raise the objection and has the burden of establishing the existence of the privilege).	**Employee Personnel File:** Oklahoma law does not regulate the timing of personnel file requests. **Third Party Subpoena:** The subpoena must designate at a time and place that documents must be produced. 12 OK Stat § 12-2004.1(A)(1)(B)	**Third Party Subpoena:** If the action is pending outside of Oklahoma, the district court for the county in which the production or inspection is to be made must issue the subpoena. 12 OK Stat § 12-2004.1(A)(2) If the plaintiff seeks to serve a subpoena for the production of documentary evidence on any person who is not a party prior 30 days after service of the summons and petition upon any defendant, the plaintiff must seek leave of court. 12 OK Stat § 12-2004.1(A)(5)

STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
OK cont.	**Third Party Subpoena:** A party to the case may subpoena a third party to produce documents. 12 OK Stat § 12-2004.1			
OR	**Employee Personnel File:** Public and private employees have a statutory right to view and copy their personnel files. Or. Rev. Stat. § 652.750 **Third Party Subpoena:** A party may subpoena documents from a third party witness. Or. R. Civ. P. 55(A)	**Employee Personnel File:** The personnel file must include the records of the employee that were used to determine the employee's qualification for employment, promotion, additional compensation, employment termination or other disciplinary action. Or. Rev. Stat. § 652.750(2) "Personnel records" do not include records relating to the conviction, arrest or criminal or confidential reports from previous employers. Or. Rev. Stat. § 652.750(1)(b) **Third Party Subpoena:** The subpoena may not request confidential health information. Or. R. Civ. P. 55(A)(1)(a)(iv)	**Employee Personnel File:** Within 45 days after receipt of request, an employer must provide a certified copy of the personnel file to a current or former employee (if the request was made within 60 days of termination). Or. Rev. Stat. § 652.750(2) If the employee's personnel records are not readily available, the employer and the employee may agree to extend the 45-day time limit to provide a reasonable opportunity to access the records. Or. Rev. Stat. § 652.750(4) **Third Party Subpoena:** A third party subpoena for production must be served on all parties to the action at least 7 days before service of the subpoena on the third party, unless the court orders less time. Or. R. Civ. P. 55(C)(3) The subpoena must allow at least 14 days for production of the required documents, unless the court orders less time. Or. R. Civ. P. 55(C)(3)	**Employee Personnel File:** The employer must also allow the employee to inspect and copy their time and pay records. Or. Rev. Stat. § 652.750(2) An employer need only keep an employee's personnel file and time and pay records 60 days after that employee's termination. Or. Rev. Stat. § 652.750(3) **Third Party Subpoena:** A subpoena for production may be joined with a subpoena to appear and testify or may be issued separately. Or. R. Civ. P. 55(C)(1) A copy of a subpoena for production that does not contain a command to appear and testify may be served by mail. Or. R. Civ. P. 55(C)(2)
PA	**Employee Personnel File:** An employee or the employee's agent has a right to inspect the employee's personnel files. 43 Pa. Stat. § 1322 **Third Party Subpoena:** A party may subpoena a third party witness to produce documents. 231 Pa. Code § 4009.21	**Employee Personnel File:** Employee personnel files may include documents used to determine qualifications for employment, promotion, additional compensation, termination or disciplinary action. 43 Pa. Stat. § 1322	**Employee Personnel File:** The employer shall make the personnel records available during the regular business hours of the office where these records are usually and ordinarily maintained. 43 Pa. Stat. § 1322 An employer may limit review to once a year by employee and once a year by employee's agent. 43 Pa. Stat. § 1323 **Third Party Subpoena:**	**Employee Personnel File:** Written request may be required at the employer's discretion. This written request is solely for the purpose of identifying the employee or the employee's agent, to avoid disclosure to ineligible individuals. 43 Pa. Stat. § 1322 An employer is not obligated to permit copying, but the employee may take notes. 43 Pa. Stat. § 1323

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PA cont.		However, records relating to the investigation of a possible criminal offense; letters of reference; documents being developed or prepared for use in civil, criminal, or grievance procedures; medical records; materials used by the employer to plan future operations; or information available to an employee under the Fair Credit Reporting Act are exempted. 43 Pa. Stat. § 1321 **Third Party Subpoena:** A subpoena to produce documents must list the documents to be produced. 231 Pa. Code § 4009.26	A party seeking production from a third party must give written notice to every other party of the intent to serve a subpoena at least 20 days before the date of service. A copy of the proposed subpoena must be attached to the notice. 231 Pa. Code § 4009.21(a) Third party who has been subpoenaed must execute and deliver a certificate of compliance with the documents produced to the party serving the subpoena within 20 of service. 231 Pa. Code § 4009.23(a)	An employer is permitted to require that inspection take place in front of an official to be designated by the employer. 43 Pa. Stat. § 1323 If the employee wants their agent to inspect the personnel file, the employee must provide a signed authorization designating the agent, indicate the specific date and time of the inspection, and include the reason for the inspection or the parts of the record the agent is authorized to inspect. 43 Pa. Stat. § 1322.1 The Bureau of Labor Standards, after a petition and hearing, may allow employee to place a counterstatement in the personnel file, if employee claims that the file contains an error. 43 Pa. Stat. § 1324 **Third Party Subpoena:** A party may object to the subpoena by filing written objections and serving a copy of the objections upon every other party to the action. 231 Pa. Code § 4009.21(c) If an objection is received by the party intending to serve a subpoena prior to its service, the subpoena cannot be served. Upon motion, a court will rule upon the objections. 231 Pa. Code § 4009.21(d)(1) A motion to quash a subpoena may be filed by any party or the person served. After a hearing, the court may make an order to protect a party, witness or other person from unreasonable annoyance, embarrassment, oppression, burden or expense. 231 Pa. Code § 234.4(b)

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STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
RI	**Employee Personnel File:** Public and private employees have a statutory right to review their personnel files. R.I. Gen. L. § 28-6.4-1 **Third Party Subpoena:** A party to a lawsuit may subpoena documents from third party witnesses. R.I. Super. Ct. R. Civ. P. 45	**Employee Personnel File:** The personnel files generally contain information used by the employer to determine the employee's job qualifications, promotion, extra pay, termination, or disciplinary action. R.I. Gen. L. § 28-6.4-1(a) Documents related to investigation of criminal, civil or grievance proceedings; letters of reference; recommendations; managerial records kept or used only by the employer; confidential reports from previous employers; and managerial planning records are exempted from employee access. R.I. Gen. L. § 28-6.4-1(a)(4) **Third Party Subpoena:** The subpoenaed person may withhold privileged documents if they expressly claim the privilege and sufficiently describe the nature of the documents to enable the demanding party to contest the claim. R.I. Super. Ct. R. Civ. P. 45(d)	**Employee Personnel File:** Employers must permit employees to inspect personnel files when given at least 7 days' advance notice (excluding weekends and holidays). However, the employer may limit access to no more than 3 times a year. R.I. Gen. L. § 28-6.4-1(a-b) **Third Party Subpoena:** A subpoenaed person can object to production of documents within 14 days after service or before the time specified for compliance if such time is less than 14 days. R.I. Super. Ct. R. Civ. P. 45(c)(2)(B)	**Employee Personnel File:** Written request is required, and the employee may not make copies or remove files from place of inspection. R.I. Gen. L. § 28-6.4-1(a)(2) **Third Party Subpoena:** A person commanded to produce and permit inspection of designated documents does not need to appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. R.I. Super. Ct. R. Civ. P. 45(c)(2)(A)
SC	**Employee Personnel File:** Generally, employees do not have the legal right to review or copy their personnel files. **Third Party Subpoena:** A party may subpoena documents from a third party witness. S.C. Civ. Proc. R. 45	**Employee Personnel File:** There are no South Carolina laws governing what must be exempted from an employee personnel file. **Third Party Subpoena:** The subpoenaed person may withhold privileged documents if they expressly claim the privilege and sufficiently describe the nature of the documents to enable the demanding party to contest the claim. S.C. Civ. Proc. R. 45(d)(2)	**Employee Personnel File:** There are no statutes regulating time limits for when a personnel record may be requested. **Third Party Subpoena:** The subpoena must specify a reasonable time and place. S.C. Civ. Proc. R. 45(a)(1)(C) A subpoenaed person can object to production of documents within 14 days after service or before the time specified for compliance if such time is less than 14 days. S.C. Civ. Proc. R. 45(c)(2)(B)	**Employee Personnel File:** Employers must grant employees and former employees, or their representatives, access to records concerning the monitoring and measuring of employee exposure to potentially toxic materials or harmful physical agents. S.C. Code § 41-15-100 **Third Party Subpoena:** The party who issues the subpoena shall provide to another party copies of documents produced by the third party upon written request. The party requesting copies shall pay the reasonable costs of reproduction. S.C. Civ. Proc. R. 45(c)(2)

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SD	**Employee Personnel File:** South Dakota employees do not have a legal right to inspect or copy their personnel files. **Third Party Subpoena:** Parties may subpoena third party witnesses for the production of books, papers, documents or tangible things. S.D. Codified Laws § 15-6-45(b)	**Employee Personnel File:** There are no laws governing what can be exempted from a personnel file. **Third Party Subpoena:** The subpoena must designate the documents or electronically stored information that it is directed to produce. S.D. Codified Laws § 15-6-45(b)	**Employee Personnel File:** There are no laws regulating time limits for when a personnel record may be requested. **Third Party Subpoena:** The subpoena must specify a time and date for compliance. S.D. Codified Laws § 15-6-45(a)	**Third Party Subpoena:** Before a third party subpoena to produce documents is served on the third person, a notice and copy of the subpoena must be served on each party to the case. S.D. Codified Laws § 15-6-45(b)
TN	**Employee Personnel File:** Private employees do not have a statutory right to insect or copy their personnel files. However, all government employees have access to their personnel files. TN Code § 8-50-108 **Third Party Subpoena:** Parties may subpoena third party witnesses for the production of books, papers, documents or tangible things. Tenn. R. Civ. P. 45.02	**Employee Personnel File:** Tennessee law does not exempt content from employee review. **Third Party Subpoena:** The subpoena must designate the documents or electronically stored information that it is directed to produce. Tenn. R. Civ. P. 45.02	**Employee Personnel File:** Government employees are entitled to have access to their personnel files at "any reasonable time." TN Code § 8-50-108 **Third Party Subpoena:** The subpoena must provide the non-party witness at least 21 days after service of the subpoena to respond. Tenn. R. Civ. P. 45.07 A non-party witness commanded to produce documents can serve a written objection on the subpoenaing party within 21 days after the subpoena is served. Tenn. R. Civ. P. 45.07	**Employee Personnel File:** A government employee is entitled to copies of any material contained in the personnel file, if the employee pays copying costs. TN Code § 8-50-108 **Third Party Subpoena:** When appearance is not required, the subpoenaed party must swear that the documents are authentic and confirm whether all documents have been produced. Tenn. R. Civ. P. 45.02 Copies of the subpoena must be served on all parties, and all material produced must be made available for inspection, copying, testing, or sampling by all parties. Tenn. R. Civ. P. 45.02
TX	**Employee Personnel File:** Texas private employers are not legally required to let employees view the contents of their personnel file. However, public employees and their designated representatives are entitled to review the employee's personnel file. TX Gov. Code § 552.102(a)	**Employee Personnel File:** There are no statutes governing what must be exempted from employee inspection of their personnel file. **Third Party Subpoena:**	**Employee Personnel File:** There are no laws regulating time limits for when an employee can request their personnel record. **Third Party Subpoena:** A person commanded to produce and permit inspection or copying of designated documents and things must respond before the time specified for compliance in the subpoena. Tex. R. Civ. P. 176.6(d)	**Third Party Subpoena:** A person commanded to produce documents need not appear in person at the time and place of production unless the person is also commanded to attend and give testimony. Tex. R. Civ. P. 176.6(c) A person must produce documents as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand. Tex. R. Civ. P. 176.6(c)

STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
TX cont.	**Third Party Subpoena:** Parties may subpoena third party witnesses for the production of documents or tangible things. Tex. R. Civ. P. 205.1(d)	A person may withhold material or information claimed to be privileged. When asserting a privilege, the party must state that: (1) information was withheld, (2) the request or required disclosure to which the information relates, and (3) the privilege asserted. Tex. R. Civ. P. 176.6(c); 193.3		
UT	**Employee Personnel File:** Private employees do not have a right to access their personnel files. Public employees have the right to examine and make copies of documents in their own personnel files. UT. Code § 67-18-1 **Third Party Subpoena:** Parties may subpoena third party witnesses to copy and deliver documents within the third parties' possession. Utah R. Civ. P. 45(a)(1)(C)(iii)	**Employee Personnel File:** State employees may not access documents in their personnel file if they are classified as confidential under the Utah Government Records Access and Management Act. UT. Code § 67-18-5 **Third Party Subpoena:** A person can object to the subpoena if it seeks privileged information not subject to waiver or exception. Utah R. Civ. P. 45 (e)(3)(D)	**Employee Personnel File:** Utah law does not impose time restrictions on personnel file requests. **Third Party Subpoena:** A subpoena must allow at least 14 days after service to comply. Utah R. Civ. P. 45(e)	**Employee Personnel File:** The state employee must make a written request to examine their personnel file. UT. Code § 67-18-3 The employee must cover the cost of copying. UT. Code § 67-18-4 **Third Party Subpoena:** If the subpoena commands a third party to produce documents, the party issuing the subpoena must serve each party with notice of the subpoena before serving the subpoena. Utah R. Civ. P. 45(b) The party issuing the subpoena must pay the reasonable cost of producing or copying documents. Utah R. Civ. P. 45(d) Upon the request of any other party and the payment of reasonable costs, the party issuing the subpoena must provide to the requesting party copies of all documents obtained in response to the subpoena. Utah R. Civ. P. 45(d)
VT	**Employee Personnel File:** Private employers in Vermont are not required to share employee personnel files with their employees. However, public employees and their designated representatives have a right to review the employee's personnel file. 1 V.S.A. § 317(c)(7)	**Employee Personnel File:** A state employee is entitled to view "information in any files maintained to hire, evaluate, promote or discipline any employee of a public agency, information in any files relating to personal finances, medical or psychological facts concerning any individual or corporation." 1 V.S.A. § 317(a)(7)	**Employee Personnel File:** Vermont law does not impose time restrictions on personnel file requests. **Third Party Subpoena:** A subpoenaed person can object to production of documents within 14 days after service or before the time specified for compliance if such time is less than 14 days. Vt. R. Civ. P. 45(c)(2)(B)	**Employee Personnel File:** A party in a civil action cannot obtain civil discovery of an employee personnel file without first mailing a notice to the employee at his or her last known address, after which the employee has twenty days to file a response or objection. 12 V.S.A. § 1691a

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STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
VT cont.	**Third Party Subpoena:** A party may subpoena documents, electronically stored information, or tangible things in the possession, custody or control of a third party. Vt. R. Civ. P. 45(a)	**Third Party Subpoena:** The subpoenaed person may withhold privileged documents if they expressly claim the privilege and sufficiently describe the nature of the documents to enable the demanding party to contest the claim. Vt. R. Civ. P. 45(d)(2)		**Third Party Subpoena:** A copy of a third party subpoena must be served on all parties to the case before or at the same time that it is served on the person to whom it is directed. Vt. R. Civ. P. 45(a)(4)
VA	**Employee Personnel File:** A current or former employee or employee's attorney has the right to certain copies of employment records or papers. Va. Code § 8.01-413.1(B) Public employees are legally entitled to inspect their personnel records. VA Code § 2.2-3705.1 **Third Party Subpoena:** A party to a lawsuit may subpoena records from a third party. VA Code § 16.1-89	**Employee Personnel File:** An employer is not required to furnish copies of employment records or papers when the employee's treating physician or clinical psychologist determines reasonable endangerment to life or safety of the employee or another person or if records refer to a person other than a health care provider and access is reasonably likely to cause substantial harm to referenced person. Va. Code § 8.01-413.1(E) **Third Party Subpoena:** Special rules apply to subpoenas to produce medical records. VA Code § 16.1-89	**Employee Personnel File:** Employer shall provide records or papers within 30 days of receipt of written request. If employer is unable to provide records or papers within 30 days, employer shall notify requester in writing of the reason for the delay and shall have no more than 30 days after the date of such written notice to comply with such request. Va. Code § 8.01-413.1(B) **Third Party Subpoena:** A sheriff shall not be required to serve an attorney-issued subpoena that is not issued at least five business days prior to the date production of evidence is desired. If the time for compliance with a subpoena is less than 14 days after service of the subpoena, the person to whom it is directed may serve a written objection on the subpoenaing party. VA Code § 16.1-89	**Employee Personnel File:** If the records or papers are kept in paper or hard copy format, the employer may charge a reasonable fee per page for copying. If the records or papers are kept in electronic format, the employer may charge a reasonable fee for the electronic records. Va. Code § 8.01-413.1(B) **Third Party Subpoena** Upon failure of any employer to comply with a written request made in accordance with Va. Code § 8.01-413.1, the employee or his attorney may cause a subpoena duces tecum to be issued. Va. Code § 8.01-413.1(C) The subpoena may be issued (i) upon filing a request therefor with the clerk of the circuit court wherein any eventual suit would be required to be filed and upon payment of the fees required by subdivision A(18) of § 17.1-275 and fees for service or (ii) by the employee's attorney in a pending civil case in accordance with § 8.01-407 without payment of the fees established in subdivision A 23 of § 17.1-275. Va. Code § 8.01-413.1(C)
WA	**Employee Personnel File:** Public and private employees have the right to access their personnel files. WA Rev Code § 49.12.240	**Employee Personnel File:** Employee records relating to the investigation of a possible criminal offense and records compiled in	**Employee Personnel File:** Employers must allow their employees to access their personnel files at least once a year.	**Employee Personnel File:** Employees may petition annually that employer review all information in that employee's personnel file.

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STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
WA cont.	**Third Party Subpoena:** A party may subpoena records from a third party. Wash. Sup. Ct. Civ. R. 45	preparation for an impending lawsuit which would not be available to another party under pretrial discovery rules are exempted from the file. WA Rev Code § 49.12.260 **Third Party Subpoena:** The subpoenaed person may withhold privileged documents if they expressly claim the privilege and sufficiently describe the nature of the documents to enable the demanding party to contest the claim. Wash. Sup. Ct. Civ. R. 45(d)(2)(A).	Employers must comply within a reasonable time after the employee makes the request. WA Rev Code § 49.12.240; 250 **Third Party Subpoena:** A subpoenaed person can object to production of documents within 14 days after service or before the time specified for compliance if such time is less than 14 days. Wash. Sup. Ct. Civ. R. 45(c)(2)(B)	If there is any irrelevant or incorrect information in the file, the employer must remove it. If the employee does not agree with the employer's review, the employee may have a statement of rebuttal or correction placed in file. Former employees have a right of rebuttal for two years after termination. WA Rev Code § 49.12.250(2) **Third Party Subpoena:** A subpoena commanding production of documents from a third party must be served on each party. Service must be made five or more days prior to service of the subpoena on the person named therein, unless the parties otherwise agree for good cause shown. Wash. Sup. Ct. Civ. R. 45(b)(2)
WV	**Employee Personnel File:** West Virginia employers are not legally required to let employees view the contents of their personnel file. **Third Party Subpoena:** A party may subpoena records from a third party. W.Va. R. Civ. P. 45	**Employee Personnel File:** There are no laws related to exemptions from employee personnel files. **Third Party Subpoena:** The subpoenaed person may withhold privileged documents if they expressly claim the privilege and sufficiently describe the nature of the documents to enable the demanding party to contest the claim. W.Va. R. Civ. P. 45(e)(2)	**Employee Personnel File:** West Virginia law does not impose time restrictions on personnel file requests. **Third Party Subpoena:** The subpoena must specify a date and time for compliance. W.Va. R. Civ. P. 45(a)(1)(C) A subpoenaed person can object to production of documents within 14 days after service or before the time specified for compliance if such time is less than 14 days. W.Va. R. Civ. P. 45(d)(2)(B)	**Third Party Subpoena:** A subpoena for production or inspection shall issue from the court for the circuit in which the production or inspection is to be made. W.Va. R. Civ. P. 45(a)(2)
WI	**Employee Personnel File:** Employers must permit employees and former employees to view their personnel file. Wis. Stat. Ann § 103.13 Employees involved in a grievance may also designate a legal representative to inspect the relevant records. Wis. Stat. Ann § 103.13(3)	**Employee Personnel File:** The right to inspect personnel records does not include records relating to criminal investigations, letters of reference, test documents, management materials, information of a personal nature about a person other than the	**Employee Personnel File:** Employee must be allowed to inspect their personnel files within 7 working days of making request and at least twice per year. Wis. Stat. Ann § 103.13(1)-(3)	**Employee Personnel File:** Written request required at employer's discretion. Wis. Stat. Ann § 103.13(2) Access must be permitted twice per year unless a collective bargaining agreement provides otherwise. Wis. Stat. Ann § 103.13(2)

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STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
WI cont.	**Third Party Subpoena:** A party may subpoena records from a third party witness. WI Stat § 805.07(2)	employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy, records relevant to any other pending claim between the employer and the employee which may be discovered in a judicial proceeding. Wis. Stat. Ann § 103.13(6)(e) **Third Party Subpoena:** The subpoena must designate the books, papers, documents, electronically stored information, or tangible things it seeks to produce. WI Stat § 805.07(2)(a)	**Third Party Subpoena:** Notice of a third-party subpoena must be provided to all parties at least 10 days before the scheduled deposition in order to preserve their right to object. WI Stat § 805.07(2)(b)	An employee involved in a current grievance may designate a representative of the union or collective bargaining unit, or other agent, to inspect records that may be relevant to resolving the grievance. Wis. Stat. Ann § 103.13(3) If employee disagrees with any information in the personnel record and cannot come to an agreement with the employer to remove or correct it, employee may submit an explanatory written statement. Employer must attach the statement to the disputed portion of the personnel record. Wis. Stat. Ann § 103.13(4) **Third Party Subpoena:** If a subpoena does not specify a form for producing electronically stored information, the person responding shall produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. WI Stat § 805.07(2)(c)
WY	**Employee Personnel File:** Private employers are not required to share personnel files with their employees. However, public employees and their official supervisors have the right to inspect employee personnel files. Wyo. Stat. § 16-4-203(d)(iii) **Third Party Subpoena:** A party may subpoena records from a third party witness. Wyo. R. Prac. & P. 45(a)(4)	**Employee Personnel File:** A Wyoming state employee has a right to inspect applications, performance ratings and scholastic achievement data within their personnel file. Wyo. Stat. § 16-4-203(d)(iii) **Third Party Subpoena:** The subpoenaed person may withhold privileged documents if they expressly claim the privilege and sufficiently describe the nature of the documents to enable the demanding party to contest the claim. Wyo. R. Prac. & P. (d)(2)(A)	**Employee Personnel File:** Wyoming law does not impose time restrictions on state employee access to their personnel files. **Third Party Subpoena:** A subpoenaed person can object to production of documents within 14 days after service or before the time specified for compliance if such time is less than 14 days. Wyo. R. Prac. & P. (c)(2)(B)	**Employee Personnel File:** Written promotional examinations and the test-taker's score must be available for inspection by the state employee, but test questions, scoring keys and other examination data is kept confidential. Wyo. Stat. § 16-4-203(b)(ii). **Third Party Subpoena:** A person commanded to produce documents need not appear in person at the place of production or inspection unless also commanded to appear for deposition, hearing or trial. Wyo. R. Prac. & P. 45(c)(2)(A) A subpoena may specify the form or forms in which electronically stored information is to be produced. Wyo. R. Prac. & P. 45(a)(1)(A)(v)

STATE	WHO CAN ACCESS EMPLOYEE PERSONNEL FILE	EXCLUDED/REDACTED INFORMATION	TIME FOR RESPONSE	OTHER REQUIREMENTS
WY cont.				If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served, a notice must be served on each party. Wyo. R. Prac. & P. 45(a)(4)

50 State Legal Matrix – Insurance Carriers' Record Retention Requirements for 2024

Historically, insurance carriers have been required by state law to retain physical records for a specified number of years. In recent years, nearly every state has enacted statutes that replace previous requirements for retention of physical records with standards allowing insurance companies to satisfy retention requirements with electronic records. The following table provides insurance record retention requirements for each state, including specific categories of records that must be maintained, the minimum number of years required for retention, and also identifies those states that have adopted an electronic record standard.

STATE	RETENTION REQUIREMENTS
Alabama	All records must be maintained for not less than five (5) years. Ala. Admin. Code 482-1-118-.03. All advertisements must be maintained for five (5) years after discontinuation of the last use or publication of the advertisement. Ala. Admin. Code 482-1-132.10. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Ala. Stat. Ann. § 8-1A-12.
Alaska	Unless otherwise required by law or unless the director orders a longer retention period, a domestic insurer shall retain records required by AS 21.69.390 and 3 AAC 21.460, including records relating to losses and claims, for the following period of time after the date the record is considered to be an obsolete record. Records of reinsurance transactions, ten (10) years or until completion of a full examination, whichever is longer. All other records are required to be retained for five (5) years or until completion of a full examination, whichever is longer. 3 AAC 21.470. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Alaska Stat. Ann. § 09.80.090.
Arizona	Any insurer must maintain (at its home or principal office) a complete file containing every printed, published, or prepared advertisement of individual policies, and typical advertisements of blanket, franchised and group policies for at least three (3) years. Ariz. Admin. Code § R20-6-201.01. Insurance administrators must retain a written agreement with the insurer for five (5) years after the termination of the agreement, and maintain adequate records of all transactions with insurers and the insured for the same five (5) year period. Ariz. Stat. Ann. § 20-485.01. Any licensed insurance entity may create, record, copy, or reproduce by electronic imaging or other processes, electronic records of their physical records, and thereafter may destroy their physical records, unless held in a custodial or fiduciary capacity, and so long as the information contained therein remains easily accessible via the electronic records. Ariz. Stat. Ann. § 20-157; 44-7012. Additional record retention requirements for other insurance matters can be found in the following statutes or regulations: Surplus Line Brokers (A.R.S. § 20-414); Reinsurance Intermediaries (A.R.S. § 20-486.03); Replacement Transactions (A.R.S. § 20-1241.05, A.R.S. § 20-1241.06); Annuity Transactions (A.R.S. § 20-1243.06); Insurance Producers (A.R.S. § 20-290); Title Insurance (A.R.S. § 20-1581); Individual Disability Insurance (Ariz. Admin. Code § R20-6-607); Life Settlement Contracts (A.R.S. § 20-3210); and Credit Insurance (Ariz. Admin. Code § R20-6-604.09).

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STATE	RETENTION REQUIREMENTS
Arkansas	All insurance companies must maintain (at their home or principal office) a complete file containing one copy of each document authorized and used by the company for at least five (5) years from the date of its last authorized use. 054-00-10 Ark. Code R. § 2. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Ark. Stat. Ann. § 25-32-112.
California	Every insurance carrier must maintain books, records, and documents pertaining to the business for a period of five (5) years. Cal. Ins. Code § 742.33; Cal. Code Regs. Tit. 10 § 2190.2. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Cal. Civil Code § 1633.12.
Colorado	Every insurance carrier must maintain (at its home or principal office) a complete file containing every printed, published, or prepared advertisement of individual policies, and typical advertisements of blanket, franchised and group policies for at least five (5) years after discontinuance of its use or publication. 3 Colo. Code Regs. § 702-4-1-2-10. Every insurance carrier must maintain its books, records, documents, and other business records, including operations and management, policyholder services, claims handling, rating, underwriting, advertising, marketing and sales, complaint/grievance handling, and producer licensing for the current calendar year plus two prior calendar years unless a longer time period is specified by any other applicable law. 3 Colo. Code Regs. § 702-1--1-7-5. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to fulfill this requirement. Col. Rev. Stat. Ann. § 24-71.3-112.
Connecticut	Every insurance carrier must maintain (at its home or principal office) a complete file containing every printed, published, or prepared advertisement of individual policies, and typical advertisements of blanket, franchised and group policies for at least four (4) years, or until the filing of the next regular report on examination of the insurer, whichever is longer. Conn. Agencies Regs. § 38a-819-18; 38a-819-29. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to fulfill this requirement. Conn. Gen. Stat. § 1-277.

STATE	RETENTION REQUIREMENTS
Delaware	Every insurance carrier must maintain (at its home or principal office) a complete file containing every printed, published, or prepared advertisement of individual policies, and typical advertisements of blanket, franchised and group policies for at least four (4) years, or until the filing of the next regular report on examination of the insurer, whichever is longer. 18 Del. Admin. Code 1302-18.0. Adjusters and producers must retain records for each claim settled, including the names of insurers, insureds, policy number, and the amount of adjustment or settlement, for a period of at least three (3) years. Insurers must maintain a complete record of all complaints filed against them with the Insurance Commissioner between periods of examination. 18 Del. C. § 1707; 18 Del. C. § 2304. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. 6 Del. C. § 12A-112. **Public Insurance Adjusters: 5 Years** Electronic record standards notwithstanding, insurance adjusters must maintain a complete record (in original form) for at least five (5) years after the termination of the transaction with an insured and shall be open to examination by the Commissioner. 18 Del. C. § 1754.
Florida	Every insurer advertising health insurance, life insurance and annuity contracts, or Medicare supplement insurance must maintain (at its home or principal office) a complete file containing every printed, published, or prepared advertisement of individual policies, and typical advertisements of blanket, franchised and group policies for at least four (4) years, or until the filing of the next regular report on examination of the insurer, whichever is longer. Fla. Admin. Code 69O-150.018; 69O-150.119; 69O-156.120. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Fla. Stat. Ann. § 668.50(12).
Georgia	Every insurer advertising life insurance and annuity contracts must maintain (at its home or principal office) a complete file containing every printed, published, or prepared advertisement of individual policies, and typical advertisements of blanket, franchised and group policies for at least four (4) years, or until the filing of the next regular report on examination of the insurer, whichever is longer. Ga Comp. R. & Regs. 120-2-11-.11. Every insurer advertising accident and sickness insurance must maintain (at its home or principal office) a complete file containing every printed, published, or prepared advertisement of individual policies, and typical advertisements of blanket, franchised and group policies for at least five (5) years. Ga Comp. R. & Regs. 120-2-12-.19. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Ga. Code Ann. § 10-12-12.
Hawaii	All insurance producers must maintain a complete record of each policy and make such records available for examination by the commissioner. Each policy record must include limit of liability, description of property insured and location, the effective date of the contract, the time period covered, the gross premium charged, any returns paid, the name and address of the risk retention group which issued the policy; the name and address of the insured, and any additional information required by the commissioner. HRS § 431K-11. Any record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. HRS § 489E-12; HRS § 523A-21.

STATE	RETENTION REQUIREMENTS
Idaho	Every administrator shall maintain and make available to the insurer complete books and records of all transactions performed on behalf of the insurer. The books and records shall be maintained in accordance with prudent standards of insurance recordkeeping and shall be maintained for a period of not less than five (5) years from the date of their creation. In the event the insurer and the administrator cancel their agreement, the administrator may, by written agreement with the insurer, transfer all records to a new administrator rather than retain them for five (5) years. In such cases, the new administrator shall acknowledge, in writing, that it is responsible for retaining the records of the prior administrator as required in subsection (1) of this section. Idaho Code Ann. § 41-904. **Privacy of Consumer Information: 5 Years** Insurers subject to the Rule to Implement the Privacy of Consumer Financial Information (IDAPA 18.01.01.000) will document the factors and criteria considered in underwriting and rating decisions and will retain the documentation for at least five (5) years. Idaho Admin. Code R. 18.02.01.201. The record retention requirement is satisfied by retaining an electronic record of the information in the record which: (1) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and (2) Remains accessible for later reference. A person may satisfy this section by using the services of another person if the requirements of that subsection are satisfied. Idaho Code Ann. § 28-50-112(a).
Illinois	Insurers may dispose of or destroy records in its custody that lack sufficient administrative, legal, or fiscal value to warrant preservation and that are not needed in the transaction of current business. Records for the final settlement or disposition of any claim arising out of a policy issued by the insurer must be maintained for the current year plus five (5) years. Additionally, records necessary to determine the financial condition of the insurer for the period since the date of the last examination report officially filed with Department of Insurance must be maintained for at least the current year plus five (5) years. 50 Ill. Admin. Code § 901.20. Every insurer must maintain (at its home or principal office) a complete file containing a specimen copy of every printed, published, or prepared advertisement for a period of either four (4) years or until the filing of the next regular report of examination of the insurer, whichever is longer. 50 Ill. Admin. Code § 909.90. Record retention is satisfied by retaining an electronic record of the information in the record which accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise, and remains accessible for later reference. P.A. 102-38, § 12. **Public Insurance Adjusters: 7 Years** Records shall be maintained for at least 7 years after the termination of the transaction with an insured and shall be open to examination by the Director at all times. 215 ILCS 5/1585.

STATE	RETENTION REQUIREMENTS
Indiana	Every insurer, health care service plan, or other entity providing long term care insurance benefits must maintain a copy of any long term insurance advertisement intended for use in Indiana (regardless of the medium used) for a period of at least three (3) years from the date the advertisement was used. 760 Ind. Admin. Code § 2-14-2. Any agreement between an insurance administrator and insurer must be retained by both parties in their records for a period of at least five (5) years following termination of the agreement. Ind. Code Ann. § 27-1-25-4. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Ind. Code Ann. § 26-2-8-111.
Iowa	Any record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Iowa Code Ann. § 554D.114.
Kansas	Any licensed carrier must maintain records of its premium finance transactions and the records shall be open to examination and investigation by the state commissioner. All such records must be maintained for at least three (3) years after making the final entry. Kan. Stat. Ann. § 40-2607. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Kan. Stat. Ann. § 16-1612.
Kentucky	Every administrator shall maintain adequate books and records of all transactions between it, insurers, and insureds for at least five (5) years. The executive director will have access to such records for the purpose of examination, audit, and inspection. Ky. Rev. Stat. Ann. § 304.9-373. Every licensed carrier must maintain records of its premium finance transactions for at least five (5) years, and remain accessible to the executive director for examination and/or investigation. Ky. Rev. Stat. Ann. § 304.30-060. Each insurer must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed published or prepared advertisements of blanket, franchise and group policies for a period of at least three (3) years. 806 Ky. Admin. Regs. 12:010. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Ky. Rev. Stat. Ann. § 369.112.

STATE	RETENTION REQUIREMENTS
Louisiana	Every administrator shall maintain adequate books and records of all transactions between it, insurers, and insureds for at least five (5) years. The executive director will have access to such records for the purpose of examination, audit, and inspection. La. Rev. Stat. Ann. § 22:1644. Each insurer must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed published or prepared advertisements of blanket, franchise and group policies for a period of either four (4) years, or until the filing of the next regular report on examination, whichever is longer. La. Admin. Code tit. 37, Pt XI, §§ 131, 1333; Pt XIII, § 4117. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information after it was first generated in its final form as an electronic record or otherwise and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. La. Rev. Stat. Ann. § 9:2612. **Records Examined by Commissioner: 5 Years** All domestic carriers must maintain physical records, for the purpose of examination, until authority to destroy or otherwise dispose of the records is secured from the commissioner. If any records are subjected to examination by the commissioner, the record must be preserved for a period commencing on the first day following the last period examined by the commissioner through the subsequent examination period, or five (5) years, whichever is greater. La. Rev. Stat. Ann. § 22:68.
Maine	Each insurer must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise and group policies for a period of at least three (3) years. 02-031-140 Me. Code R. § 11. Accountants for Insurers must preserve all work papers for at least six (6) years and keep them assessable for review by the Bureau of Insurance Examiners. Additionally, such accountants and insurers must preserve all communications between one another related to any audit conducted by the Bureau. 02-031-235 Me. Code R. § 12. The record retention requirement may be satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Me. Stat. tit. 10 § 9412.
Maryland	Each insurance carrier or producer must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise and group policies for a period of at least three (3) years. Such records must include notation attached to each advertisement indicating the manner and extent of distribution and the form number of any policy advertised, and the file shall be subject to regular and periodical inspection. Md. Code Regs. 31.15.02.18. The record retention requirement may be satisfied with an electronic record. A contract will not be denied legal effect nor enforceability solely on the basis of an electronic record being used in its formation. Md. Code Ann., Com. Law § 21-106.

This is a general matrix of state statutes through January 2024. It should be used as a reference guide and a starting point only in researching the applicable law to a given situation. It may not reflect statutory changes or court decisions which may modify the scope or import of the statutes listed above. This document should not be construed as an attempt to offer or render a legal opinion or provide legal advice.

STATE	RETENTION REQUIREMENTS
Massachusetts	Each insurer must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed published or prepared advertisements of blanket, franchise and group policies for a period of either four (4) years, or until the filing of the next regular report on examination, whichever is longer. Furthermore, when an insured's testimonial refers to benefits received under a policy, specific claim information and identifiers shall be retained for the same four (4) year period. 211 Mass. Code Regs. 40.14; 40.09(4). Life insurance providers must maintain (at their home or principal office) a copy of each form it authorized for use for a period of three (3) years following the date of its last authorized use, unless otherwise provided by the Code. 211 Mass. Code Regs. 31.07. Insurers must maintain records (and additional data) that were the basis for insurance transactions for five (5) years after the transaction's completion. 211 Mass. Code Regs. 96.08. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. But note, some law may specifically prohibit use of electronic records. Mass. Gen. Laws Ann. Ch. 110G, § 12.
Michigan	Adjusters must maintain a complete record of all transactions for at least six (6) years after termination of the transaction with the insured. Mich. Comp. Laws Ann. § 500.1228. Any licensed insurer must maintain records of its premium finance transaction for at least three (3) years and the records must be held open to examination and investigation by the commissioner. Mich. Comp. Laws Ann. § 500.1506. Each accident and sickness insurer must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed published or prepared advertisements of blanket, franchise and group policies for a period three (3) years beyond its last use. Each insurer of life insurance and annuities must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed published or prepared advertisements of blanket, franchise and group policies for a period of either four (4) years, or until the filing of the next regular report on examination, whichever is longer. Mich. Admin. Code R. 500.668; 500.1385. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Mich. Comp. Laws Ann. § 450.842.
Minnesota	All insurance records must be maintained for at least six years, and must be available for examination by the commissioner or a designee in accordance with Minnesota Statutes, section 60A.031. Minn. R. 2795.1400. Any licensed insurer must maintain records of its premium finance transaction for at least three (3) years and the records must be held open to examination and investigation by the commissioner. Minn. Stat. Ann. § 59A.06. Each insurer must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise and group policies for a period of at least three (3) years. Minn. R. 2790.2000. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Minn. Stat. Ann. § 325L.12.

STATE	RETENTION REQUIREMENTS
Mississippi	Insurance administrators must maintain and make available (to the insurer or employer) complete books and records of all transactions performed on behalf of in the insurer or employer, for a period of not less than five (5) years from the date of their creation. Miss. Code Ann. § 83-18-9. Each insurer offering Medicare supplemental insurance must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of its individual policies and typical printed, published or prepared advertisements of its blanket, franchise and group policies it disseminates for a period of at least four (4) years or until the filing of the next regular report of examination of the insurer, whichever is longer. 19 Miss. Admin. Code Pt. 1, R. 16.16. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Miss. Code Ann. § 75-12-23.
Missouri	Subject to the following specific exceptions, insurance records must generally be retained for at least five (5) years: Each insurer offering life insurance, or accident and sickness insurance must maintain (at its home or principal office) must maintain a file containing a specimen copy of every printed, published or prepared advertisement of individual policies and specimen copies of typical printed published or prepared advertisements of its blanket, franchise and group policies for a period of at least four (4) years or until the filing of the next report on examination of the insurer, whichever is the longer period of time. 20 Mo. Code of State Regulations 400-5.700. Each domestic insurer, foreign insurer, health services corporation, health maintenance organization, prepaid dental plan, managing general agent, and third-party administrator licensed to do business in this state shall maintain its books, records, documents, and other business records in an order that the insurer's financial condition may be readily ascertained by. All such records must be maintained for at least three (3) years, or, for domestic insurers, health services corporations, health maintenance organizations, and prepaid dental plans, until the full-scope financial examination reviewing the time period that the record relates to is closed, whichever is longer.Mo. Code Regs. Tit. 20 § 200-4.010. Insurance companies must maintain records of the information collected from the consumer and other information used in making the recommendations that were the basis for any insurance transactions, for a period of at least three (3) years after the transaction is complete. 20 Mo. Code of State Regulations 400-5.900(6)(A). Title Insurance companies must retain the written statement required by 3(A) of 20 Mo. Code of State Regulations 500-7.080(2)(D). The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Mo. Stat. Ann. § 432.255.
Montana	Domestic insurers must maintain complete records of its operations for the preceding five (5) years. Mont. Code Ann. § 33-3-401. Every issuer, health service corporation or health maintenance organization or other entity providing long-term care insurance or benefits in Montana must maintain a file containing a copy of any long-term care insurance advertisement (regardless of the medium) for at least three (3) years from the date it was first used. Mont. Admin. R. 6.6.3113A. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Mont. Code Ann. § 30-18-111.

STATE	RETENTION REQUIREMENTS
Nebraska	Insurers are required to maintain records of "Claim Files" for the current year as well as the two preceding years, and such files shall be subject to examination by the Director of Insurance. Neb. Rev. Stat. Ann. 44-1536-1544; 210 Neb. Admin. Code Ch. 60, §§ 003.03, 004.01. Each Accident and Sickness insurer must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise and group policies for a period of either four (4) years or until the filing of the next regular report of examination of the insurer, whichever is longer. For Life Insurance and Annuities insurers, files must be maintained for a period of five (5) years after discontinuance of its use of publication. 210 Neb. Admin. Code Ch. 14, § 018; Ch. 50, § 010. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Neb. Rev. Stat. Ann. § 86-639.
Nevada	Any producer of insurance must maintain complete records for at least three (3) years, and keep the records open to examination of the Commissioner at all times during that period. Nev. Rev. Stat. Ann. § 683A.351. Each accident and health insurer must maintain a file containing every printed, published, or prepared advertisement of individual policies, and typical printed, published, or prepared advertisements of blanket, franchise and group policies disseminated for at least three (3) years. Nev. Admin. Code § 689A.270. The record retention requirement may be satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Nev. Rev. Stat. Ann. § 719.290.
New Hampshire	Each insurer must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise and group policies for at least three (3) years. N.H. Code Admin. R. Ins 2604.15. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. N.H. Rev. Stat. Ann. § 294-E:12.
New Jersey	For a minimum of five (5) years, insurers must maintain detailed documentation in each claim file. The detail must be sufficient to allow the insurance commissioner to reconstruct the company's activities relative to claims settlement and must include, but is not limited to: a. all investigative reports, payment vouchers, notices, notes, transactions, memoranda and work papers; and b. records of all pertinent communications relating to a claim, the date of the communication and the persons involved. N.J.A.C. § 11:2-17.12; N.J.S.A. 17:23-22. Each insurance producer shall maintain accurate books and records for a period at least five years, reflecting all insurance-related transactions in which the insurance producer or his employees take part in accordance with the standards set forth in this chapter. These records may be maintained by either separate books of record or by one or more consolidated books of record. N.J.A.C. § 11:17C-2.5.

STATE	RETENTION REQUIREMENTS
New Mexico	Insurance administrators must maintain (at its home or principal office) complete records, including copies of any written agreements, of all transactions with insurers or insured persons for at least five (5) years after the termination of any underlying agreement. N.M. Stat. Ann. § 59A-12A-4(A); 59A-12A-6. Each insurer must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise and group policies for a period of either five (5) years or until the filing of the next regular report on examination of the insurer, whichever is longer. N.M. Admin. Code 13.10.4.22. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. N.M. Stat. Ann. § 14-16-12.
New York	Each insurer must maintain (at its home or principal office) a file containing a specimen copy of every printed, published or prepared advertisement disseminated, regardless of whether the advertisements were actually used by the company, its agents or solicitors. The portion of the file which has been covered by a filed report on examination need not be retained. 11 NYCRR § 219.5. Pursuant to 11 NYCRR § 243.2(b), an insurer must maintain a policy record for each insurance contract or policy for six years from the date the policy is no longer in force, or until after the filing of a report on examination, whichever is longer. A policy record includes the contract or policy forms, the application, the policy term, and basis for rating and return premium amounts, if any. Both the original policy that is issued and any subsequent renewals of the policy must be retained in the policy record for the retention period specified in Regulation 152. Electronic records have the same force and effect as those not produced by electronic means. N.Y. State Tech. Law § 305.
North Carolina	Each insurer must maintain (at its home or principal office) a file containing a specimen copy of every printed, published, or prepared advertisement of its policies disseminated in the state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised, for a period of either three (3) years or until the filing of the next regular report on examination of the insurer, whichever is longer. 11 N.C. Admin. Code 12.0431. For domestic insurers, all records shall be maintained for the years for which a statutory examination has not yet been completed, all books of original entry and corporate records shall be maintained by the company (or its successor) for 25 years after the company ceases to exist, any claim file involving a minor shall be maintained until the minor has attained the age of majority for third-party liability coverage, and all tax and tax related questions shall be resolved or finally adjudicated before the destruction of any records related thereto. 11. N.C. Admin. Code 11C.0105 (a-b). The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. N.C. Stat. Ann. § 66-322.
North Dakota	Each insurer must maintain (at its home or principal office) a file containing a specimen copy of every printed, published, or prepared advertisement of its policies for a period of either four (4) years or until the filing of the next regular report on examination of the insurer, whichever is longer. N.D. Admin. Code § 45-04-10-07. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. N.D. Cent. Code § 9-16-11.

STATE	RETENTION REQUIREMENTS
Ohio	All insurers must maintain records concerning any and all cybersecurity events, such as an unauthorized breach (or as otherwise defined in Ohio Rev. Code Ann. 3965.01) for at least five (5) years from the date of any such event. Ohio Rev. Code Ann. § 3965.03. Any record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Ohio Rev. Code Ann. § 1306.11.
Oklahoma	Each accident, health, hospitalization or disability insurer must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise and group policies for a period of either four (4) years or until the filing of the next regular report on examination of the insurer, whichever is longer. Okla. Admin. Code 365:10-3-18; 10-3-37. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Okla. Stat. Ann. tit. 12A, § 15-112.
Oregon	Each insurer must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise and group policies for a period of either four (4) years or until the filing of the next regular report on examination of the insurer, whichever is longer. Or. Admin. R. 836-020-0280. Insurance producers (as defined by Or. Rev. Stat. Ann. § 731.104), both resident and non-resident, must retain records of any insurance transacted under their license for a period of three years following expiration of the policy. Or. Rev. Stat. Ann. § 744.068. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Or. Rev. Stat. Ann. § 84.034.
Pennsylvania	The general requirement for retention of records by insurers is seven (7) years from the execution of the record, unless otherwise specified in the Guidelines. *See*, Guidelines for Retention of Records by Insurers and Other Entities Subject to Examinations Conducted by the Insurance Department; Notice No. 2011-10 [41 Pa.B. 5849]. The seven (7) year requirement applies to, but is not limited to, Audit and CPA Reports, Litigation Reports, Claims Files, Consumer Complaints, Internal Reports, Reinsurance Transactions, and SEC Filings. Id. Each insurer must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise and group policies for a period of either four (4) years or until the filing of the next regular report on examination of the insurer, whichever is longer. 31 Pa. Admin. Code § 51.4; 51.5; and 51.6. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. 73 Pa. Stat. Ann. § 2260.308.

STATE	RETENTION REQUIREMENTS
Rhode Island	Health insurers and providers of Medicare supplement insurance must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise and group policies for a period of either four (4) years or until the filing of the next regular report on examination of the insurer, whichever is longer. 230 R.I. Admin. Code 20-30-8.17. The record retention requirement is satisfied by maintaining an electronic record which accurately reflects the information contained within the record when it was first generated in its final form as an electronic record or otherwise, and remains accessible for later reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. 42 R.I. Gen. Laws Ann. § 42-127.1-12.
South Carolina	Each insurer must maintain (at its home or principal office) a file containing every prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise and group policies disseminated in this or any other state, with a notation attached to each such advertisement which shall indicate the manner and extent of distribution and the form number of any policy advertised, for a period of either four (4) years or until the filing of the next regular report on examination of the insurer, whichever is longer. S.C. Code Ann. Regs. 69-17. Insurance carriers must maintain business records for at least five (5) years and keep them open for inspection at all times. S.C. Code Ann. § 38-13-120. Carriers must also maintain a record of losses paid under its policies and notices as provided in its policies which may normally result in claim or loss until the next regular examination by an insurance department or for a period of either five (5) years from the date of payment of the loss or receipt of the notice, whichever is longer. S.C. Code Ann. § 38-13-130. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. S.C. Code Ann. § 26-6-120.
South Dakota	Every insurer advertising health insurance or life insurance, excluding listed exemptions, shall maintain at its home or principal office a complete file containing every printed, published, or prepared advertisement of its policies and typical printed, published, or prepared advertisements of its blanket, franchise, and group policies where the content of advertisements vary dependent upon coverage options, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. All advertisements shall be maintained in the file for a period of either five (5) years or until the filing of the next regular report on the examination of the insurer, whichever is the longer period of time. S.D. Codified Laws § 58-33A-11. Any record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. S.D. Codified Laws §§ 53-12-25; 53-12-27; 53-12-28; and 53-12-30.
Tennessee	Each insurer offering accident and sickness insurance must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise and group policies for a period of either four (4) years or until the filing of the next regular report on examination of the insurer, whichever is longer. Tenn. Comp. R. & Regs. 0780-01-08-.17; 0780-01-33-.10. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Tenn. Code Ann. § 47-10-112.

STATE	RETENTION REQUIREMENTS
Texas	All insurers (domestic or foreign) conducting business in Texas must maintain (at is home or principal office) a file containing a specimen copy of every institutional advertisement, or invitation to contract advertisement it disseminates for a period of at least (3) years. 28 Tex. Admin. Code § 21.116. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Tex. Bus. & Com. Code § 322.012.
Utah	Any record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information set forth in the record after it was first generated in its final form and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Utah Code Ann. § 46-4-301.
Vermont	Each insurer must retain records of policies, declined applications, claims, and complaints. Additionally, a producer licensing record must be maintained for each producer whom an insurer establishes a relationship. Producers must keep records of the transactions conducted under their license. All of the above records must be maintained for the longer of five (5) years or until such time as the insurer is no longer required to maintain a reserve for payment of corresponding claims. 21-050 Code Vt. R. 21-020-050-X. Each insurer must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise and group policies for a period of either four (4) years or until the filing of the next regular report on examination of the insurer, whichever is longer. 21-002 Code Vt. R. 21-020-002-X. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Vt. Stat. Ann. tit. 9, § 281.
Virginia	Each insurer of life insurance and annuity marketing must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise and group policies for a period of either five (5) years or until the filing of the next regular report on examination of the insurer, whichever is longer. For insurers of accident and sickness insurance, records must be maintained for four (4) years. Such records must include a specimen copy of each, and notation indicating the manner and extent of distribution and the form number of any policy referred to in any advertisement, and the file shall be subject to inspection by the commission. 14 Va. Admin. Code 5-90-170; 14 Va. Admin. Code 5-41-150. Every insurer required to file the Audited Financial Report shall require the accountant to make available for review by the commission's examiners, all work papers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the commission or at any other reasonable place designated by the commission. The insurer shall require that the accountant retain the work papers and communications until the commission has filed a Report on Examination covering the period of the audit, but no longer than seven years from the date of the audit report. 14 Va. Admin. Code 5-270-140. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Va. Code Ann. § 59.1-490.

STATE	RETENTION REQUIREMENTS
Washington	Each insurer must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise and group policies for a period of either four (4) years or until the filing of the next regular report on examination of the insurer, whichever is longer. Wa. Admin. Code 284-23-090; 284-50-200. Insurance producers (as defined by Rev. Code of Wash. 48.17.010) must retain for a period of five years a record of each insurance contract it procured, along with the name of the insurer and insured, premium amount, and the subject matter of the insurance. Rev. Code of Wash. 48.17.470. An adjuster (as defined under Rev. Code of Wash. 48.17.010) must retain for a period of five years a record of each investigation or adjustment that the adjuster has undertaken and a statement of any compensation received. Rev. Code of Wash. 48.17.470. The record retention requirement is satisfied by retaining an electronic record of the information in the record that accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record and remains accessible for later reference. A person may satisfy the above requirement by using the services of another person. Rev. Code of Wash. 1.80.110.
Washington D.C.	Each insurer of accident and sickness insurance shall maintain (at its home or principal office) a complete file containing every printed, published, or prepared advertisement of individual policies and typical printed, published or prepared advertisements of blanket, franchise, and group policies disseminated in the District or in any state. Such records must include notation attached to each advertisement indicating the manner and extent of distribution and the form number of any policy advertised, and the file shall be subject to inspection by the Department for a period of at least three (3) years. D.C. Mun. Regs. Tit. 26§ A211. The record retention requirement is satisfied by retaining an electronic record of the information in the record which accurately reflects the information and remains accessible for future reference. D.C. Code Section 28-4911.
West Virginia	Each insurer offering accident and sickness insurance must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise and group policies for a period of either four (4) years or until the filing of the next regular report on examination of the insurer, whichever is longer. For insurers offering long-term care insurance, records must be maintained for three (3) years. W. Va. Admin. Code § 114-10-17; 114-32-20. Each insurer of life insurance and annuity marketing shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement of its individual policies and typical printed, published or prepared advertisements of its blanket, franchise and group policies, with a notation indicating the manner and extent of distribution and the form number of any policy advertised, for a period of five (5) years after discontinuance of its use or publication. W. Va. Admin Code § 114-11-9. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. W. Va. Code Ann. § 39A-1-12.

STATE	RETENTION REQUIREMENTS
Wisconsin	Each insurer offering life insurance must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise and group policies for a period of either three (3) years or until the filing of the next regular report on examination of the insurer, whichever is longer. Insurers offering accident and sickness insurance must maintain documents for four (4) years. An insurer of funeral insurance must maintain a copy of every advertisement and all correspondence for each advertisement submitted for approval or used in WI for three (3) years after the advertisement was last used. Wis. Admin. Code § INS 2.16; 3.27; 23.60. The record retention requirement is satisfied by retaining an electronic record of the information which accurately reflects the information and remains accessible for future review or reference. The services of another (i.e., a record retention entity) may be used to satisfy this requirement. Wis. Stat. Ann. § 137.20.
Wyoming	Each insurer of accident and sickness insurance must maintain (at its home or principal office) a file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise and group policies for a period of either four (4) years or until the filing of the next regular report on examination of the insurer, whichever is longer. 044-21 Wyo. Code R. § 21-18. Insurance producers shall keep at their place of business a complete record of transactions under their license. The record shall show, as to each insurance policy or contract placed by or through the licensee, the names of the insurer and insured, the number, expiration date of, premium payable as to the policy or contract and any other information the commissioner reasonably requires. The insurance producer shall keep the record available for inspection for a period of at least three (3) years after completion of the transactions. These requirements are satisfied if the records specified in this section may be obtained immediately from a central storage place, or elsewhere by on line computer terminals located at the licensee's place of business. Wyo. Stat. § 26-9-228.

50 State Legal Matrix – Licensing, Examination & Continuing Education Requirements for Independent Claims Adjusters for 2024

The term ‘‘independent claims adjuster’’ refers to an individual, other than a public adjuster, who undertakes on behalf of insurers or self-insurers to investigate, evaluate, and negotiate the resolution of the amount of a property, casualty, liability, disability, or workers’ compensation claim, loss, or damage on behalf of an insurance policy or insurer or as a third-party on behalf of a self-insurer. Independent claims adjusters are licensed and regulated, if at all, by the state in which they are providing services. For persons who are currently licensed or intend to be licensed as an insurance Producer or Broker, it is strongly encouraged to review the appropriate state insurance website to determine eligibility to contemporaneously hold an active Independent Claim Adjuster license. The following table provides the requirements for independent claims adjusters regarding licensing, examinations, and continuing education, and also outlines applicable exceptions.

Please be advised that hyperlinks were added to the word “HERE” found within the definition section and exemptions section in the Licensing Requirements column. By clicking “HERE” you will be brought to the appropriate state webpage that will provide the relevant information for each section.

STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
Alabama	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old and eligible to designate AL as their home state. Must not have committed any act that is a ground for probation, suspension, revocation, or refusal of an independent adjuster's license as set forth in Section 27-9A-12. Must complete a pre-licensing course consisting of 20 classroom hours per line of authority, or equivalent individual instruction within 12 months before the date of the related examination. AL Code § 27-9A-6 and AL Code § 27-9A-8 **Fingerprints:** Commissioner may require fingerprints. Ala. Code § 27-9A-17 **Reciprocity:** A nonresident may receive a nonresident license if licensed and in good standing in their home state and the home state awards licenses to AL residents on the same basis. Ala.Code 1975 § 27-9A-10 **Exemptions:** • Attorneys at law admitted to practice in AL when acting in their professional capacity as an attorney. Ala. Code § 27-9A-3 • Salaried employees of an insurer. Ala. Code § 27-9A-3 • All exclusions to the license requirement can be found HERE	Yes. AL Code § 27-9A-8 *Not required if the applicant is certified to teach the independent adjuster course approved by the commissioner which required an examination for certification. AL Code § 27-9A-9	Every two years a licensee must complete 24 continuing education credit hours, 3 of which must include the topic of insurance ethics. AL Code § 27-9A-13

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STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
Alaska	**Definition** of an Adjuster: HERE **Requirements:** Must be at least 18 years old as well as trustworthy and competent. Must (1) have at least six months active working experience within the previous two calendar years as either an independent adjuster trainee, an insurance producer, a managing general agent, a reinsurance intermediary broker, a reinsurance intermediary manager, a surplus lines broker, an independent adjuster, or an underwriter or claims adjuster employee of an insurer, and, in the director's opinion, exhibit the ability to competently perform the responsibilities of an independent adjuster; OR (2) have been previously licensed in good standing in this state as an independent adjuster within the previous four calendar years and not have had a license suspended or revoked. AS § 21.27.830 (2022) **Fingerprints:** Fingerprints required. 3 AAC 23.010 **Reciprocity:** A nonresident independent adjuster not licensed by this state who is licensed by and in good standing with its resident state may act as an adjuster and adjust a single loss in this state during a calendar year, or may act as an adjuster and adjust losses arising out of a catastrophe as declared by the director, if, within 10 days after the start of an investigation or adjustment under this section, the nonresident independent adjuster has advised the director in writing. AS § 21.27.860 **Exemptions:** • Does not apply to a person if the scope of their assignment and work is only to evaluate the extent of damage to a motor vehicle or to property (if a total loss, the actual cost to purchase comparable vehicle or property). B93-08.pdf (alaska.gov) • Staff adjusters adjusting claims on behalf of an admitted insurer. Licenses With Special Requirements (alaska.gov) • All exclusions to the license requirement can be found HERE	Yes. 3 AAC 23.070	Every two years a licensee must complete 24 continuing education credit hours, 3 of which must include the topic of insurance ethics. 3 AAC 23.100

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Arizona	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old. Must be a resident of AZ or a resident of another state that allows residents of this state to act as adjusters in another state. AZ Rev Stat § 20-321.01 (c)(1) - (c)(2) (2022) **Fingerprints:** May require fingerprints. AZ Rev Stat § 20-321.01 (e) (2022) **Reciprocity:** An adjuster who is licensed or permitted to act as an adjuster in the state of the adjuster's domicile is not required to be licensed pursuant to this section or meet the qualifications prescribed in this section if the adjuster is sent to this state on behalf of an insurer for the purpose of investigating or making adjustment of a particular loss under an insurance policy or a series of losses resulting from a catastrophe common to all those losses. AZ Rev Stat § 20-321.01 (d) (2022) **Exemptions:** • An AZ licensed attorney at law. AZ Rev Stat § 20-321 (b)(i) (2022) • A salaried employee of an insurer or of a managing general agent; the employee's compensation must not be contingent on the outcome of the claim determination. AZ Rev Stat § 20-321 (b)(ii) (2022) • All exclusions to the license requirement can be found HERE	Yes. AZ Rev Stat § 20-321.01 (c)(1) - (c)(2) (2022)	No continuing education requirement.

STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
Arkansas	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old. Must be a resident of AR or resident of another state which permits residents of AR to act as adjusters in the other state. Must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation. Must maintain an office accessible to the public in AR and keep records there. Nonresident adjusters are not required to keep an office in AR. A.C.A. § 23-64-209 **Reciprocity:** In order to be licensed as a nonresident independent adjuster in AR, the applicant must be licensed as an adjuster in another state that permits residents of AR to act as adjusters in that state. A.C.A. § 23-64-209 **Exemptions:** • An AR licensed attorney. A.C.A. § 23-64-102 • A salaried employee of an insurer, a managing general agent, or of any adjustment bureau or association owned and maintained by insurers to adjust losses of member insurers. A.C.A. § 23-64-102 • All exclusions to the license requirement can be found HERE	Yes. Once an application is approved if the applicant doesn't schedule and appear for the examination within 90 days the applicant must file a new application. A.C.A. § 23-64-209	Every two years a licensee must complete 24 continuing education credit hours, 3 of which must include the topic of insurance ethics. A.C.A. § 23-64-209
California	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years of age. Must not have committed acts or crimes constituting ground for denial of licensure under Section 480 of the Bus. & Prof. Code. Must have at least two years of experience in adjusting insurance claims or the equivalent thereof as determined by the commissioner. Cal.Ins.Code § 14025 **Reciprocity:** No reciprocity. **Exemptions:** • Attorneys at law admitted to practice in CA, when performing their duties as attorneys at law. Cal.Ins.Code § 14022(e) • A person employed exclusively and regularly by one employer in connection with the affairs of the employer only and if there exists an employer-employee relationship. Cal.Ins.Code § 14022(a)(1) • All exclusions to the license requirement can be found HERE	Yes. Cal.Ins.Code § 14026	Every two years a licensee must complete 24 continuing education credit hours, 3 of which must include the topic of insurance ethics. Cal. Ins. Code Sec. 14090.1(a)

STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
Colorado	No license required.* *Although CO does not offer a resident insurance adjuster license and does not require a license to practice insurance claims adjusting within CO, it is recommended that an adjuster obtain a designated home state license as it may be required or preferred by an employer or if the adjuster will need to travel across state lines. Florida, Indiana, and Texas offer nonresident licenses. See: Florida Insurance License Qualifications (myfloridacfo.com) IDOI: Nonresident Agent Licensing Adjuster: designated home state - all lines (texas.gov)	N/A* *Refer to the exam requirements of the state that issued the nonresident license.	N/A* *Refer to the continuing education requirements of the state that issued the nonresident license.
Connecticut	Licenses required for Casualty Claim Adjusters: **Definition** HERE **Requirements:** Must be at least 18 years old, of good moral character, and financially responsible. C.G.S.A. § 38a-769; CT Licensing Requirements; Governing statutes are under Title 38a, Ch. 702, **HERE** **Reciprocity:** CT will grant reciprocity with an equivalent license in any other state except CA, NY, or HI. Property and Casualty Claim Adjuster (ct.gov) **Exemptions:** • No staff adjuster exemption. C.G.S.A. § 38a-792 • All exclusions to the license requirement can be found HERE	Yes. C.G.S.A. § 38a-769	No continuing education required.

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Delaware	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old and have not committed any act that is a ground for denial, suspension or revocation set forth in § 1712 of this title. 18 Del.C. § 1706 **Fingerprints:** Fingerprinting required to provide DE with state criminal and federal criminal history report from the FBI, dated within 90 days of receipt. Candidate Handbook – Changes (delaware.gov) **Reciprocity:** A nonresident may receive a nonresident license if the person is currently licensed in their home state and in good standing, and the home state awards nonresident licenses to residents of DE on the same basis. 18 Del.C. § 1708 **Exemptions:** • Does not apply to a salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission. 18 Del.C. § 1704 • All exclusions to the license requirement HERE	Yes. 18 Del.C. § 1706 *Not required for an individual who applies for a license in DE who was previously licensed for the same lines of authority in another state. 18 Del.C. § 1709	Every two years a licensee must complete 12 continuing education credit hours, 3 of which must include the topic of ethics. 504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants (delaware.gov)
District of Columbia	No license required.* *Although the District of Columbia does not offer a resident insurance adjuster license and does not require a license to practice insurance claims adjusting within the District, it is recommended that an adjuster obtain a designated home state license as it may be required or preferred by an employer or if the adjuster will need to travel across state lines. Florida, Indiana, and Texas offer nonresident licenses. See: Florida Insurance License Qualifications (myfloridacfo.com) IDOI: Nonresident Agent Licensing Adjuster: designated home state - all lines (texas.gov)	N/A* *Refer to the exam requirements of the state that issued the nonresident license.	N/A* *Refer to the continuing education requirements of the state that issued the nonresident license.

STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
Florida	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old and a resident of FL or a legal alien who possesses a work authorization from the U.S Immigration and Naturalization Services. Must complete an approved pre-licensing course. Fla. Stat. §626.855; §626.864; §626.866; §626.876 **Fingerprints:** Fingerprints required. Fla. Stat. § 624.34 **Reciprocity:** Must have a company or independent adjuster license from a state that FL has a reciprocal agreement with. See list of states with reciprocal agreements HERE **Exemptions:** • Attorneys at law licensed in FL and in good standing. Fla. Stat. § 626.860 • No staff adjuster exemption: An adjuster who is appointed and employed on an insurer's staff of adjusters or a wholly owned subsidiary of the insurer must be licensed. • All exclusions to the license requirement can be found HERE	Yes. *Not required if currently licensed as a public adjuster, OR completed an approved course in Adjusting, OR earned an insurance degree with at least 18 semester hours from an accredited college. All exclusions to the license requirement can be found HERE; Fla. Stat. §626.221	Every two years by the end of licensee's birth month, a licensee must complete 24 continuing education credit hours. Fla. Stat. § 648.385
Georgia	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old and of good character. Must be a resident of GA and shall reside and be present within GA for at least 6 months every year, or have their principal place of business within GA. Must complete 20 hours of pre-licensing course requirements. O.C.G.A § 33-23-5 **Reciprocity:** A nonresident license will be given reciprocity if the person is currently licensed in another state and in good standing, and the person's home state awards nonresident licenses to GA residents on the same basis. O.C.G.A. 33-23-16 **Exemptions:** • An employee of an insurer, or of an insurance agent or agency, provided that the employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in GA and: (1) the employee's activities are executive, administrative, managerial, or clerical; (2) the employee's function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or (3) the employee is acting in the capacity of a special agent or agency supervisor assisting insurance agents where the person's activities are limited to providing technical advice and assistance to	Yes. O.C.G.A. 33-23-10	For resident licensees with less than 20 years of service: Every two years a licensee must complete 24 hours of continuing education credit hours, 3 of which must be in ethics. For resident licensees with more than 20 years of service: Every two years a licensee must complete 20 continuing education credit hours, 3 of which must be in ethics. Continuing Education | Georgia Office of Insurance and Safety Fire Commissioner

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Georgia cont.	licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance. O.C.G.A § 33-23-4 • See all exemptions to the license requirement HERE		
Hawaii	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old. Must be domiciled in HI, or in a state that permits residents of HI to act as adjusters in the other state. Must have experience, special education, or training with reference to handling loss of claims under insurance contracts of sufficient duration and extent reasonably to make the individual competent to fulfill the responsibilities of an adjuster. HRS § 431:9-203; HRS § 431:9-222 **Fingerprints:** Fingerprints required. HRS § 431:9-204 **Reciprocity:** No reciprocity. Insurance | Nonresident Adjuster (hawaii.gov) **Exemptions:** • No staff adjuster exemption. • See all exemptions to the license requirement HERE	Yes. HRS § 431:9-206	No continuing education requirement.

STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
Idaho	**Definition** of Adjuster: HERE **Requirements:** Must be at least 21 years old. Must be trustworthy, be of good character and morals, and financially responsible. Must not have been convicted of any crime that is deemed relevant in accordance with section 67-9411(1) of the Idaho Code. ID Code § 41-1104 Must be a salaried employee of a licensed adjuster, or must have had experience or special education or training as to the investigation and settlement of loss of claims under insurance contracts of sufficient duration and extent reasonably to satisfy the director as to his competence to fulfill the responsibilities of an adjuster. ID Code § 41-1104 **Reciprocity:** A nonresident license will be given if licensed and in good standing in home state, and the home state awards nonresident licenses to residents of ID on the same basis. ID Code § 41-1109; ID Code § 41-1020 **Exemptions:** • Attorneys licensed in ID. I.C. § 41-1102 • A salaried employee of an authorized insurer, or group of such insurers under common control or ownership, or of a managing general agent, who adjusts losses for such insurer or insurers or for the authorized insurers represented by the general agent. I.C. § 41-1102 • All exclusions to the license requirement can be found HERE	Yes. ID Code § 41-1104 (2020)	Every two years a licensee must complete 24 continuing education credit hours, 3 of which must include the topic of insurance ethics. Continuing Education (idaho.gov); ID Code § 41-1108
Illinois	No license required.* *Although IL does not offer a resident insurance adjuster license and does not require a license to practice insurance claims adjusting within IL, it is recommended that an adjuster obtain a designated home state license as it may be required or preferred by an employer or if the adjuster will need to travel across state lines. Florida, Indiana, and Texas offer nonresident licenses. See: Florida Insurance License Qualifications (myfloridacfo.com) IDOI: Nonresident Agent Licensing Adjuster: designated home state - all lines (texas.gov)	N/A* *Refer to the exam requirements of the state that issued the nonresident license.	N/A* *Refer to the continuing education requirements of the state that issued the nonresident license.

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Indiana	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old. Must be eligible to designate IN as their home state. Must be trustworthy, reliable, and of good reputation. Must not have committed any act that is ground for denial, suspension, or revocation of a license. Must have completed a 40 hour pre-licensing education program. Adjuster Licensing- in.gov/idoi; IC 27-1-28-12 **Reciprocity:** Nonresident license given if currently licensed and in good standing in home state and the home state awards nonresident licenses to IN residents on the same basis. Nonresident Adjuster- in.gov/idoi; IC 27-1-28-16; IC 27-1-28-17 **Exemptions:** • An attorney admitted to practice in IN and acts in a professional capacity as an attorney. Adjuster License Exemption- in.gov/idoi • An employee of an authorized insurer, a managing general agent, a surplus lines insurer, a risk retention group, or an attorney in fact of a reciprocal insurer. Adjuster License Exemption- in.gov/idoi • All exclusions to the license requirement can be found HERE	Yes. IC 27-1-28-15	Every two years by the end of licensee's birth month, a licensee must have 24 hours of continuing education credits. Continuing Education- in.gov/idoi; IC 27-1-28-19
Iowa	No license required.* *Although IA does not offer a resident insurance adjuster license and does not require a license to practice insurance claims adjusting within IA, it is recommended that an adjuster obtain a designated home state license as it may be required or preferred by an employer or if the adjuster will need to travel across state lines. Florida, Indiana, and Texas offer nonresident licenses. See: Florida Insurance License Qualifications (myfloridacfo.com) IDOI: Nonresident Agent Licensing Adjuster: designated home state - all lines (texas.gov)	N/A* *Refer to the exam requirements of the state that issued the nonresident license.	N/A* *Refer to the continuing education requirements of the state that issued the nonresident license.

STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
Kansas	No license required.* *Although KS does not offer a resident insurance adjuster license and does not require a license to practice insurance claims adjusting within KS, it is recommended that an adjuster obtain a designated home state license as it may be required or preferred by an employer or if the adjuster will need to travel across state lines. Florida, Indiana, and Texas offer nonresident licenses. See: Florida Insurance License Qualifications (myfloridacfo.com) IDOI: Nonresident Agent Licensing Adjuster: designated home state - all lines (texas.gov)	N/A* *Refer to the exam requirements of the state that issued the nonresident license.	N/A* *Refer to the continuing education requirements of the state that issued the nonresident license.
Kentucky	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old and eligible to designate KY as their home state. Must be trustworthy, reliable, financially responsible, and of good reputation. Must not have committed any act that is a ground for probation, suspension, revocation, or refusal of a license as set forth in KRS 304.9-440. KRS § 304.9-430 **Reciprocity:** A nonresident shall receive a nonresident license if they are currently licensed in good standing in their home state and the person's designated home state issues nonresident licenses to residents of KY on the same basis. KRS § 304.9-430 **Exemptions:** • An attorney licensed to practice law in KY, when acting in his or her professional capacity as an attorney. KRS § 304.9-430 • An officer, director, manager, or employee of an authorized insurer, surplus lines insurer, or risk retention group, or an attorney-in-fact of a reciprocal insurer. KRS § 304.9-430 • All exclusions to the license requirement can be found HERE (Section 10)	Yes. KRS § 304.9-430	Every two years by the end of a licensee's birth month, a licensee must complete 24 continuing education credit hours, 3 of which must be in ethics. DEPARTMENT OF INSURANCE (ky.gov); KRS § 304.9-295

STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
Louisiana	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old and eligible to designate LA as their home state. Must not have committed any act that is ground for denial, suspension, or revocation of a license as set forth in LSA-R.S. 22:1672. Must maintain an office in LA with public access. LSA-**R.S. 22:1665** **Reciprocity:** A nonresident shall receive a nonresident license if they are currently licensed as a resident claims adjuster in good standing in their home state. If the home state does not require an exam, they must take the LA exam. Additionally, the person's designated home state issues nonresident licenses to residents of LA on the same basis. LSA-R.S. 22:1670 **Exemptions:** • Does not apply to an attorney at law admitted to practice in LA, when acting in his professional capacity as an attorney. LSA-R.S. 22:1662 • No staff adjuster exemption **unless** adjusting claims arising under life, accident, and health insurance policies. LSA-R.S. 22:1662 • All exclusions to the license requirement can be found HERE	Yes. LSA-R.S. 22:1665; LSA-R.S. 22:1668	Every two years a licensee must complete 24 continuing education credit hours, 3 of which must include the topic of ethics. LSA-R.S. 22:1673; Continuing Education Requirements (la.gov)
Maine	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old. Must be competent, trustworthy, financially responsible, and of good personal and business reputation. 24-A M.R.S.A. § 1472 **Reciprocity:** A nonresident shall receive a nonresident license if the applicant holds a valid license in their home state and if the home state awards nonresident licenses to residents of ME. 24-A M.R.S.A. § 1477 **Exemptions:** • Does not apply to attorneys admitted to practice in ME. 24-A M.R.S.A. § 1402 • Does not apply to property and casualty insurance adjusters who are employees of insurers or workers' compensation insurance adjusters who are employees of insurers, or persons adjusting only life and health insurance claims. 24-A M.R.S.A. § 1402 • All exclusions to the license requirement can be found HERE	Yes. 24-A M.R.S.A. § 1410	No continuing education requirement. Adjusters FAQs | PFR Insurance (maine.gov)

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Maryland	No license requirement.* *Although MD does not offer a resident insurance adjuster license and does not require a license to practice insurance claims adjusting within MD, it is recommended that an adjuster obtain a designated home state license as it may be required or preferred by an employer or if the adjuster will need to travel across state lines. Florida, Indiana, and Texas offer nonresident licenses. See: Florida Insurance License Qualifications (myfloridacfo.com) IDOI: Nonresident Agent Licensing Adjuster: designated home state - all lines (texas.gov)	N/A* *Refer to the exam requirements of the state that issued the nonresident license.	N/A* *Refer to the continuing education requirements of the state that issued the nonresident license.
Massachusetts	No license requirement.* *Although Maryland does not offer a resident insurance adjuster license and does not require a license to practice insurance claims adjusting within Maryland, it is recommended that an adjuster obtain a designated home state license as it may be required or preferred by an employer or if the adjuster will need to travel across state lines. Florida, Indiana, and Texas offer nonresident licenses. See: Florida Insurance License Qualifications (myfloridacfo.com) IDOI: Nonresident Agent Licensing Adjuster: designated home state - all lines (texas.gov)	N/A* *Refer to the exam requirements of the state that issued the nonresident license.	N/A* *Refer to the continuing education requirements of the state that issued the nonresident license.

STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
Michigan	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old. Cannot be in any manner connected with a funeral establishment, mortuary, or cemetery (employed by, own stock, etc.). Michigan / Resident Licensing / Individual | NIPR **Reciprocity:** A nonresident shall receive a nonresident license if the applicant holds a valid license and is in good standing in their home state. If no exam was required in their home state, they must take the MI exam. DIFS - How to Become Licensed as an Insurance Adjuster (michigan.gov) **Exemptions:** • Does not apply to a person admitted to the practice of law in MI. M.C.L.A. **500.1222** • Does not apply to an employee or manager of an authorized insurer adjusting loss or damage under a policy issued by the insurer. M.C.L.A. **500.1222** • All exclusions to the license requirement can be found HERE	Yes. M.C.L.A. 500.1224	No continuing education requirement.
Minnesota	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old. Must be eligible to designate MN as their home state. Must be trustworthy, reliable, and of good reputation. Must not have committed any act that is ground for probation, suspension, revocation, or refusal of an adjuster's license as set forth in section 72B.08. M.S.A. § 72B.041 **Fingerprints:** Must submit fingerprints. M.S.A. § 72B.041 **Reciprocity:** A nonresident shall receive a nonresident license if the applicant holds a valid license and is in good standing in their home state, and if the home state awards nonresident licenses to residents of MN. M.S.A. § 72B.05 **Exemptions:** • Not required if an attorney-at-law practicing in MN and acting in the professional capacity as an attorney. M.S.A. § 72B.03 • An employee of an authorized insurer. M.S.A. § 72B.03 • All exclusions to the license requirement can be found HERE	Yes. M.S.A. § 72B.041	Every two years a licensee must complete 24 continuing education credit hours, 3 of which must include the topic of ethics. M.S.A. § 72B.045

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Mississippi	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old and a resident of MS. Must be trustworthy. Must take a state approved 20 hour pre-licensing course. Miss. Code Ann. § 83-17-413 MS Pre-licensing Requirement; Miss. Code Ann. § 83-17-251 **Reciprocity:** License requirement can be waived for an applicant with a valid license from another state which has license requirements substantially equivalent to those of MS. Miss. Code Ann. § 83-17-407 **Exemptions:** • An attorney-at-law who adjusts insurance losses from time to time and incidental to the practice of law, and who does not advertise or represent that he is an adjuster. Miss. Code Ann. § 83-17-401 • A salaried employee of an insurer who is regularly engaged in the adjustment, investigation, or supervision of insurance claims. Miss. Code Ann. § 83-17-401 • All exclusions to the license requirement can be found HERE	Yes. MS Code § 83-17-413 (2013)	For licenses in effect for 13-18 months: 12 hours of continuing education credit is required. For licenses in effect for 19-24 months: 24 hours of continuing education credit is required, including 3 hours of ethics. Mississippi Insurance Department - Pre-Licensing and Continuing Education (ms.gov); Miss. Code Ann. § 83-17-251
Missouri	No license requirement.* *Although MO does not offer a resident insurance adjuster license and does not require a license to practice insurance claims adjusting within MO, it is recommended that an adjuster obtain a designated home state license as it may be required or preferred by an employer or if the adjuster will need to travel across state lines. Florida, Indiana, and Texas offer nonresident licenses. See: Florida Insurance License Qualifications (myfloridacfo.com) IDOI: Nonresident Agent Licensing Adjuster: designated home state - all lines (texas.gov)	N/A* *Refer to the exam requirements of the state that issued the nonresident license.	N/A* *Refer to the continuing education requirements of the state that issued the nonresident license.

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STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
Montana	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old and a resident of MT. Must be trustworthy and of good character and reputation. Must maintain an office in MT that is accessible to the public, and shall keep in the office for not less than 5 years the usual and customary records pertaining to transactions under the license. MCA 33-17-301 **Fingerprints:** Fingerprints required. Insurance-licensing-fingerprints.pdf (csimt.gov) Fingerprints-for-Insurance-Licensing-Purposes_4.22-4.pdf (csimt.gov) **Reciprocity:** Nonresidents must have a home state or designated home state which allows residents of MT to act as adjusters in that state. MCA 33-17-301 **Exemptions:** • A licensed attorney who is qualified to practice law in MT. MCA 33-17-102 • A salaried employee of an insurer or of a managing general agent. MCA 33-17-102 • All exclusions to the license requirement can be found HERE	Yes. MCA 33-17-301 *Nonresidents that are licensed in another state do not need to take the exam. MCA 33-17-301	Every two years a licensee must complete 24 continuing education credit hours which must be reported within 30 days of completion. 1 credit hour must be in legislative changes in MT and 3 credit hours must be in ethics. Producer Licensing | Montana Insurance Department (csimt.gov)
Nebraska	No license requirement.* *Although NE does not offer a resident insurance adjuster license and does not require a license to practice insurance claims adjusting within NE, it is recommended that an adjuster obtain a designated home state license as it may be required or preferred by an employer or if the adjuster will need to travel across state lines. Florida, Indiana, and Texas offer nonresident licenses. See: Florida Insurance License Qualifications (myfloridacfo.com) IDOI: Nonresident Agent Licensing Adjuster: designated home state - all lines (texas.gov)	N/A* *Refer to the exam requirements of the state that issued the nonresident license.	N/A* *Refer to the continuing education requirements of the state that issued the nonresident license.

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STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
Nevada	**Definition** of Adjuster: • Independent: HERE • Staff: HERE • Company: HERE **Requirements:** Must be at least 18 years old and be able to declare NV as their home state. Must be an independent contractor. Must be competent, trustworthy, financially responsible and of good reputation. Must not have been convicted of: forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to commit fraud. Must not have committed any act what would be cause for denial of a license under NV law. Must complete pre-licensing education. **Fingerprints:** Must submit fingerprints. **Reciprocity:** A nonresident must be licensed in good standing in their home state or be able to declare NV as their home state and comply with all requirements as if they were a NV resident. Nevada Division of Insurance (nv.gov) **Exemptions:** • Independent: HERE • Staff: HERE • Company: HERE	Yes. Nevada Division of Insurance (nv.gov)	Every three years a licensee must complete 24 hours of continuing education credit, 3 of which must be in ethics. Nevada Division of Insurance (nv.gov)
New Hampshire	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old. New Hampshire / Resident Licensing / Individual | NIPR **Reciprocity:** Nonresident applicants who are licensed as insurance claims adjusters in the states in which they reside are exempt from the exam requirement. NH Rev Stat § 402-B:5 **Exemptions:** • Attorneys admitted to practice in NH when acting in their professional capacity as an attorney. N.H. Rev. Stat. § 402-B:2 • No staff adjuster exemption. N.H. Rev. Stat. § 402-B:2 • All exclusions to the license requirement can be found HERE	Yes. N.H. Rev. Stat. § 402-B:4	Every two years, at least 60 days before the license renewal date, a licensee must complete 24 hours of continuing education credit, 3 of which must be in ethics. N.H. Rev. Stat. § 402-B:5-a

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STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
New Jersey	No license requirement.* *Although NJ does not offer a resident insurance adjuster license and does not require a license to practice insurance claims adjusting within NJ, it is recommended that an adjuster obtain a designated home state license as it may be required or preferred by an employer or if the adjuster will need to travel across state lines. Florida, Indiana, and Texas offer nonresident licenses. See: Florida Insurance License Qualifications (myfloridacfo.com) IDOI: Nonresident Agent Licensing Adjuster: designated home state - all lines (texas.gov)	N/A* *Refer to the exam requirements of the state that issued the nonresident license.	N/A* *Refer to the continuing education requirements of the state that issued the nonresident license.
New Mexico	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old and a resident of NM. Must be able to demonstrate a good business reputation and intend to engage in a bona fide manner in the business of adjusting insurance claims. N. M. S. A. 1978, § 59A-13-4 Applicant must file a bond **unless** they are a Staff Adjuster. N. M. S. A. 1978, § 59A-13-5 **Fingerprints:** Fingerprints required. Apply for a License – NM Office of Superintendent of Insurance (state.nm.us); N. M. S. A. 1978 § 59A-11-2 **Reciprocity:** A nonresident may receive a nonresident license if the applicant is currently licensed and in good standing in their home state, and the home state awards licenses to residents of NM on the same basis. N. M. S. A. 1978, § 59A-11-24 **Exemptions:** • An attorney-at-law who adjusts insurance losses or claims from time to time incidental to practice of law and who does not advertise or represent as an adjuster. N. M. S. A. 1978, § 59A-13-2 • No staff adjuster exemption. N. M. S. A. 1978, § 59A-13-2 • All exclusions to the license requirement can be found HERE	Yes. N. M. S. A. 1978, § 59A-13-3.1	Every two years a licensee must complete 24 hours of continuing education credit, 3 of which must be in ethics. Additionally, at least 3 credit hours must be earned in a formal classroom or in another format that allows the student to interact with a live instructor. Office of Superintendent of Insurance (state.nm.us)

STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
New York	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old. Must submit five Certificates of Character from members of the community in which the applicant resides or transacts business. Must post a bond. NY Ins L § 2108 **Fingerprints:** Fingerprints required. NY Ins L § 2108 NY Ins L § 2108; Licensing Application: Adjuster Independent or Public | Department of Financial Services (ny.gov) **Reciprocity:** Requirements can be waived for a nonresident license if the applicant has a current and valid license in their home state and the home state awards nonresident licenses to NY residents on the same basis. NY Ins L § 2136 **Exemptions:** • A NY licensed attorney. NY Ins L § 2101 • Some specific staff adjuster exemptions. (See all exclusions link for more information) • All exclusions to the license requirement can be found HERE (Section G)	Yes. NY Ins L § 2108	Every two years a licensee must complete 15 hours of continuing educations credit. NY Ins L § 2132
North Carolina	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old. Must not have committed any act that is a ground for probation, suspension, nonrenewal, or revocation set forth in G.S. 58-33-46. Applicant must have special training, education, or experience of sufficient duration and extent to satisfy the Commissioner that the applicant possesses the competence necessary. N.C.G.S.A. § 58-33-31; N.C.G.S.A. § 58-33-30 **Reciprocity:** A nonresident holding a like license in their home state is exempt from taking the NC exam if the applicant's home state required an exam for licensure. N.C.G.S.A. § 58-33-30 **Exemptions:** • An attorney-at-law who adjusts insurance losses from time to time incidental to the practice of their profession. N.C.G.S.A. § 58-33-10 • No staff adjuster exemption. • Adjusters who adjust claims arising under life or annuity insurance contracts. N.C.G.S.A. § 58-33-10 • All exclusions to the license requirement can be found HERE	Yes. N.C.G.S.A. § 58-33-31; N.C.G.S.A. § 58-33-30	Every two years a licensee must complete 24 hours of continuing education credit, 3 of which must be in ethics. For the first reporting periods, 3 hours of flood continuing education is required. NC Agt Handbook Update - Dec 2019 Final Updated.pdf (prometric.com)

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STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
North Dakota	No license requirement.* *Although ND does not offer a resident insurance adjuster license and does not require a license to practice insurance claims adjusting within ND, it is recommended that an adjuster obtain a designated home state license as it may be required or preferred by an employer or if the adjuster will need to travel across state lines. Florida, Indiana, and Texas offer nonresident licenses. See: Florida Insurance License Qualifications (myfloridacfo.com) IDOI: Nonresident Agent Licensing Adjuster: designated home state - all lines (texas.gov)	N/A* *Refer to the exam requirements of the state that issued the nonresident license.	N/A* *Refer to the continuing education requirements of the state that issued the nonresident license.
Ohio	No license requirement.* *Although OH does not offer a resident insurance adjuster license and does not require a license to practice insurance claims adjusting within OH, it is recommended that an adjuster obtain a designated home state license as it may be required or preferred by an employer or if the adjuster will need to travel across state lines. Florida, Indiana, and Texas offer nonresident licenses. See: Florida Insurance License Qualifications (myfloridacfo.com) IDOI: Nonresident Agent Licensing Adjuster: designated home state - all lines (texas.gov)	N/A* *Refer to the exam requirements of the state that issued the nonresident license.	N/A* *Refer to the continuing education requirements of the state that issued the nonresident license.

STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
Oklahoma	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old and a resident of OK, or a resident of a state or country which permits residents of OK to act as adjusters within that state or country. Must be trustworthy. Must have experience or special education or training of sufficient duration and extent with reference to the handling of loss claims pursuant to insurance contracts to make the applicant competent to fulfill the responsibilities of an adjuster. 36 Okl.St.Ann. § 6206 **Reciprocity:** A nonresident may receive a nonresident license if the applicant has a license in good standing in another state which required an examination. Additionally, the applicant's home state must award nonresidents adjuster licenses to residents of OK on the same basis. 36 Okl.St.Ann. § 6205 **Fingerprints:** Not required. Oklahoma Department of Insurance Licensing Information Bulletin (prometric.com) **Exemptions:** • An attorney licensed in OK who adjusts insurance losses from time to time, incidental to the practice of law, and who does not advertise or represent that they are an adjuster. 36 Okl.St.Ann. § 6203 • An adjuster adjusting claims arising pursuant to the provisions of life insurance, annuity, or accident and health insurance contracts. 36 Okl.St.Ann. § 6203 • Find all exemptions to the license requirement HERE	Yes. 36 Okl.St.Ann. § 6208	Every two years a licensee must complete 24 hours of continuing education credit, 3 of which must be in ethics and 2 of which must be for legislative updates, and 19 hours of adjuster general. License CE Requirements | Oklahoma Insurance Department
Oregon	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old. Must be trustworthy, reliable, and have a good reputation. Must establish a residence or place of business in which the applicant intends to transact insurance in OR before submitting an application. **ORS 744.525** **Reciprocity:** A nonresident may receive a nonresident license if the applicant is licensed in their home state and the home state gives the same privilege to a resident adjuster. **ORS 744.528** **Exemptions:** • An attorney licensed in OR while performing duties as an attorney-at-law. **ORS 744.515** • A person that an authorized insurer employs and authorizes in writing to adjust losses under the insurer's policies that insure domestic risks. **ORS 744.515** • All exemptions to the license requirement HERE	Yes. **ORS 744.525**	Every two years a licensee must complete 24 hours of continuing education credit, 3 of which must be in ethics. A resident license also requires 3 hours in Oregon statutes and administrative rules, including recent changes. Division of Financial Regulation : Continuing education requirements : Continuing ed requirements and registered proctors : State of Oregon

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STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
Pennsylvania	No license requirement.* *Although PA does not offer a resident insurance adjuster license and does not require a license to practice insurance claims adjusting within PA, it is recommended that an adjuster obtain a designated home state license as it may be required or preferred by an employer or if the adjuster will need to travel across state lines. Florida, Indiana, and Texas offer nonresident licenses. See: Florida Insurance License Qualifications (myfloridacfo.com) IDOI: Nonresident Agent Licensing Adjuster: designated home state - all lines (texas.gov)	N/A* *Refer to the exam requirements of the state that issued the nonresident license.	N/A* *Refer to the continuing education requirements of the state that issued the nonresident license.
Rhode Island	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old and be able to designate RI as their home state. Must be trustworthy, reliable, and of good reputation. Must not have committed any act that is ground for probation, suspension, revocation, or refusal of a professional license as set forth in § 27-10-12. Must provide a certified background check. 27 R.I. Gen. Laws Ann. § 27-10-3; Rhode Island / Nonresident Adjuster Licensing / Individual | NIPR **Reciprocity:** A nonresident may receive a nonresident license if the applicant is currently licensed and in good standing in their home state and the applicant's home state awards RI residents nonresident licenses on the same basis. 27 R.I. Gen. Laws Ann. § 27-10-7.1 **Exemptions:** • An attorney-at-law licensed in RI and acting in their professional capacity as an attorney. 27 R.I. Gen. Laws Ann. § 27-10-2 • A person who investigates, negotiates, or settles life, accident and health, annuity, or disability insurance claims. 27 R.I. Gen. Laws Ann. § 27-10-2 • Staff Adjuster Exemption if an individual employee, under a self-insured arrangement, who adjusts claims on behalf of their employer. 27 R.I. Gen. Laws Ann. § 27-10-2 (11) • All exclusions to the license requirement can be found HERE	Yes. 27 R.I. Gen. Laws Ann. §§ 27-10-3; 27-10-6	No continuing education requirement. Rhode Island Department of Business Regulation: (ri.gov)

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STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
South Carolina	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old. Must be of good moral character and be a fit and proper individual for the position. Must have sufficient knowledge of the insurance business and their duties as an adjuster. Must not have violated the insurance laws of SC. Code 1976 § **38-47-10**; South Carolina / Resident Licensing / Individual | NIPR **Reciprocity:** A nonresident may receive a nonresident license if the applicant resides in a state that is as liberal in issuing nonresident licenses as SC. Code 1976 § 38-47-20 **Exemptions:** • No staff adjuster exemption. Code 1976 § 38-47-10 • All exclusions to the license requirement can be found HERE	Yes. Adjuster | Department of Insurance, SC - Official Website	No continuing education requirement.
South Dakota	No license requirement.* *Although SD does not offer a resident insurance adjuster license and does not require a license to practice insurance claims adjusting within SD, it is recommended that an adjuster obtain a designated home state license as it may be required or preferred by an employer or if the adjuster will need to travel across state lines. Florida, Indiana, and Texas offer nonresident licenses. See: Florida Insurance License Qualifications (myfloridacfo.com) IDOI: Nonresident Agent Licensing Adjuster: designated home state - all lines (texas.gov)	N/A* *Refer to the exam requirements of the state that issued the nonresident license.	N/A* *Refer to the continuing education requirements of the state that issued the nonresident license.
Tennessee	No license requirement.* *Although TN does not offer a resident insurance adjuster license and does not require a license to practice insurance claims adjusting within TN, it is recommended that an adjuster obtain a designated home state license as it may be required or preferred by an employer or if the adjuster will need to travel across state lines. Florida, Indiana, and Texas offer nonresident licenses. See: Florida Insurance License Qualifications (myfloridacfo.com) IDOI: Nonresident Agent Licensing Adjuster: designated home state - all lines (texas.gov)	N/A* *Refer to the exam requirements of the state that issued the nonresident license.	N/A* *Refer to the continuing education requirements of the state that issued the nonresident license.

STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
Texas	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old and reside in TX. Must be trustworthy and have experience, special education, or training of sufficient duration and extent regarding handling loss of claims under insurance contracts. V.T.C.A., Insurance Code § 4101.053 **Reciprocity:** A nonresident may receive a license if the applicant resides in a state that permits a resident of TX to act as an adjuster in that state. V.T.C.A., Insurance Code § 4101.053 **Fingerprints:** Fingerprints required. Adjuster: all lines (texas.gov) **Exemptions:** • An attorney who adjusts insurance losses periodically and incidentally to the practice of law and does not represent that they are an adjuster. V.T.C.A., Insurance Code § 4101.002 • An individual employed by an insurer or an affiliate of the insurer who adjusts a loss not to exceed $500, or authorizes a payment on a claim for a loss for which there is a specified coverage limit of $500 or less, arising from a first-party claim under a property and casualty insurance policy. V.T.C.A., Insurance Code § 4101.002 • All exclusions to the license requirement can be found HERE *See* Sec.4101.002	Yes. V.T.C.A., Insurance Code § 4101.053	Every two years a licensee is required to complete 24 hours of continuing education credit, 3 of which much be in ethics/consumer protection (if your license expired on or before August 31, 2022, you need only two hours of ethics). At least 12 hours must be in a classroom or classroom equivalent courses. Adjuster: all lines (texas.gov)
Utah	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old, competent, and trustworthy. Must have a good faith intent to engage in type of business the license would permit. U.C.A. § 31A-26-205 **Fingerprints:** Resident adjusters must submit fingerprints. Adjuster | Utah Insurance Department **Reciprocity:** License requirements may be waived if nonresident license applicant has a valid license from the applicant's home state and the home state awards licenses to residents of UT on the same basis. U.C.A. § 31A-26-208 **Exemptions:** • An attorney-at-law licensed in UT and acting in an attorney-client relationship. U.C.A. § 31A-26-201 • An individual engaged in insurance adjusting as a regular salaried employee of, and not an independent contractor for, an insurer. U.C.A. § 31A-26-201 • All exclusions to the license requirement can be found HERE	Yes. U.C.A. 1953 § 31A-26-207	Every two years a licensee must complete 24 hours of continuing education credit, 3 of which must be in ethics. At least half of the required courses must be completed through classroom hours of insurance-related instruction. U.C.A. 1953 § 31A-26-206

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STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
Vermont	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old. Must be competent, trustworthy, financially responsible, and of good personal business reputation. Must meet the experience requirement in one of three ways: 1) have two years' experience handling loss of claims, 2) special training of sufficient duration and scope, or 3) employed by and subject to the immediate supervision of a licensed adjuster who is licensed in VT and who has been licensed for not less than three years. 8 V.S.A. § 4803; PC Adjuster | Department of Financial Regulation (vermont.gov) **Reciprocity**: The exam requirement can be waived if the applicant is currently licensed as an adjuster in their home state, and the home state required passing an exam. PC Adjuster | Department of Financial Regulation (vermont.gov) **Exemptions**: • Lawyers settling claims of clients. 8 V.S.A. § 4791 • An employee of a domestic fire or casualty insurance company who is authorized by such insurer to appraise losses under policies issued by such insurer. 8 V.S.A. § 4791 • All exemptions to the license requirement HERE	Yes. 8 V.S.A. § 4803	Yes, but only for Workers Compensation Adjusters. After a licensee's first license renewal or first eligibility for renewal, a licensee must attend one Continuing Education seminar offered by the Vermont Department of Labor every two years. WC Adjuster | Department of Financial Regulation (vermont.gov)
Virginia	No license requirement.* *Although VA does not offer a resident insurance adjuster license and does not require a license to practice insurance claims adjusting within VA, it is recommended that an adjuster obtain a designated home state license as it may be required or preferred by an employer or if the adjuster will need to travel across state lines. Florida, Indiana, and Texas offer nonresident licenses. See: Florida Insurance License Qualifications (myfloridacfo.com) IDOI: Nonresident Agent Licensing Adjuster: designated home state - all lines (texas.gov)	N/A* *Refer to the exam requirements of the state that issued the nonresident license.	N/A* *Refer to the continuing education requirements of the state that issued the nonresident license.

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STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
Washington	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old. Must not have committed any act that is ground for denial, suspension, or revocation as set forth in RCW 48.17.530. Must complete a pre-licensing course or have worked 12 consecutive months as a full-time salaried insurance company or managing general agent adjuster. Wash. Rev. Code Ann. § 48.17.090; Adjuster pre-licensing experience and education requirements | Washington state Office of the Insurance Commissioner **Fingerprints:** Must submit fingerprints. Independent adjuster | Washington state Office of the Insurance Commissioner **Reciprocity:** Nonresidents must comply with license requirements, except for fingerprinting. Wash. Rev. Code Ann. § 48.17.380 **Exemptions:** • Does not apply to an attorney-at-law who adjusts insurance losses from time to time incidental to the practice of his or her profession. Wash. Rev. Code Ann. § 48.17.010 • Does not apply to a salaried employee of an insurer or of a managing general agent **except** when acting as a crop adjuster. Wash. Rev. Code Ann. § 48.17.010 • All exemptions to the license requirement HERE	Yes. Wash. Rev. Code Ann. § 48.17.110	Every two years a licensee is required to complete 24 hours of continuing education credit, 3 of which must be in ethics. R 2021-03 Stakeholder draft (wa.gov); and see, WAC 284-17-224

STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
West Virginia	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old and a resident of WV, or eligible to designate WV as their home state. Must be trustworthy, competent, reliable, and of good reputation. Must have a business address in WV for acceptance of service of process, or if residing outside the state, acknowledges that by adjusting claims in WV they are subject to WV jurisdiction. W. Va. Code, § 33-12B-5 **Fingerprints:** Must submit fingerprints and undergo criminal history record check. W. Va. Code, § 33-12B-6 **Reciprocity:** Nonresidents may be issued a license if they hold a similar license in their home state and the home state has established like requirements for WV residents. W. Va. Code, § 33-12B-9 **Exemptions:** • Attorneys-at-law admitted to practice in WV when acting in their professional capacity as an attorney. W. Va. Code, § 33-12B-3 • Does not apply to company adjusters employed by an insurer outside of WV who adjust claims solely by telephone, fax, United States mail, and electronic mail, and who do not physically enter this state in the course of adjusting such claims. W. Va. Code, § 33-12B-3 • All exclusions to the license requirement can be found HERE	Yes. W. Va. Code, § 33-12B-5	Every two years a licensee must complete 24 hours of continuing education credit, 3 of which must be in ethics. W. Va. Code, § 33-12B-13
Wisconsin	No license requirement.* *Although WI does not offer a resident insurance adjuster license and does not require a license to practice insurance claims adjusting within WI, it is recommended that an adjuster obtain a designated home state license as it may be required or preferred by an employer or if the adjuster will need to travel across state lines. Florida, Indiana, and Texas offer nonresident licenses. See: Florida Insurance License Qualifications (myfloridacfo.com) IDOI: Nonresident Agent Licensing Adjuster: designated home state - all lines (texas.gov)	N/A* *Refer to the exam requirements of the state that issued the nonresident license.	N/A* *Refer to the continuing education requirements of the state that issued the nonresident license.

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STATE	LICENSING REQUIREMENTS	EXAMINATION REQUIREMENTS	CONTINUING EDUCATION REQUIREMENTS
Wyoming	**Definition** of Adjuster: HERE **Requirements:** Must be at least 18 years old and a resident of WY or of another state which permits residents of WY to act as adjusters in that state. Must be trustworthy and of good reputation. Must be a full-time salaried employee of a licensed adjuster, a graduate of a recognized law school, or have had experience or special education or training in the handling of loss claims under insurance contracts of sufficient duration and extent. Must have and maintain and office accessible to the public. W.S.1977 § 26-9-219 **Fingerprints:** If licensed as a resident, must submit fingerprints. W.S.1977 § 26-9-219 **Reciprocity:** Examination may be waived if nonresident applicant is licensed and in good standing in their home state, and the home state grants WY residents a similar privilege. WY does not reciprocate with AL, AK, AZ, AR, CA, CT, DE, FL, GA, HI, ID, IN, KY, LA, ME, MI, MN, MS, MT, NC, NH, NM, NV, NY, OK, OR, PR, RI, SC, TX, UT, VT, WV. W.S.1977 § 26-9-219 Adjusters (wyo.gov); § 26-9-215. Reciprocity | Statutes | Wyoming | Westlaw **Exemptions:** • A person adjusting claims other than Property, Casualty, and Crop Insurance. Rocket NXT (wyoleg.gov) W.S.1977 § 26-9-219 • All exclusions to the license requirement can be found HERE	Yes. W.S.1977 § 26-9-219	Every two years a licensee must complete 24 classroom hours of continuing education credit, 3 of which must be in ethics. W.S.1977 § 26-9-231

50 State Legal Matrix – Material Breach/First to Breach Rules for 2024

The following table provides insight into the general law of material breach for each state, including, the first to breach rule, nonpayment as material breach, and the prevention doctrine. A material breach of a contract is a breach that severely impairs the core of the contract, rendering the entire agreement unenforceable and, thus, undermining the entire purpose of the contract. In this instance, the parties to the contract fail to acquire the benefit of the bargained-for exchange. If a material breach occurs, the non-breaching party can terminate the agreement and petition a court for damages caused by the breach. In deciding whether a breach of contract constitutes a "material" breach, courts often look to guidance from the Restatement (Second) of Contracts, as well as historical court decisions arising from various contract disputes.

Please be advised that hyperlinks were added to the case citations. By clicking on the citation, you will be brought to the appropriate webpage containing an opinion of the case that will provide the relevant information for each section.

STATE	GENERAL LAW OF MATERIAL BREACH	FIRST TO BREACH RULE	NONPAYMENT AS MATERIAL BREACH	PREVENTION DOCTRINE
AL	A court should not enforce a contract when the party seeking enforcement failed to perform his part of the agreement. *Gray v. Reynolds*, 553 So.2d 79, 82 (Ala. 1989) Alabama courts have held that a material or substantial breach by one party [to a contract] excuses further performance by the other. *Nationwide Mut. Ins. Co. v. Clay*, 525 So.2d 1339, 1343 (Ala. 1987) A material breach is a breach "that touches the fundamental purposes of the contract and defeats the object of the parties in making the contract." *LNM1, LLC v. TP Props., LLC*, 296 So.3d 792 (Ala. 2019) (quoting *Sokol v. Bruno's, Inc.*, 527 So. 2d 1245, 1248 (Ala. 1988))	"'A repudiation is a manifestation by one party to the other that the first cannot or will not perform at least some of his obligations under the contract … If a party 'wrongfully states that he will not perform unless the other party consents to a modification of the contract, the statement is a repudiation.' As a general rule, 'an anticipatory repudiation gives the injured party an immediate claim to damages for total breach, in addition to discharging his remaining duties of performance.'" *Congress Life Ins. Co. v. Barstow*, 799 So.2d 931 (Ala. 2001) (quoting E. Allan Farnsworth, Contracts, pp. 630, 633-34, §§ 8.20, 8.21 (1982))	*Boyington v. Bryan*, 174 So.3d 347, 362 (Ala. Civ. App. 2014) (affirming trial court's ruling in favor of plaintiff subcontractor for a breach of contract claim against the general contractor for failure to make payments)	"It is a principle of fundamental justice that if a promisor is himself the cause of the failure of performance, either of an obligation due him or of a condition upon which his own liability depends, he cannot take advantage of the failure." *World's Exposition Shows v. B.P.O. Elks*, No. 148, 237 Ala. 329, 332, 186 So. 721, 724 (1939) (quoting 3 Williston on Contracts, section 677) **Pay-when-paid Clause:** *Fed. Ins. Co. v. I. Kruger, Inc.*, 829 So.2d 732, 737 (Ala. 2002) (holding a pay-when-paid clause did not create a condition precedent to payment but was rather merely a timing mechanism for the final payment under the subcontract).
AK	A material breach bars a party from enforcing an agreement. See *Dickerson v. Williams*, 956 P.2d 458, 463 (Alaska 1998). To prove a breach material, a party has to show that the breach prejudiced him or her.	If a party fails to perform its own obligations under contract, and no valid excuse for nonperformance exists, performance obligations of the other party are	State-specific case law not located for this issue.	Every contract imposes upon each party a duty of good faith and fair dealing in its performance or its enforcement. *Mitford v. de Lasala*, 666 P.2d 1000, 1006 (Alaska 1983)

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STATE	GENERAL LAW OF MATERIAL BREACH	FIRST TO BREACH RULE	NONPAYMENT AS MATERIAL BREACH	PREVENTION DOCTRINE
AK cont.	*Id.* at 463, n. 8 (citing Restatement (Second) of Contracts §§ 241(a)-(b), 242(a)-(b)) Whether a breach is material is a question "of degree, centering on the reasonable expectations of the parties, and a material breach is one that will or may result in the other party not receiving substantially what that party bargained for." *State v. Alaskan Crude Corp.*, 441 P.3d 393, 401 (Alaska 2018) Ordinarily the question of materiality must be left to the fact finder, but in some cases the breached provision is so obviously central to the purpose of the contract that materiality can be determined as a matter of law. *Id*	discharged. *Grace v. Insur. Co. of N. Amer.*, 944 P.2d 460, 464 n.8 (Alaska 1997)		(quoting Restatement (Second) of Contracts § 205 (1981)) The "prevention doctrine is subsumed in" the implied covenant of good faith and fair dealing. *Prichard v. Clay*, 780 P.2d 359, 363 (Alaska 1989)(citing *Mitford v. de Lasala*, 666 P.2d at 1006)
AR	As a general rule, the failure of one party to perform its contractual obligations releases the other party from its obligations. *Stocker v. Hall*, 269 Ark. 468 (1980) Where there is a material breach of contract, substantial nonperformance and entire or substantial failure of consideration, the injured party is entitled to rescission of the contract and restitution and recovery back of money paid. *Econ. Swimming Pool Co. v. Freeling*, 236 Ark. 888, 891 (1963) A material breach of a contract occurs when there is a failure to perform an essential term or condition that substantially defeats the purpose of the contract for the other party. *Washington v. Kingridge Enters.*, 450 S.W.3d 685, 688 (Ark. Ct. App. 2014)	The party who first breaches a contract is in no position to take advantage of a later breach by the other party. *Stocker v. Hall*, 269 Ark. 468 (1980)	A subcontractor's right to abandon his contract for nonpayment of a requested installment depends upon which party was actually in default at the time. *Royal Manor Apartments v. Powell*, 258 Ark. 166, 167 (1975) In *Royal Manor Apartments v. Powell*, Professional Builders & Realty Company—a corporation owned by Leonard Coyle—was the general contractor engaged in the construction of the Royal Manor Apartments. 258 Ark. 166, 167 (1975). Coyle orally subcontracted the foundation and carpentry work to B.J. Powell, for the total sum of $112,000. *Id.* Under the agreement, Powell was entitled to request part payments or "draws" as the work progressed. *Id.* Powell's first three draws—totaling $52,148—were duly paid. *Id.* Coyle, however, refused to honor the fourth request, taking the position that the amount sought was excessive and that Powell was not properly performing his contract. *Id* Powell then quit, brought this	In *Willbanks v. Bibler*, the Arkansas Supreme Court held that "he who prevents the doing of a thing shall not avail himself of the nonperformance he has occasioned." 216 Ark. 68, 224 S.W.2d 33 (1949)

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STATE	GENERAL LAW OF MATERIAL BREACH	FIRST TO BREACH RULE	NONPAYMENT AS MATERIAL BREACH	PREVENTION DOCTRINE
AR cont.			suit for breach of contract and sought damages of $21,712.59 as the balance due for his past performance. *Id.* The trial court ruled in Powell's favor and awarded Powell a judgment of $16,290.22. *Id.* Coyle appealed but the appellate court affirmed the trial court's ruling. *Id.* at 170	
AZ	A material breach occurs where an oblige fails to receive the substantial benefit of the bargain due to the failure to perform or defective performance. *Zancanaro v. Cross*, 85 Ariz. 394, 399 (1959) Framework contained in Restatement (Second) of Contracts § 241 should be applied in determining triviality or immateriality of a breach. *Foundation Dev. Corp. v. Loehmann's*, 163 Ariz. 438 (Ariz. 1990) A material breach excuses the non-breaching party from performing under the contract; a non-material breach merely permits a claim for damages. *Chartone, Inc. v. Bernini*, 207 Ariz. 162, 170 (App. 2004) One of the remedies available at common law upon a material breach of contract is the right to cease performance and recover the profits which would have been made had the entire contract been performed. *Zancanaro v. Cross*, 85 Ariz. 394, 399 (1959) Arizona courts have also held that an uncured material breach of contract relieves the non-breaching party from the duty to perform and can discharge that party from the contract. *Murphy Farrell Dev., LLLP v. Sourant*, 229 Ariz. 124, 133 (Ct. App. 2012)	State-specific case law not located for this issue.	*Darrell T. Stuart Contractor of Arizona v. Bridges*, 406 P.2d 413 (Ariz. Ct. App. 1965). (affirming trial court's ruling in favor of sub-subcontractor's claim for breach of contract against subcontractor for failure to make timely payments) *Watson Constr. Co. v. Reppel Steel & Supply Co.*, 598 P.2d 116, 118 (Ariz. Ct. App. 1979) (affirming trial court's ruling of summary judgment in favor of steel subcontractor's claim for breach of contract against general contractor for failure to make timely payments)	The doctrine of prevention pertains to the prevention or hindrance of the performance of a condition not to be performed by the promisor, when the promisor has no right under the contract to hinder or interfere with such performance. *Sec. Nat'l Life Ins. Co. v. Pre-Need Camelback Plan*, 19 Ariz. App. 580, 582–83 (1973) Arizona courts have followed the Restatement of Contracts relative to this problem of contract prevention. *Id.* at 582. See Restatement (Second) of Contracts § 295

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STATE	GENERAL LAW OF MATERIAL BREACH	FIRST TO BREACH RULE	NONPAYMENT AS MATERIAL BREACH	PREVENTION DOCTRINE
CA	A material breach of one aspect of a contract generally constitutes a material breach of the whole contract." *Brown v. Grimes*, 192 Cal. App. 4th 265, 278 (2011) Furthermore, California courts have held that "[w]hen a party's failure to perform a contractual obligation constitutes a material breach of the contract, the other party may be discharged from its duty to perform under the contract." *See id*. at 277	"One who himself breaches a contract cannot recover for a subsequent breach by the other party." *Silver v. Bank of America*, 47 Cal. App. 2d 639, 645 (1941)	State-specific case law not located for this issue.	Where a party's breach by non-performance contributes materially to the non-occurrence of a condition of one of his duties, the non-occurrence is excused. *Stephens & Stephens XII, LLC v. Fireman's Fund Ins. Co.*, 231 Cal. App. 4th 1131, 1144 (2014)
CO	Whether there has been a material breach of contract turns upon the importance or seriousness of the breach and the likelihood that the injured party nonetheless received, or will receive, substantial performance under the contract. *Interstate Investments, LLC v. Vail Valley Consolidated Water Dist.*, 12 P.3d 1224, 1228 (Colo. App. 2000) A breach that is material goes to the root of the mater or essence of the contract. *Id.* at 1229 (internal quotes and citations omitted). In deciding whether a breach is material, the extent to which an injured party would still obtain substantial benefit from the contract, and the adequacy of compensation in damages for the breach, should be considered. *Id* If one party has failed to perform the bargained for exchange, the other party may be relieved of a duty to continue its own performance, where there is a complete failure of consideration. *Converse v. Zinke,* 635 P.2d 882, 887 (Colo. 1981). A partial failure of consideration may be a defense pro tanto where the contract and the consideration are apportionable and the amount of the failure may be fairly ascertained by computation. *Id*	Under contract law, a party to a contract cannot claim its benefit where he is the first to violate its terms. *Coors v. Sec. Life of Denver Ins. Co.*, 112 P.3d 59, 64 (Colo. 2005)	In *Flagstaff Enters. Constr. v. Snow*, the parties entered into an oral agreement for builder to sell the owners land and build a home for them on the land. 908 P.2d 1183, 1184 (Colo. App. 1995). The appellate court affirmed the trial court's ruling that the owners breached their agreement to make monthly payments on the $30,000 balance and owed builder $34,722.40. *Id*	When a promisor or party is themselves a cause of failure of performance of a contract condition, they cannot take advantage of that failure. *Montemayor v. Jacor Communications, Inc.*, 64 P.3d 916, 920 (Colo. App. 2002) "He who prevents a thing from being done may not avail himself of the nonperformance which he has himself occasioned; or, if the performance of an obligation is prevented by one of the parties to the contract, the party thus prevented from discharging his part of such obligation is to be treated as though he had performed it." *Empson Packing Co. v. Clawson*, 95 P. 546, 548–49 (Colo. 1908) "The prevention doctrine is a generally recognized principle of contract law according to which if a promisor prevents or hinders fulfillment of a condition to his performance, the condition may be waived or excused." *New Design Constr. Co. v. Hamon Contractors Inc.*, 215 P.3d 1172, 1184 (Colo. App. 2008)(quoting *Moore Bros. Co. v. Brown & Root, Inc.*, 207 F.3d 717, 725 (4th Cir. 2000)

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STATE	GENERAL LAW OF MATERIAL BREACH	FIRST TO BREACH RULE	NONPAYMENT AS MATERIAL BREACH	PREVENTION DOCTRINE
CT	Under the law, a performance will be excused only if there is an uncured material breach of the contract. See *Bernstein v. Nemeyer,* 213 Conn. 665, 672 (1990) A plaintiff can advance a material breach of contract claim so as to excuse the requirement that a plaintiff has fully performed his obligations under the contract in order to enforce its provisions. See *Strouth v. Pools by Murphy & Sons, Inc.*, 79 Conn. App. 55 (2003) A defendant can advance the same claim in defense of a breach of contract claim, by averring that the plaintiff was in material uncured breach, thus excusing the defendant's further performance under the contract. See *Shah v. Cover-It Inc.*, 86 Conn. App. 71, 77 (2004)	*Bernstein v. Nemeyer,* 213 Conn. 665, 672-73 (1990) ("It follows from an uncured material failure of performance that the other party to the contract is discharged from any further duty to render performances yet to be exchanged.")	State-specific case law not located for this issue.	[U]nder the prevention doctrine, if a party to a contract "prevents, hinders, or renders impossible the occurrence of a condition precedent to his or her promise to perform, or to the performance of a return promise, [that party] is not relieved of the obligation to perform, and may not legally terminate the contract for nonperformance." *Blumberg Assocs. Worldwide v. Brown & Brown of Conn., Inc.*, 311 Conn. 123, 176 (Conn. 2014) (citing 13 R. Lord, Williston on Contracts § 39:3 (4th Ed. 2000)) *Id.* see also 2 Restatement (Second), supra, § 245, p. 258 ("[w]here a party's breach by non-performance contributes materially to the non-occurrence of a condition of one of his duties, the non-occurrence is excused")
DC	Under the common law rule of discharge, one party's material breach of a contract will excuse the other party's performance. *Noble Energy, Inc. v. Salazar,* 671 F.3d 1241 (D.C. Cir. 2012)	In contract actions, if one party commits a material breach, the other party may generally justify nonperformance even if, at the time of its own nonperformance, the second party was unaware of the first party's material breach. See *American Federation of Teachers, AFL-CIO v. Federacion De Maestros de Puerto Rico*, 2008 WL 2078964 (quoting *Mardell v. Harleysville Life Ins. Co.*, 31 F.3d 1221, 1231 N. 16 (3rd Cir. 1995)	State-specific case law not located for this issue.	Under the prevention doctrine, one who unjustly prevents the performance or the happening of a condition of his own promissory duty thereby eliminates it as such a condition. He will not be permitted to take advantage of his own wrong, and to escape from liability for not rendering his promised performance by preventing the happening of the condition on which it was promised." *Shear v. Natl. Rifle Ass'n of Am.*, 606 F.2d 1251 (D.C. Cir. 1979) (quoting 3A Corbin on Contracts s 767 at 540 (1961)
DE	Under Delaware law, for a breach to be material, it must go to the essence of the contract and be of sufficient importance to justify non-performance by the non-breaching party. *Norfolk S. Ry. Co. v. Basell USA Inc.*, 512 F.3d 86 (3d Cir. 2008)	As a general rule, the party first guilty of a material breach of contract cannot complain if the other party subsequently refuses to perform. *Hudson v. D.V. Mason Contractors, Inc.*, 252 A.2d 166, 170 (Super. Ct. 1969)	One's failure to pay a progress payment justifies suspension and termination of the subcontract by a subcontractor. *United States ex rel. Endicott Enters. v. Star Bright Constr. Co.*, 848 F. Supp. 1161, 1169 (D. Del. 1994)	State-specific case law not located for this issue.

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STATE	GENERAL LAW OF MATERIAL BREACH	FIRST TO BREACH RULE	NONPAYMENT AS MATERIAL BREACH	PREVENTION DOCTRINE
FL	A contracting party, faced with a material breach by the other party, may treat the contract as totally breached and stop performance. *Miami Beach v. Carner*, 579 So.2d 248, 251 (Fla. 3d DCA 1991) To determine whether the conduct rose to the level of a "material breach," courts must look to the language of the contract and measure the breaching party's shortfall or failure in performance. *JF & LN, LLC v. Royal Oldsmobile-GMC Trucks Co.*, 292 So.3d 500, 509 (Fla. 2d DCA 2020) "To constitute a vital or material breach a defendant's nonperformance must be such as to go to the essence of the contract; it must be the type of breach that would discharge the injured party from further contractual duty on his part." *Id.* (quoting *Beefy Trail, Inc. v. Beefy King Intern., Inc.*, 267 So.2d 853, 857 (Fla. 4th DCA 1972))	In order for the "First to Breach" rule to apply, the following elements must converge: (1) a first breach of contract; (2) the breach must be material or substantial; (3) the contract provision breached must be a dependent covenant; and (4) the non-breaching party must not have waived the right to enforce the prior breach against the opposing party. See *Northern Trust Invs., N.A. v. Domino*, 896 So.2d 880, 882 (Fla. 4th DCA 2005) (holding that "[a] material breach of the agreement allows the non-breaching party to treat the breach as a discharge of his contract liability."); See *Richland Towers, Inc. v. Denton*, 139 So.3d 318, 321 (Fla. 2d DCA 2014) (holding that "[i]n determining the existence of a prior breach, the circuit court necessarily had to determine the parties' obligations under the contracts were dependent covenants.")	State-specific case law not located for this issue.	The doctrine of prevention of performance applies, generally, when a party to a contract is ready, willing and able to perform, but the other party prevents him from performing by imposing obstacles not contemplated within the contract. *Buckley Towers Condo. Inc v. QBE Ins. Corp.*, 395 F. App'x 659, 663 (11th Cir. 2010). Under Florida law, the doctrine of prevention of performance may be applied when one party to a contract prevents another from performing its obligations under a contract; it bars the preventing party from availing himself of the other party's nonperformance. *Id.* at 662
GA	A contract may be rescinded for substantial nonperformance or material breach. *Calabro v. State Med. Educ. Bd.*, 283 Ga. App. 113, 114 (2006) The general rule is that a contract may be rescinded for substantial nonperformance or breach, and ordinarily a material breach warrants rescission. *Cutcliffe v. Chesnut*, 122 Ga. App. 195, 201 (1970)	"Generally, one injured by a breach of contract has the election to rescind or continue the contract and recover damages for the breach." *Forsyth County v. Waterscape Services, LLC*, 303 Ga. App. 623, 633 (2010) (citation omitted). "But to justify rescission, there must be a 'material nonperformance of breach' by the opposing party." *Id.* "If the breach is not material, the party is limited to a claim for damages and cannot rescind the contract." *Id*	*Beacon Indus., Inc. v. Vanderbunt Concrete, Ltd.*, 323 S.E.2d 871, 873 (Ga. Ct. App. 1984) (affirming the trial court's conclusion that plaintiff subcontractor was entitled to recover against defendants $11,487.92 on breach of contract claim for defendants' failure to make payments)	Under Georgia law, "[i]f the nonperformance of a party to a contract is caused by the conduct of the opposite party, such conduct shall excuse the other party from performance." *Progressive Elec. Servs. V. Task Force Constr., Inc.*, 327 Ga. App. 608, 614 (2014) (quoting Ga. Code Ann. § 13–4–23))

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STATE	GENERAL LAW OF MATERIAL BREACH	FIRST TO BREACH RULE	NONPAYMENT AS MATERIAL BREACH	PREVENTION DOCTRINE
HI	"A seller's material breach of a contract excuses the buyer's nonperformance." See *Southwest Slopes v. Lum*, 81 Haw. 501, 508 (1996) It ©s basic contract law that one party cannot insist upon the performance of a contract or a provision thereof where he, himself, is guilty of a material or substantial breach of that contract or provision. *Windward Partners v. Lopes*, 3 Haw. App. 30, 33 (1982) It is well established that a material breach by one party excuses the other party from further performance under the contract. *Bischoff v. Cook*, 118 Haw. 154, 164 (Ct. App. 2008) (citing *Ward v. Am. Mut. Liab. Ins. Co.*, 15 Mass. App. Ct. 98, 100 (1983))	State-specific case law not located for this issue.	State-specific case law not located for this issue.	It is an implied condition of every contract that one party will not prevent performance by the other party, and thus one party who prevents another party from performing under the contract cannot complain about or recover damages from the non-performance which he himself has brought about. To prevail on the affirmative defense, Plaintiffs must prove that their non-performance of the contract was through no fault of the Plaintiffs and that Defendant, without legal excuse, actually prevented Plaintiffs from performing. *Stanford Carr Dev. Corp. v. Unity House, Inc.*, 111 Hawai`i 286, 304, 141 P.3d 459, 477 (2006) A condition precedent can be waived or excused if the promisor's conduct prevents or hinders fulfillment of the condition. See *Ikeoka v. Kong*, 47 Haw. 220, 228, 386 P.2d 855, 860 (1963)
ID	"If a breach of contract is material, the other party's performance is excused." *Rice v. Sallaz*, 159 Idaho 148, 154, 357 P.3d 1256 (2015) (quoting *J.P. Stravens Planning Assocs., Inc. v. City of Wallace*, 129 Idaho 542, 545 (Ct. App. 1996)) The Idaho Court of Appeals has defined a material breach of contract as follows: A material breach of contract is a breach so substantial and fundamental that it defeats the object of the parties in entering into the contract. There is no material breach of contract where substantial performance has been rendered. Substantial performance is performance which, despite deviation from the contract or some omission, provides the important and essential benefits of the contract to the promisee. *State v. Chacon*, 146 Idaho 520, 523, 198 P.3d 749 (Ct. App. 2008) (quoting *Roberts v. Wyman*, 135 Idaho 690, 697 (Ct. App. 2000)	A party who commits the first breach of contract cannot maintain an action against the other for a subsequent failure to perform. See *Nelson v. Jardine*, 46 Idaho 82, 267 P. 447 (1928)	In *Cuddy Mountain Concrete v. Citadel Constr.*, Cuddy Mountain and Citadel entered into a written contract titled "Subcontract Agreement." 121 Idaho 220, 222 (Ct. App. 1992). Cuddy Mountain agreed to provide labor and all incidental materials to build the concrete footings, pads, foundation walls, and all concrete flatwork for the construction of a Shopko store in Lewiston. *Id.* Citadel agreed to pay Cuddy Mountain $ 92,209 for its work. *Id.* On May 18, Citadel terminated the agreement. *Id.* At 223. Cuddy Mountain later brought suit against Citadel on breach of contract claims. *Id.* After a trial, a jury awarded Cuddy Mountain damages on their breach of contract claims. *Id.* At 224. Citadel appealed, but the appellate court affirmed the jury's award. *Id.* At 232 In *Kelly v. Wagner*, Kelly—a licensed electrical contractor doing business as CHS Construction—completed a list	The doctrine of prevention of performance excuses a party from fulfilling his contractual obligations when the party to whom the obligation is owed unlawfully prevents the first party from tendering performance. *Ferguson v. City of Orofino*, 131 Idaho 190, 193, 953 P.2d 630 (Ct. App. 1998).(quoting *Sullivan v. Bullock*, 124 Idaho 738, 741-742, 864 P.2d 184 (Ct. App. 1993) The doctrine of prevention is an equitable doctrine designed to excuse non-performance by the non-breaching party. *Sullivan v. Bullock*, 124 Idaho 738, 744, 864 P.2d 184 (Ct. App. 1993) The doctrine is intended to provide a mechanism by which the party desiring to perform may establish that the other party has breached the contract before its completion, and may seek recompense for that breach. *Id*

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STATE	GENERAL LAW OF MATERIAL BREACH	FIRST TO BREACH RULE	NONPAYMENT AS MATERIAL BREACH	PREVENTION DOCTRINE
ID cont.	Material breach has also been defined as "more than incidental and touches the fundamental purpose of the contract, defeating the object of the parties entering into the agreement." *Rice*, 159 Idaho at 154 (quoting *Borah v. McCandless,*147 Idaho 73, 79, 205 P.3d 1209, 1215 (2009))		of repairs and other remodeling projects needed by Pamela Wagner. 161 Idaho 906, 907 (2017). On February 27, 2009, Kelly filed a complaint with the district court alleging that Wagner had failed to pay certain invoices in an amount exceeding $10,000. *Id.* At 908. The district court ruled that Wagner had failed to pay Kelly for work performed in the amount of $9,429.64. *Id.* At 909. Wagner appealed, but the Idaho Supreme Court affirmed the district court's ruling in favor of Kelly. *Id.* At 910	
IL	A material breach by one party to a contract discharges the other party from performing its obligations. *Quality Components Corp. v. Kel-Keef Enters.*, 316 Ill. App. 3d 998, 1016 (Ct. App. 2000) Under the material breach doctrine, "[a] party to a contract is discharged from his duty to perform where there is a material breach of the contract by the other party." *Dragon Constr. V. Parkway Bank & Tr.*, 287 Ill. App. 3d 29, 33 (Ct. App. 1997) (quoting *Susman v. Cypress Venture,* 187 Ill. App. 3d 312, 316 (Ct. App. 1989)) A material breach occurs where The covenant not performed is of such importance that the contract would not have been made without it. *Id.* (citing *Haisma v. Edgar*, 218 Ill.App.3d 78, 86, 161 Ill.Dec. 36, 41, 578 N.E.2d 163, 168 (1991)) Courts analyze five factors in determining whether a breach is material: "(a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer	A material breach of a contract by a party will justify nonperformance by the non-breaching party. *Sahadi v. Cont'l Illinois Nat. Bank & Tr. Co. of Chicago*, 706 F.2d 193, 196 (7th Cir. 1983) Once a material breach has occurred, the injured party is no longer required to accept performance by the breaching party on new or modified terms. *InsureOne Indep. Ins. Agency, LLC v. Hallberg,* 2012 IL App (1st) 092385, ¶ 87, 976 N.E.2d 1014, 1035 Under the "first to breach rule," a party to a contract may not claim its benefit when that party was the first to violate it. *Palmaris Imaging, L.L.C. v. Belleville Imaging, Inc.*, No. 04-CV-077-WDS, 2005 U.S. Dist. LEXIS 10666, at *4 (S.D. Ill. May 12, 2005) (quoting *R.J.S. Sec., Inc. v. Command Sec. Servs.*, 101 S.W.3d 1, 18–19 (Mo. Ct. App. 2003)) The fact that a party may have been the first to breach does not end the analysis, because only if the breach is material, will	*Watson v. Auburn Iron Works, Inc.*, 23 Ill. App. 3d 265, 269, 318 N.E.2d 508, 511 (1974) (Failure to make monthly installments on a construction contract was properly viewed as a material breach, allowing plaintiff to suspend work until payment was received.). In *Allstate Contractors v. Marriott Corp.*, plaintiff Allstate Contractors, Inc. brought an action for breach of a construction subcontract between itself and defendant Bulley & Andrews, Inc., and foreclosure of a mechanic's lien against property owned by defendant Marriott Corporation. 273 Ill. App. 3d 820, 821 (1995). Plaintiff's breach of contract claim was based on non-payment by defendant. *Id.* At 824.. After trial, the jury returned a verdict in favor of plaintiff on the complaint and counterclaim, and awarded $ 328,000 in damages. *Id.* At 821. Defendant appealed, but the appellate court affirmed the trial court's ruling. *Id.* At 830	A party to a contract may not complain of nonperformance by the other party where that performance is prevented by his own actions. *Barrows v. Maco, Inc.,* 94 Ill. App. 3d 959, 966, 419 N.E.2d 634, 639 (1981) A party who deliberately prevents the fulfillment of a condition on which his liability under a contract depends cannot take advantage of his own conduct and claim that the failure of the fulfillment of the condition defeats his liability. *Eggan v. Simonds*, 34 Ill. App. 2d 316, 320, 181 N.E.2d 354, 356 (Ill. App. Ct. 1962)

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STATE	GENERAL LAW OF MATERIAL BREACH	FIRST TO BREACH RULE	NONPAYMENT AS MATERIAL BREACH	PREVENTION DOCTRINE
IL cont.	forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; and (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing." *Commonwealth Edison Co. v. Elston Ave. Properties, LLC*, 2017 IL App (1st) 153228, ¶ 19. (citing to *Rubloff CB Machesney, LLC v. World Novelties, Inc.*, 363 Ill.App.3d 558, 564, 300 Ill.Dec. 464, 844 N.E.2d 462 (2006) (citing Restatement (Second) of Contracts § 241 (1981))	the breach excuse the other party's performance. *Id.* (citing *R.J.S. Sec., Inc.* 101 S.W.3d at 18–19) If the breach is not material, then the aggrieved party may sue for partial breach but may not cancel the agreement. *Id.* (citing *R.J.S. Sec., Inc.* 101 S.W.3d at 19)		
IN	[W]here a party is in material breach of a contract, he may not maintain an action against the other party or seek to enforce the contract against the other party if that party later breaches the contract. *Wilson v. Lincoln Fed. Sav. Bank*, 790 N.E.2d 1042, 1048 (Ind. Ct. App. 2003) Indiana courts employ the language of "a breach of the contract is a material one which goes to the heart of the contract" when considering material breach issues. *Stephenson v. Frazier*, 399 N.E.2d 794, 798 (Ind. Ct. App. 1980) This follows the principle (from Ohio) that, in cases where the prior breach doctrine applies, the "non-breaching party may select whether to (1) terminate the contract or (2) continue on with the contract, so long as the non-breaching party also fulfills its obligations under the contract to avoid an inequitable result". See *Watson Water Co v. Indiana-American Water Co.*, 85 N.E.3d 840, 849 (Ind. Ct. App. 2017) (citing *Land Dev. Ltd v. Primrose Mgmt. L.L.C.*, 193 Ohio App. 3d 465 (2011))	"When one party to a contract commits the first material breach of that contract, it cannot seek to enforce the provisions of the contract against the other party if that other party breaches the contract at a later date." See *Coates v. Heat Wagons, Inc.*, 942 N.E.2d 905, 917 (Ind. Ct. App. 2011) A party first guilty of a material breach of contract may not maintain an action against the other party or seek to enforce the contract against the other party should that party subsequently breach the contract. *Licocci v. Cardinal Assocs., Inc.*, 492 N.E.2d 48, 52 (Ind. Ct. App. 1986)	The Indiana Court of Appeals has held that interest on an account may be awarded where monthly statements were sent and no objection to the statements were made until several months later. *Burns Constr., Inc. v. Valley Concrete*, 322 N.E.2d 404, 406 (Ind. Ct. App. 1975)	A promisor cannot rely upon the existence of a condition precedent to excuse his performance where the promisor, himself, prevents performance of the condition. *Billman v. Hensel*, 391 N.E.2d 671, 673 (Ind. App. 3d Dist. 1979) *See* 5 Williston On Contracts (3rd Ed.) "It is a well–established principle of law that the actions and conduct of one party to a contract which prevents the other from performing his part, excuses nonperformance." *Beatty v. Miller et al.* (1911) 47 Ind. App. 494, 499, 94 N. E. (quoting *Brodt v. Duthie*, 186 N.E. 893, 896 (Ind. App. 1933))

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IA	[O]nce one party to a contract breaches the agreement, the other party is no longer obligated to continue performing his or her own contractual obligations. *Kelly v. Iowa Mut. Ins. Co.*, 620 N.W.2d 637, 641 (Iowa 2000) (citing *Van Oort Constr. Co. v. Nuckoll's Concrete Serv., Inc.*, 599 N.W.2d 684, 692 (Iowa 1999))	The "first to breach" rule holds that "a party to a contract cannot claim its benefit where he is the first to violate it." *Cordry v. Vanderbilt Mortg. & Fin., Inc.*, 445 F.3d 1106, 1113 (8th Cir. 2006) (quoting *Classic Kitchens & Interiors v. Johnson*, 110 S.W.3d 412, 417 (Mo. Ct. App. 2003)	Iowa follows the Restatement (Second) of Contracts 241 cmt a, (1981) and looks to five circumstances to determine if a "material" breach occurred. In *Newton Mfg. v Clemmons*, 868 N.W.2d 202, 2015 WL 3624338, the Iowa Court of Appeals held non-payment of the last two months of commission earned as the part of a three year contract was not a material breach, relying on a "substantial performance" theory. *Id.* However, see special concurrence, in which a Justice noted "substantial performance" shouldn't apply to cases involving payment of money, only in cases involving services. *Id*	Restatement (Second) of Contracts § 245 (1981) provides: "Where a party's breach by non-performance contributes materially to the non-occurrence of a condition of one of his duties, the non-occurrence is excused." *Cathedral Square Partners, Ltd. P'ship v. S.D. Hous. Dev. Auth.*, 875 F. Supp. 2d 952, 958 (D.S.D. 2012) In other words, the doctrine of prevention provides "where a party to a contract is the cause of the failure of performance of the obligation due him or her, that party cannot in any way take advantage of that failure." *Longaker v. Bos. Sci. Corp.*, 715 F.3d 658, 666 (8th Cir. 2013) (quoting 13 Richard A. Lord, Williston on Contracts § 39:3 (4th ed. 2000)) The rationale behind the doctrine is two-fold. The first rationale is equitable. *Id.* It is unfair for one who prevents the fulfillment of a condition precedent to rely on the non-occurrence of that condition to defeat his or her liability. *Id.* (citing *Omaha Pub. Power Dist. v. Emp'rs Fire Ins. Co.*, 327 F.2d 912, 916 (8th Cir. 1964)). Second, it emanates from the promise of good-faith performance, which the law implies in every contract. *Id.* (citing *Zobel & Dahl Constr. v. Crotty*, 356 N.W.2d 42, 45 (Minn. 1984))
KS	If a party breaches a contract, the other party has a right to cancel the contract only if it was a material breach. *M & W Development, Inc. v. El Paso Water Co.*, 634 P.2d 166, 169 (Kan. Ct. App. 1981) A material breach is one where the promisee receives something substantially less or different than what he or she bargained for. *Almena State Bank v. Enfield*, 954 P.2d 724, 727 (Kan. Ct. App. 1998) Additionally, where the failure to perform is so substantial as to defeat the object of the parties in making the agreement, the	"A party is not liable for a material failure of performance if it can show that the other party committed a prior material breach of the contract; in such event, the prior breach discharged the first party's own duty to perform." *Fusion, Inc. v. Nebraska Aluminum Castings, Inc.*, 95-2366-JWL, 1997 WL 51227, at *15 (D. Kan. Jan. 23, 1997)	In *Lindsey Masonry Co. v. Murray & Sons Constr. Co.*, Blue Valley School District decided to build four buildings. 390 P.3d 56, 59 (Kan. Ct. App. 2017). Blue Valley picked Murray as the general contractor on each of these projects. *Id.* Lindsey Masonry became Murray's masonry subcontractor for all four buildings. *Id.* The working relationship between Murray and Lindsey deteriorated, and Lindsey walked off the Blue Valley #10 job before completing the masonry work. *Id.* Lindsey filed a lawsuit seeking money from Murray,	The Kansas Supreme Court has explained the prevention doctrine as follows: "While the condition precedent must have happened before the contract can be enforced or relief sought in the way of specific performance, the party who has demanded the condition precedent cannot hinder, delay or prevent its happening for the purpose of avoiding performance of the contract." *M W., Inc. v. Oak Park Mall, L.L.C.*, 234 P.3d 833, 847 (Kan. Ct. App. 2010) (quoting *Wallerius v. Hare*, 399 P.2d 543, 547 (Kan. 1965)). Kansas courts have stated "[t]he rule is clear and well settled, and founded in absolute justice, that a party to a

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KS cont.	breach is material, and rescission or cancellation of the contract is warranted. *Federal Land Bank of Wichita v. Krug*, 856 P.2d 111, 115 (Kan. 1993)		and claimed damages for money due on each of the projects, asserting alternative theories of recovery based on breach of contract, promissory estoppel, and quantum meruit. *Id.* at 59-60. The trial court ruled in favor of Lindsey and awarding damages to them for their breach of contract claims. *Id.* at 60-61. Murray appealed, but the appellate court affirmed the trial court's decision. *Id.* at 71	contract cannot prevent performance by another and derive any benefit, or escape any liability, from his own failure to perform a necessary condition." *Id*
KY	"No principle in the law of contracts is better settled than that the breach of an entire and indivisible contract in a material particular excuses further performance by the other party and precludes an action for damages on the unexecuted part of the contract." See *O'Bryan v. Mengel Co.*, 224 Ky. 284, 288 (1928) Under Kentucky law, a material breach by one contracting party to a contract gives the other contracting party the right not to perform without being liable for breach. See *Dalton v. Mullins*, 293 S.W.2d 470 (Ky. 1956)	[H]e who first breaches a contract must bear the liability for its nonperformance. *Dalton v. Mullins*, 293 S.W.2d 470, 476 (Ky. 1956). In other words, the party "first guilty of a breach of contract cannot complain if the other party thereafter refused to perform." See *Id* "[T]he party first guilty of a breach of contract cannot complain if the other party thereafter refuses to perform.... [H]e who first breaches a contract must bear the liability for its nonperformance." *Mostert v. Mostert Grp., LLC*, 606 S.W.3d 87, 94 (Ky. 2020) (quoting *Dalton v. Mullins*, 293 S.W.2d 470, 476 (Ky. 1956))	Where defendant breaches contract by refusing payment during progress of work, preventing plaintiff's completing it, he may sue for breach and recover on contract, so far as performed, and for loss of profits. *Johnson v. Tackitt*, 173 Ky. 406, 191 S.W. 117 (1917) The failure to make payment constituted a breach of contract which terminated same and operated as an abandonment. *Ream v. Fugate*, 265 Ky. 463, 97 S.W.2d 11, 13 (1936)	The Sixth Circuit follows the doctrine of prevention, which states "a contracting party whose unjustified action prevents the other party from performing may not claim that the other party has not performed." *Flagstar Bank, FSB v. Estrella*, No. 13-cv-13973, 2014 U.S. Dist. LEXIS 59826, at *7 (E.D. Mich. Apr. 30, 2014) (quoting *Iron Workers' Local No. 25 Pension Fund v. McGuire Steel Erection, Inc.*, 352 F. Supp. 2d 794, 801-02 (E.D. Mich. 2004))
LA	"[W]here one party substantially breaches a contract, the other party to it has a defense and an excuse for nonperformance." *LAD Servs. of La., L.L.C. v. Superior Derrick Servs., L.L.C.*, 167 So.3d 746, 755 (La. Ct. App. 2014) (quoting *Commerce Ins. Agency, Inc. v. Hogue*, 618 So.2d 1048, 1052 (La.App. 1st Cir.1993), writ denied, 626 So.2d 1171 (La.1993)) One party's substantial breach, which would preclude his enforcement of the contract, is an affirmative defense that may	"[W]here a material breach of the contract occurs, a party may have grounds to seek judicial dissolution of the contract and thereby be relieved of the lien waiver. *Brightergy Louisiana, LLC v. GalCan Elec. & Gen. Contracting, LLC*, 2021 WL 253830, at *3 (E.D. La. Jan. 26, 2021) Additionally, "according to the circumstances," when an obligor fails to perform, the obligee may regard	Interpreting Louisiana law, the United States Fifth Circuit Court of Appeals has held that a general contractor's nonpayment may entitle the subcontractor to dissolve their agreement. *Shaw Constructors v. ICF Kaiser Eng'rs, Inc.*, 395 F.3d 543–45 (5th Cir. 2004)	Louisiana does not recognize the "prevention doctrine" as it is commonly known in other jurisdictions. However, the following Civil Code provision does provide some support for this legal theory: An obligee may not recover damages when his own bad faith has caused the obligor's failure to perform or when, at the time of the contract, he has concealed from the obligor facts that he knew or should have known would cause a failure. La. Civ. Code art. 2003 However, "an obligor cannot establish an obligee has

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LA cont.	be asserted by the other party. The party asserting the affirmative defense has the burden of proving it by a preponderance of the evidence. *Id.* at 756 A breach is substantial if it is an actual cause of the other party's "failure to comply with its obligations." *Id*	the contract as dissolved. *Id.* (citing La. Civ. Code art. 2013)		contributed to the obligor's failure to perform unless the obligor can prove the obligee itself failed to perform duties owed under the contract." *See Lamar Contractors, Inc. v. Kacco, Inc.*, 189 So. 3d 394, 398-99 (La. 2016)
ME	A material breach "is a nonperformance of a duty that is so material and important as to justify the injured party in regarding the whole transaction as at an end." *Associated Builders, Inc. v. Coggins*, 722 A.2d 1278, 1280 (Me. 1999); see also *Cellar Dwellers*, 2010 ME 32, ¶ 16, 993 A.2d 1 The Restatement (second) of Contracts provides five factors for determining a material breach, which Maine has adopted: (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform . . . will suffer forfeiture; (d) the likelihood that the party failing to perform . . . will cure his failure . . .; (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing. *Augusta Fuel Co. v. Bond Safeguard Ins. Co.*, 502 F. Supp. 2d 124, 136 (D. Me. 2007) (quoting *Crowe v. Bolduc*, 334 F.3d 124, 138 (1st Cir. 2003)); see also *Acoustic Processing Technology, Inc. v. KDH Electronic Systems, Inc.* 697 F. Supp.2d 146 (2010)	State-specific case law not located for this issue.	In *Morin Bldg. Prods. Co. v. Atl. Design & Constr. Co.*, Atlantic was hired as a general contractor to build a warehouse building. 615 A.2d 239, 240 (Me. 1992). Atlantic hired Morin to furnish and install the exterior metal building panels. *Id.* After receiving no payment from Atlantic, Morin filed a complaint against Atlantic seeking damages for its alleged breach of the contract with Morin by Atlantic's failure to pay Morin. *Id.* Atlantic defended its nonpayment by claiming that Morin supplied defective material or substandard installation. *Id.* Based on the evidence submitted to it, the trial court found that Morin substantially performed his contract with Atlantic, that the claimed defects were caused by the misaligned structural steel installed by another contractor, and that Morin was excused from further repair obligations under the contract because Atlantic had obstructed Morin's efforts to make repairs. *Id.* at 240-241. Atlantic appealed, but an appellate court affirmed the trial court's judgment. *Id.* at 241. In *R.F. Jordan & Sons v. P.M. Mackay & Sons*, MacKay was the general contractor on a contract with the Town of Mount Desert for the construction of an elementary school 2006 WL 5250258 (Me.Super.) MacKay and Jordan entered into a subcontract whereby Jordan would provide certain earth moving and site preparation work on the project. *Id.* Jordan	Prevention of performance is a breach of contract that excuses further performance by the non-breaching party. *Morin Bldg. Prods. Co. v. Atl. Design & Constr. Co.*, 615 A.2d 239, 241 (Me. 1992)

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ME cont.			performed the work expected under the contract but payments pursuant to the contract were consistently delayed and untimely. *Id.* at *1–*2. The problems continued without significant improvement into the [s]ummer of 2003. *Id.* Jordan continued working at the elementary school until July 18, 2003, when the Jordan crew and equipment were taken off the site. *Id.* at *3. As the parties were unable to resolve their dispute, Jordan never returned to the site and MacKay was forced to obtain services of another contractor. *Id.* Upon the evidence adduced at trial, the court held that MacKay peremptorily breached the contract with Jordan by its consistent late payment and, ultimately, a non-payment. *Id.* at *4. The court ruled this breach absolved Jordan of its obligation to complete the remaining items on the contract. *Id*	
MD	"[I]n Maryland, where there has been a material breach of a contract, the non-breaching party has the right to rescind the agreement. This is black letter Maryland law…." *Maslow v. Vanguri*, 168 Md. App. 298, 315 (2006) A material breach is a breach such that further performance of the contract would be "different in substance from that which was contracted for." *Dialist Co. v. Pulford*, 42 Md. App. 173, 178 (1979)	Under Maryland contract law, the prior material breach defense applies where a party materially breaches an agreement, the non-breaching party may be excused from further performance. *Hudson Slp v. Am. Hous. Pres.*, No. 24-C-13-004465 2015 Md. Cir. Ct. LEXIS 292, *11 (Md. Cir. Ct. Aug. 4, 2015)	In *Atl. States Constr. Co. v. Drummond & Co.*, Laurel Plaza, Inc. (owner) contracted with appellant (Atlantic) for the construction of a shopping center at Laurel, in Prince George's County in August 1964. 251 Md. 77, 78 (Ct. App. 1968). In March 1965, Atlantic contracted with appellee (Drummond) for the installation of the paving. *Id.* Atlantic completed the shopping center and Drummond installed the paving, all of which was approved and accepted by the architect and the owner. *Id.* at 79. In the spring of 1966 the owner ran out of money. *Id.* In the spring of 1966 the owner ran out of money. *Id.* The owner owed Atlantic a balance of $ 84,808.58 and Atlantic owed Drummond $ 20,701.63. *Id.* Further recovery from the owner was, and ever since has been, impossible. *Id.* Drummond filed suit against Atlantic on March 2, 1967, for	According to the prevention doctrine, if one party to a contract "hinders, prevents or makes impossible performance by the other party, the latter's failure to perform will be excused." *WSC/2005 LLC v. Trio Ventures Associates*, 190 A.3d 255 (Md. 2018) (citing 13 Richard A. Lord, Williston on Contracts § 39:3 (4th ed. 2000)) In other words, the prevention doctrine applies when one party prevents another party from performing under the contract. *Id*

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MD cont.			breach of contract due to nonpayment. *Id.* On October 11, 1967, the trial court granted Drummond's motion for summary judgment. *Id.* Atlantic appealed the judgment but an appellate court affirmed the trial court's ruling. *Id.* at 85	
MA	"It is well established that a material breach by one party excuses the other party from further performance under the contract." *Lease-It, Inc. v. Mass. Port Auth.*, 33 Mass. App. Ct. 391, 397 (1992) (quoting *Ward v. American Mut. Liab. Ins. Co.*, 15 Mass. App. Ct. 98, 100 (1983)) A material breach occurs when there is a breach of an essential and inducing feature of the contract, i.e., an act that goes to the root of the agreement. *Petrangelo v. Pollard*, 356 Mass. 696, 701, 255 N.E.2d 342 (1970) Furthermore, a breach is material where it is so serious and so intimately connected with the substance of the contract as to justify the other party in refusing to perform further. *Bucholz v. Green Bros. Co.*, 272 Mass. 49, 52, 172 N.E. 101 (1930)	State-specific case law not located for this issue.	In the construction contract context, the nonpayment of money owed under the contract has been held to constitute a material breach warranting termination of the contract. *See Petrangelo v. Pollard*, 356 Mass. 696, 701, 255 N.E.2d 342 (1970) (holding owner's failure to pay contractor monthly payments for work performed was material breach); *Drinkwater v. D. Guschov Co. Inc.*, 347 Mass. 136, 141 (1964) (finding contractor's nonpayment of $25,000 owed to subcontractor was material breach of subcontract where contractor had been paid by owner for the work).	"[A] contractual condition precedent is deemed excused when a promisor hinders or precludes fulfillment of a condition and that hindrance or preclusion contributes materially to the non occurrence of the condition." *Banco Do Brasil, S.A. v. 275 Wash. St. Corp.*, 889 F.Supp.2d 178, 189 (Dist. Ct. 2012) (citing *Ne. Drilling, Inc. v. Inner Space Servs., Inc.*, 243 F.3d 25, 40 (1st Cir. 2001))
MI	"Repudiation is one of the weapons available to an injured party in event the other contractor has committed a material breach." *Walker & Co. v Harrison*, 347 Mich. 630, 635, 81 N.W.2d 352, 355 (1957) In determining the materiality of a failure fully to perform a promise the following circumstances are influential: (a) The extent to which the injured party will obtain the substantial benefit which he could have reasonably anticipated; (b) The extent to which the injured party may be adequately compensated in damages for lack of complete performance; (c) The extent to	A party who first breaches a contract cannot sue the other party for breach of contract. *Flamm v. Scherer*, 40 Mich. App. 1, 8-9 (1972) However, "that rule only applies when the initial breach is substantial." *Michaels v. Amway Corp*, 206 Mich. App. 644, 650 (1994) A breach is substantial under Michigan law when it has "effected such a change in essential operative elements of the contract that further performance by the other	*H. J. Tucker & Assocs. v. Allied Chucker & Eng'g Co.*, 234 Mich. App. 550, 563 (1999) (holding that "[e]very periodic payment made that is alleged to be less than the amount due . . . constitutes a continuing breach of contract and the limitation period runs from the due date of each payment."). See also *Blazer Foods, Inc. v. Restaurant Properties*, 259 Mich. App. 241, 247-248 (2003)	According to the prevention doctrine, the general rule is that a party to a contract cannot prevent, or render impossible, performance by the other party and still recover damages for non-performance. *Kiff Contractors, Inc. v. Beeman*, 10 Mich. App. 207, 210 (1968)

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STATE	GENERAL LAW OF MATERIAL BREACH	FIRST TO BREACH RULE	NONPAYMENT AS MATERIAL BREACH	PREVENTION DOCTRINE
MI cont.	which the party failing to perform has already partly performed or made preparations for performance; (d) The greater or less hardship on the party failing to perform in terminating the contract; (e) The willful, negligent or innocent behavior of the party failing to perform; and (f) The greater or less uncertainty that the party failing to perform will perform the remainder of the contract. *Walker & Co. v Harrison*, 347 Mich. 630, 635 (1957). See also *7-Eleven, Inc. v. CJ-Grand, LLC*, 517 F. Supp. 3d 688, 695 (E.D. Mich. 2021) (explaining that the holding of the Walker case "defines factors that are considered to assess whether an alleged failure of performance was sufficiently 'material' as a matter of law to justify wholesale repudiation of a lease contract by the aggrieved party.").	party is thereby rendered ineffective or impossible, such as the causing of a complete failure of consideration or the prevention of further performance by the other party." *McCarty v. Mercury Metalcraft Co.*, 372 Mich. 567, 574 (1964) A determination of whether a breach of contract is "substantial" hinges on whether the non-breaching party obtained the benefit of its contractual bargain. *Able Demolition v. Pontiac*, 275 Mich App 577, 585 (2007)		
MN	A "material breach" is a breach of contract that is significant enough to permit the aggrieved party to elect to treat the breach as total (rather than partial), thus excusing that party from further performance and affording it the right to sue for damages." *BOB Acres, LLC v. Schumacher Farms, LLC*, 797 N.W.2d 723, 728 (Minn. Ct. App. 2011) (quoting Black's Law Dictionary 214 (9th ed. 2009))	Under Minnesota law, a "[p]arty who commits the **first breach** is … deprived of the right to complain of a subsequent breach by the opposite party. The first breach serves as a defense against the subsequent breach." *Carlson Real Estate Co. v. Soltan*, 549 N.W.2d 376 (Minn. Ct. App. 1996)	In 1986, Stratford Investments, Ltd. contracted with Lovering to construct two office buildings in a professional office development in Falcon Heights, Minnesota. *Mrozik Constr., Inc. v. Lovering Assocs., Inc.*, 461 N.W.2d 49, 50 (Minn. Ct. App. 1990). Lovering executed a subcontract with respondent Mrozik Construction, Inc. (Mrozik) on September 10, 1986. *Id.*According to the parties' subcontract, Mrozik was to perform concrete and masonry work for payment in the amount of $144,207, increased to $177,928 after changes and extras. *Id.* By August 1987, Stratford Investments, Ltd., had unpaid amounts due to Lovering of $71,486 for work completed on building No. 1 and $58,990 on building No. 2. *Id.* As a result of the owner's failure to pay Lovering, Lovering did not pay the final unpaid balance of $20,843.20 due on the subcontract with Mrozik. *Id.*	"If a promisor prevents or hinders the occurrence of a condition, or the performance of a return promise, and the condition would have occurred or the performance of the return promise been rendered except for such prevention or hindrance, the condition is excused, and the actual or threatened nonperformance of the return promise does not discharge the promisor's duty, unless '(a) the prevention or hindrance by the promisor is caused or justified by the conduct or pecuniary circumstances of the other party; or '(b) the terms of the contract are such that the risk of such prevention or hindrance as occurs is assumed by the other party.'" *Nodland v. Chirpich*, 307 Minn. 360, 366, 240 N.W.2d 513, 516 (1976)

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MN cont.			Lovering contended that language in the subcontract established payment by the owner to the general contractor was a condition precedent to payment to the subcontractor, thus excusing its failure to pay Mrozik. *Id.* Mrozik filed a complaint for non-payment and breach of contract against Lovering. *Id.* The trial court granted summary judgment for Mrozik on March 7, 1990, ruling as a matter of law that the developer's payment to Lovering was not a condition precedent in the subcontract to Lovering's payment to Mrozik. *Id.* Lovering appealed, but the appellate court held the trial court was correct in holding that the parties' subcontract did not contain the unambiguous and unequivocal language necessary to shift the risk of the owner's insolvency to the subcontractor. *Id.* at 52	
MS	Mississippi follows the general rule that if one contracting party commits a material breach, the other party is excused from further performance. *Matheney v. McClain*, 161 So.2d 516, 520 (Miss. 1964) A breach is material when there "is a failure to perform a substantial part of the contract or one or more of its essential terms or conditions, or if there is such a breach as substantially defeats its purpose," *UHS-Qualicare, Inc. v. Gulf Coast Cmty. Hosp., Inc.*, 525 So. 2d 746, 756 (Miss. 1987) (quoting *Gulf South Capital Corp. v. Brown*, 183 So.2d 802, 805 (Miss. 1966)), or when "the breach of the contract is such that upon a reasonable construction of the contract, it is shown that the parties considered the breach as vital to the existence of the contract." *Id.* (quoting *Matheney v. McClain*, 248 Miss. 842, 849 (1964))	Under the first to breach rule, the non-breaching may be excused from further performance of the contract due to a material breach by another party. See *Garcia v. Bank of Am., N.A.*, No. 2:12-CV-360, 2014 U.S. Dist. LEXIS 100002, at *9 (S.D. Tex. July 23, 2014)	The United States Fifth Circuit Court of Appeals has held that a general contractor's nonpayment may entitle the subcontractor to dissolve their agreement, including any lien waiver provision. *Indus. & Mech. Contractors v. Polk Constr. Corp.*, No. 14-513, 2014 U.S. Dist. LEXIS 81529, at *4 (E.D. La. June 16, 2014)	It is a "principle of fundamental justice that if a promisor is himself the cause of the failure of performance, either of an obligation due him or of a condition upon which his own liability depends, he cannot take advantage of the failure." *Franklin Land Assocs., LLC v. Sethi*, 281 So. 3d 119, 124 (Miss. App. 2019) (quoting *Morris v. Macione*, 546 So. 2d 969, 971 (Miss. 1989)) Under the "doctrine of prevention," "when a party to a contract causes the failure of the performance of an obligation due, it cannot in any way take advantage of that failure." *Id.* (quoting 13 Williston on Contracts § 39.3 (4th ed. 2013))

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MO	"The doctrine of material breach is simply the converse of the doctrine of substantial performance. Substantial performance is performance without a material breach, and a material breach results in performance that is not substantial." *Fire Sprinklers, Inc. v. Icon Contracting, Inc.*, 279 S.W.3d 230, 233–34 (Mo. Ct. App. 2009) (quoting E. Allen Farnsworth, Contracts, 585, § 8.16 (3d ed. 1998)) A material breach of an agreement by one party will excuse the other party's performance. *Barnett v. Davis*, 335 S.W.3d 110, 112 (Mo. Ct. App. 2011) "A material breach is one where the breach relates to a vital provision (i.e., material term) of the agreement and cannot relate simply to a subordinate or incidental matter." *Spencer Reed Grp., Inc. v. Pickett*, 163 S.W.3d 570, 573–74 (Mo. Ct. App. 2005) (*Patel v. Pate*, 128 S.W.3d 873, 878 (Mo. App. 2004)) "In determining whether a breach is material, several factors are important including: (1) the extent to which the injured party will be deprived of his contract benefit; (2) the extent to which the party in breach will suffer forfeiture; (3) the likelihood that the party in breach will cure his breach considering all relevant circumstances; and (4) the extent to which the breaching party's behavior comports with good faith and fair dealing." *Barnett*, 335 S.W.3d at 114–15	The "first to breach" rule states that "a party to a contract cannot claim its benefit where he is the first to violate it." *Barnett v. Davis*, 335 S.W.3d 110, 112 (Mo. Ct. App. 2011) (quoting *R.J.S. Security, Inc. v. Command Security Services, Inc.*, 101 S.W.3d 1, 18 (Mo. Ct. App. 2003)) "That determination of the first to breach does not end the analysis, however, as only a material breach may excuse the other party's performance." *Classic Kitchens & Interiors v. Johnson*, 110 S.W.3d 412, 417 (Mo. Ct. App. 2003)	In *Structural Sys., Inc. v. Borg-Warner Health Prods., Inc.*, plaintiff Structural Systems, Inc. submitted a bid in accordance with defendant's specifications and was awarded the contract for construction of a new office and plant addition. 654 S.W.2d 300, 301 (Mo. Ct. App. 1983). Work on the contract was substantially completed on July 2, 1975. *Id.* The contract price was $665,976 of which defendant had paid $566,607, leaving a balance of $99,370. *Id.* Plaintiff brought suit for non-payment based on a breach of contract claim. *Id.* The trial court awarded damages to plaintiff, but offset them by awarding damages to defendant as well. *Id.* Defendant appealed, but the appellate court affirmed the trial court's ruling. *Id*	"The doctrine of prevention provides 'where a party to a contract is the cause of the failure of performance of the obligation due him or her, that party cannot in any way take advantage of that failure." *Longaker v. Bos. Sci. Corp.*, 715 F.3d 658, 666 (8th Cir. 2013)(quoting 13 Richard A. Lord, Williston on Contracts § 39:3 (4th ed. 2000)) "It is well-established that a party to a contract who prevents or hinders another from executing its obligations cannot rely on the other's non-performance to escape its obligations." *BMK Corp. v. Clayton Corp.*, 226 S.W.3d 179, 194 (Mo. Ct. App. 2007)
MT	If a contracting party materially breaches the contract, the injured party is entitled to suspend his performance. *Sjoberg v. Kravik*, 759 P.2d 966, 969 (Mont. 1988) Upon a material breach of a contract, the non-breaching	Montana follows the "first to breach" rule, which states that a party who commits the initial material breach, cannot complain of a subsequent breach by the other party. *See Malloy v. Judge's Foster Home Program*,	State-specific case law not located for this issue.	Under the "doctrine of prevention," if a contracting party interferes with the performance of a condition precedent in a way that the parties did not reasonably contemplate, then the interference is a breach of the implied covenant of good faith and fair dealing, and the interfering party "cannot in any way take

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MT cont	party also has the option of either rescinding the contract without requirement for further performance or, alternatively, enforcing the contract at law or in equity. *Davidson v. Barstad*, 435 P.3d 640, 646 (Mont. 2019) "[A] substantial or material breach is one which touches the fundamental purposes of the contract and defeats the object of the parties in making the contract." *Norwood v. Serv. Distrib., Inc.*, 994 P.2d 25, 31 (Mont. 2000) (quoting *Flaig v. Gramm*, 983 P.2d 396, 400 (Mont. 1999))	746 P.2d 1073, 1076 (Mont. 1987) (holding Malloy was the first party to breach employment contract and therefore, could not maintain an action for breach of contract against Discovery House) The general rule is that a party committing a substantial breach of a contract cannot maintain an action against the other contracting party or his predecessor in interest for a subsequent failure to perform if the promises are dependent. 17 Am.Jur.2d Contracts, § 366 p. 807. *Id.* (citing *Rogers v. Relyea*, 184 601 P.2d 37, 41 1979)		advantage of that failure [of the condition precedent]." *Guidiville Rancheria of Cal. v. United States*, 704 F. App'x 655, 658 (9th Cir. 2017) (quoting 13 Williston on Contracts § 39:3 (4th ed.))
NE	Nebraska courts rely on the authoritative treatise of Williston for what constitutes a material breach. The treatise provides as follows: The courts have come up with numerous ways of speaking about "material" breaches of contract. Thus, it has been said that a "material breach" is a failure to do something that is so fundamental to a contract that the failure to perform that obligation defeats the essential purpose of the contract or makes it impossible for the other party to perform under the contract. *Jeffrey Lake Dev., Inc. v. Cent. Neb. Pub. Power & Irrigation Dist.*, 2010 Neb. App. LEXIS 119, at *17-18 (Ct. App. July 27, 2010) (quoting 23 Samuel Williston, A Treatise on the Law of Contracts § 63:3 at 438-39 (Richard A. Lord ed., 4th ed. 2002))	The "first to breach" rule holds that "a party to a contract cannot claim its benefit where he is the first to violate it." *Cordry v. Vanderbilt Mortg. & Fin., Inc.*, 445 F.3d 1106, 1113 (8th Cir. 2006) (quoting *Classic Kitchens & Interiors v. Johnson*, 110 S.W.3d 412, 417 (Mo. Ct. App. 2003)) The "determination of the first to breach does not end the analysis, however, as only a material breach may excuse the other party's performance." *Randy Kinder Excavating, Inc. v. JA Manning Constr. Co.*, 899 F.3d 511, 517 (8th Cir. 2018) (quoting *R.J.S. Sec., Inc. v. Command Sec. Servs.*, 101 S.W.3d 1, 18 (Mo. Ct. App. 2003))	State-specific case law not located for this issue.	The doctrine of prevention states that where a promisor prevents, hinders, or renders impossible the occurrence of a condition precedent to his or her promise to perform, the promisor is not relieved of the obligation to perform and may not invoke the other party's nonperformance as a defense when sued upon the contract. *D & S Realty, Inc. v. Markel Ins. Co.*, 816 N.W.2d 1, 13 (Neb. 2012) "In short, under the doctrine of prevention, where a party to a contract is the cause of the failure of the performance of the obligation due him or her, that party cannot in any way take advantage of that failure." *Id.* (quoting 13 Samuel Williston, A Treatise on the Law of Contracts § 39:3 (Richard A. Lord ed., 4th ed. 2000))
NV	When parties exchange promises to perform, one party's material breach of its promise discharges the non-breaching party's duty to perform. *Cain v. Price*, 134	The party who commits the first breach of the contract cannot maintain an action against the other for subsequent failure to perform. *Bradley*	*Young Elec. Sign Co. v. Fohrman*, confirms that Nevada courts consider "failing to pay" a material breach that excuses performance by the party that	The prevention doctrine dictates "any affirmative tender or performance is excused when performance has in effect been prevented by the other party to the

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NV cont.	Nev. 193, 196 (SC of Nev. 2018) (citing Restatement (Second) of Contracts Section 237) If the non-breaching party's duty was to a third-party beneficiary, the same principle applies: the breaching party's "failure of performance" discharges the beneficiary's right to enforce the contract. *Id.* at 196-97 Moreover, a material breach of contract also "gives rise to a claim for damages." *Id* Thus, the injured party is both excused from its contractual obligation and entitled to seek damages for the other party's breach. *Id*	*v. Nevada C. O. R. Ry.*, 42 Nev. 411, 422 (SC of Nev. 1919) (citing *Loudenback v. Tennessee Phosphate Co.*, 121 F.298.)	was not paid what they were owed. 86 Nev. 185 (1970)	contract." *Cladianos v. Friedhof*, 240 P.2d 208, 210 (1952)) In other words, "where a party's breach by non-performance contributes materially to the non-occurrence of a condition of one of his duties, the non-occurrence is excused." Restatement (Second) of Contracts, Section 245)
NH	Only a breach that is sufficiently material and important to justify ending the whole transaction constitutes a total breach that discharges the injured party's duties. *Fitz v. Coutinho*, 136 N.H. 721, 725, 622 A.2d 1220 (1993)) "For a breach of contract to be material, it must go to the root or essence of the agreement between the parties, or be one which touches the fundamental purpose of the contract and defeats the object of the parties in entering into the contract." *Found. For Seacoast Health v. Hosp. Corp. of America*, 165 N.H. 168, 181–82 (2013))	State-specific case law not located for this issue.	In *D. M. Holden, Inc. v. Contractor's Crane Serv.*, Contractor's Crane Service, Inc. (Crane Service) entered into an agreement with the City of Nashua in which it agreed to be the general contractor for the construction of the Nashua Municipal Parking Garage. 121 N.H. 831, 832 (1981). Crane Service and the plaintiff—D. M. Holden, Inc. (Holden)—entered into a subcontract in which Holden agreed to perform specific functions designated in the contract between Crane Service and the City of Nashua. *Id.* The subcontract provided that Crane Service would pay Holden a total of $57,000 in monthly installments based upon a percentage of completion formula for performance of this work. *Id* Holden began performance under the subcontract in November of 1977. *Id.* at 833. On June 10, 1978, Holden walked off the job and refused to perform further work under the subcontract. *Id.* Holden then instituted an action against Crane Service in which it sought $20,739.50 on the ground that Crane Service's failure to make payment on the	Under the so-called prevention doctrine, a contractual condition precedent is deemed excused when a promisor hinders or precludes fulfillment of a condition and that hindrance or preclusion contributes materially to the nonoccurrence of the condition. *Northeast Drilling v. Inner Space Servs.*, 243 F.3d 25, 40 (Ct. App. 2001) (citing The Restatement (Second) of Contracts Section 245 (1981))

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NH cont.			amounts requisitioned constituted a breach of contract. *Id.* After a hearing, the Master found that Holden was justified in leaving the job site and discontinuing performance of the work because Crane Service failed to make progress payments that were due. *Id.* Holden was awarded a judgment of $16,324. *Id.* Crane Service appealed the judgment, but the appellate court affirmed the judgment. *Id.* at 832	
NJ	The New Jersey Supreme Court has stated that a breach is material if it "goes to the essence of the contract." *Roach v. BM Motoring, LLC*, 228 N.J. 163, 174 (2017) (quoting *Ross Sys. v. Linden Dari-Delite, Inc.*, 35 N.J. 329, 341 (1961)) To determine if a breach is material, New Jersey courts have adopted the flexible criteria set forth in § 241 of the Restatement (Second) of Contracts (1981). *Id.* at 174–75. Thus, when deciding if a breach is material, New Jersey courts consider: (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; [and] (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing. The Restatement (Second) of Contracts § 241 (1981)	Under the first to breach rule, a prior material breach of a contract by one party will excuse the non-breaching party from further performance. See *Medivox Productions, Inc. v. Hoffmann-LaRoche*, 107 N.J.Super. 47, 58-59, 256 A.2d 803 (Law Div.1969) ("If … during the course of performance one party fails to perform "essential obligations under the contract" it may be considered to have committed a material breach and the other party may elect to terminate ….").	One's failure to pay a progress payment justifies suspension and termination of the subcontract by a subcontractor. *Vinen Corp. v. Alan W. Nau Contracting, Inc.*, 232 N.J. Super. 589, 557 A.2d 1056 (App. Div. 1989) (construction manager's wrongful setoff against progress payment justified contractor's abandonment of work); *Zulla Steel, Inc. v. A & M Gregos, Inc., 174 N.J. Super. 124, 132, 415 A.2d 1183, 1187 (App. Div. 1980)*. (general contractor's substantial underpayment for a prolonged period of time justified subcontractor's discontinuation of performance of subcontract).	"The principle that prevention by one party excuses performance by the other, both of a condition and of a promise, may be laid down broadly for all cases. …. The condition is excused because the promisor has caused the non-performance of the condition". *Creek Ranch, Inc. v. New Jersey Tpk. Auth.*, 75 N.J. 421, 432, 383 A.2d 110, 116 (1978), *quoting*, (5 Williston, Contracts, s 677 at 231-232 (3d ed. 1957))

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NM	New Mexico courts have described a material breach as the "failure to do something that is so fundamental to the contract that the failure to perform that obligation defeats an essential purpose of the contract." *Famiglietta v. Ivie-Miller Enters.*, 126 N.M. 69, 74 (Ct. App. 1998) (quoting *Horton v. Horton*, 487 S.E.2d 200, 204 (Va. 1997)) Put another way, a material breach "is one which touches the fundamental purpose of the contract and defeats the object of the parties in entering into the contract." *Id.* (quoting *Ervin Constr. Co. v. Van Orden*, 874 P.2d 506, 510 (Idaho 1993)) When considering the materiality of a breach, New Mexico courts consider the following five factors: (1) the extent to which the injured party will be deprived of the benefit he or she reasonably expected to receive from the contract; (2) the extent to which the breaching party will suffer forfeiture if the breach is deemed material; (3) whether the injured party can be adequately compensated in damages for the breach; (4) the likelihood that the breaching party will cure his or her failure to perform under the contract; and (5) whether the breaching party's conduct comported with the standards of good faith and fair dealing. *Id*	The "prior breach" doctrine is an equitable argument typically asserted by a defendant who has been sued for specific performance by a plaintiff who was the first to breach the contract. *DTC Energy Grp., Inc. v. Hirschfeld*, 912 F.3d 1263, 1274 (10th Cir. 2018) (citing *In re Country World Casinos, Inc.*, 181 F.3d 1146, 1150 (10th Cir. 1999)) This doctrine states that "a party to a contract cannot claim its benefit where he is the first to violate its terms." *Id.* (quoting *Coors v. Sec. Life of Denver Ins. Co.*, 112 P.3d 59, 64 (Colo. 2005)	In *Commercial Bldg. Servs. v. Romano,* the trial court concluded that Defendants breached the contract when they failed to pay Plaintiff the amounts due under the contracts for the work that had been completed and awarded Plaintiff $56,271.66 in damages for the unpaid, completed work. No. 14-CV-30685, 2014 Colo. Dist. LEXIS 2954, at *29 (Dist. Ct. Oct. 30, 2014)	"Each party to an enforceable agreement has a duty not to prevent performance by the other party. A party to a contract, who prevents its performance by the adverse party, cannot rely on [the adverse party's non-performance] to defeat his liability. The party who has been prevented from discharging his part of the obligation is to be treated as though he had performed it. *Estate of Griego v. Reliance Std. Life Ins. Co.*, 128 N.M. 676, 682 (Ct. App. 2000)
NY	"As a general rule, rescission of a contract is permitted for such breach as substantially defeats its purpose. It is not permitted for a slight, casual, or technical breach, but . . . only for such as are material and willful, or, if not willful, so substantial and fundamental as to strongly tend to defeat the object of the parties in making the contract." *RR Chester, LLC v. Arlington Bldg. Corp.*, 22 A.D.3d 652, 654 (N.Y. 2d Dep't 2005) (quoting	When one party is found to commit the first material breach of a contract, the non-breaching party is relieved of its obligations to perform pursuant to that contract. *American List Corp., v. U.S. New and World Report, Inc.*, 549 N.E.2d 1161, 1165 (N.Y. 1989)	*Serena Constr. Corp. v. Valley Drywall Serv.*, 45 A.D.2d 896, 896 (N.Y. 3'd Dep't 1974) lv denied 35 N.E.2d 642 (N.Y. 1974), (holding that the failure to make payment pursuant to a contract constituted a material breach of the contract).	"[U]nder the doctrine of prevention, when a party to a contract causes the failure of the performance of the obligation due, it cannot in any way take advantage of that failure." *Frank Brunckhorst Co., LLC v. JPKJ Realty, LLC*, 129 A.D.3d 1019, 1020 (N.Y. App. Div. 2015) (quoting 13 Richard A. Lord, Williston on Contracts § 39:3 (4th ed May 2015)) In other words, "a party to a contract cannot rely on the failure of another to perform a condition

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NY cont.	*Callanan v. Keeseville, Ausable Chasm & Lake Champlain R.R. Co.*, 199 N.Y.268, 284 (1910) "It has been said that a material breach is a failure to do something that is so fundamental to a contract that the failure to perform that obligation defeats the essential purpose of the contract or makes it impossible for the other party to perform under the contract. In other words, for a breach to be material, it must 'go to the root' or 'essence' of the agreement between the parties, or be 'one which touches the fundamental purpose of the contract and defeats the object of the parties in entering into the contract.'" *Metro. Nat'l Bank v. Adelphi Acad.*, 886 N.Y.S.2d 68 (Sup. Ct. 2009) Restatement (2d) of Contracts, § 241, sets forth the circumstances courts may use for consideration of a material breach: "[i]n determining whether a failure to render or to offer performance is material, the following circumstances are significant: (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; and (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing." *Id*			precedent where he has frustrated or prevented the occurrence of the condition." *See* *ADC Orange, Inc. v. Coyote Acres, Inc.*, 857 N.E.2d 513, 517 (N.Y. 2006) The doctrine of prevention, however, does not apply where a contingency was foreseeable or the party's acts were consistent with the agreement. *Ninth St. Assocs. v. 20 E. Ninth Corp.*, 114 A.D.3d 518, 519 (N.Y. App. Div. 2014)

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NC	Where there is a material breach of a contract going to the very heart of the instrument, the other party to the contract may elect to rescind and is not bound to seek relief at law by an award for damages. *Wilson v. Wilson*, 134 S.E.2d 240, 242 (N.C. 1964) A breach discharges further performance only if the breach was material. *See Crosby v. Bowers*, 361 S.E.2d 97, 102 (N.C. Ct. App. 1987) "In order for a breach of contract to be actionable it must be a material breach, one that substantially defeats the purpose of the agreement or goes to the very heart of the agreement, or can be characterized as a substantial failure to perform." *Crews v. Crews*, 826 S.E.2d 194, 199 (N.C. Ct. App. 2019) (quoting *Long v. Long*, 588 S.E.2d 1, 4 (N.C. Ct. App. 2003))	As a general rule, if either party to a bilateral contract commits a material breach of the contract, the non-breaching party is excused from the obligation to perform further. *McClure Lumber Co. v. Helmsman Constr., Inc.*, 585 S.E.2d 234, 239 (N.C. Ct. App. 2003)	*J. R. Graham & Son, Inc. v. Randolph Cty. Bd. of Educ.*, 212 S.E.2d 542, 544 (N.C. Ct. App. 1975) (affirming trial court's ruling that the delay in completing the project was caused by defendant's failure to pay plaintiff on time, defendant's failure to provide water for and a road to the job site, the failure of the heating contractor employed by defendant to install the heating system on time, and bad weather).	The doctrine of prevention is that "one who prevents the performance of a condition, or makes it impossible by his own act, will not be permitted to take advantage of the nonperformance." *Propst Constr. Co. v. N.C. Dep't of Transp.*, 290 S.E.2d 387, 388 (N.C. Ct. App. 1982) (quoting Harwood v. Shoe, 53 S.E. 616, 616 (N.C. 1906)) In order to excuse nonperformance, the conduct on the part of the party who allegedly prevented performance "must be wrongful, and . . . in excess of his legal rights." *Id.* (quoting *Goldston Brothers v. Newkirk*, 64 S.E. 2d 424, 427 (N.C. 1951))
ND	A party breaches a contract when the party fails to perform a contractual duty when due. *Riedlinger v. Steam Bros.*, 826 N.W.2d 340, 349 (N.D. 2013) (citing *Langer v. Bartholomay*, 745 N.W.2d 649, 655 (N.D. 2008))	The North Dakota Supreme Court has generally recognized the material breach of a contract by one party gives the non-breaching party a right to terminate the contract. *Riedlinger v. Steam Bros.*, 826 N.W.2d 340, 349 (N.D. 2013) (citing *Langer v. Bartholomay*, 745 N.W.2d 649, 655 (N.D. 2008))	State-specific case law not located for this issue.	The doctrine of prevention provides that "where a party to a contract is the cause of the failure of performance of the obligation due him or her, that party cannot in any way take advantage of that failure." *Longaker v. Bos. Sci. Corp.*, 715 F.3d 658, 666 (8th Cir. 2013) (quoting 13 Richard A. Lord, Williston on Contracts § 39:3 (4th ed. 2000))
OH	Under Ohio law a breach of contract occurs when a party demonstrates (1) the existence of a binding contract or agreement, (2) the non-breaching party performed its contractual obligations, and (3) the other party failed to fulfill its contractual obligations without legal excuse. *Zarwasch-Weiss v. SKF Economos USA, Inc.*, No. 1:10-cv-01327, 2012 U.S.	Under the first to breach rule, the "one who first breaches a contract cannot maintain an action against the other contracting party for his subsequent breach or failure to perform." *Yazaki N. Am., Inc. v. Johnson Controls, Inc.*, No. 16-11459, 2017 U.S. Dist. LEXIS 104963, at *22 (E.D. Mich. July 7, 2017)	*Masiongale Elec.-Mech., Inc. v. Constr. One, Inc.*, 806 N.E.2d 148, 152 (Ohio 2004) (affirming trial court's ruling that defendant contractor breached the contract by withholding $29,103 in payments to plaintiff subcontractor).	The prevention of performance doctrine provides that a party who prevents another from performing its contractual obligations cannot rely on that failure of performance to assert breach of contract. *Lucarell v. Nationwide Mut. Ins. Co.*, 97 N.E.3d 458, 466 (2018)

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OH cont.	Dist. LEXIS 37062, at *26 (N.D. Ohio Jan. 12, 2012) "A party is relieved of the obligations under a contract only if the other party's breach is material. A breach is material if performance or non-performance of the disputed term is essential to the purpose of the agreement. Mere nominal, trifling, or technical departures will not result in a breach of contract." *Connor & Murphy, Ltd. v. Applewood Vill. Condo Ass'n*, 2007 Ohio Misc. LEXIS 602, at *31 (2007)	(quoting *Flamm v. Scherer*, 198 N.W.2d 702 (Mich. 1972)) Furthermore, the first to breach rule applies only if the initial breach was "substantial." *Id.* at *23 (citing *Baith v. Knapp-Stiles, Inc.*, 156 N.W.2d 575 (Mich. 1968)) "A 'substantial breach' is one 'where the breach has effected such a change in essential operative elements of the contract that further performance by the other party is thereby rendered ineffective or impossible, such as the causing of a complete failure of consideration or the prevention of further performance by the other party.'" *Id.* (quoting *Jawad v. Hudson City Sav. Bank*, 636 F. App'x 319, 322 (6th Cir. 2016))		
OK	Only a material breach authorizes a rescission, and only if the consideration fails in a material respect. *Creach v. Home Owners' Loan Corp.*, 131 P.2d 108, 109–10 (Okla. 1942) (citing *Howe v. Martin*, 102 P. 128 (Okla. 1941)) After a material breach it is the duty of the party wishing to rescind to act promptly as soon as he learns of said material breach. *Id.* (citing *Evans v. Turney*, 61 P.2d 237 (Okla. 1936))	The "prior breach" doctrine is an equitable argument typically asserted by a defendant who has been sued for specific performance by a plaintiff who was the first to breach the contract. *DTC Energy Grp., Inc. v. Hirschfeld, 912 F.3d 1263, 1274 (10th Cir. 2018) (citing In re Country World Casinos, Inc.*, 181 F.3d 1146, 1150 (10th Cir. 1999)) This doctrine states that "a party to a contract cannot claim its benefit where he is the first to violate its terms." *Id.* (quoting *Coors v. Sec. Life of Denver Ins. Co.*, 112 P.3d 59, 64 (Colo. 2005)	The failure to pay a sub-contractor a progress payment due under a contract constitutes a substantial breach of contract by the general contractor and gives the sub-contractor the right to terminate the contract and recover the value of the work performed. *Henson Constr. Co. v. Davis*, 43 P.3d 417, 420 (Okla. Civ. App. 2002)	"The doctrine does not require proof that performance of the condition to be excused would have occurred but for the wrongful conduct; instead, it only requires that the promisor's conduct 'contributed materially' to the nonoccurrence of the condition." *Willbros Eng'rs, Inc. v. MasTec N. Am., Inc.*, No. 03-CV-436-TCK-PJC, 2006 U.S. Dist. LEXIS 38810, at *22-23 (N.D. Okla. June 8, 2006)
OR	Oregon courts have used the following factors when determining if a breach is	The first to breach rule states that a material beach by one party to a	*Mignot v. Parkhill, 391 P.2d 755, 761 (Or. 1964)* (reversing trial court's ruling and holding	The prevention doctrine states that where conduct of the defendant has prevented performance of a

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STATE	GENERAL LAW OF MATERIAL BREACH	FIRST TO BREACH RULE	NONPAYMENT AS MATERIAL BREACH	PREVENTION DOCTRINE
OR cont.	material: (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing. The Restatement (Second) of Contracts § 241 (1981)	bilateral contract justifies refusal of the other party to perform a contractual duty. *Wasserburger v. Amer. Sci. Chem.*, 267 Or. 77, 82, 514 P.2d 1097 (1973)	that general contractor was liable to subcontractor for nonpayment of unpaid balance).	contract provision by the plaintiff, the defendant cannot avail himself of any such failure to perform. *Cedartech, Inc. v. Strader*, 293 Or.App. 252, 258 (2018)
PA	The Pennsylvania Supreme Court has long recognized the established precept of contract law that a material breach of a contract relieves the non-breaching party from any continuing duty of performance thereunder. *LJL Transp., Inc. v. Pilot Air Freight Corp.*, 962 A.2d 639, 648 (Pa. 2009) (citing *Berkowitz v. Mayflower Securities*, 317 A.2d 584, 586 (Pa. 1974)) It is equally well established, that "[a] party also may not insist upon performance of the contract when he himself is guilty of a material breach of the contract." *Id.* (quoting *Ott v. Buehler Lumber*, 541 A.2d 1143, 1145 (Pa. Super. 1988)) The Pennsylvania Supreme Court had "no difficulty in concluding that when there is a breach of contract going directly to the essence of the contract, which is so exceedingly grave as to irreparably damage the trust between the contracting parties, the non-breaching party may terminate the contract without notice, absent explicit	Under the first to breach rule, when a party materially breaches a contract, the non-breaching party's contractual duties are relieved. *Northstar Fin. Cos. v. Nocerino*, No. 11-5151, 2013 U.S. Dist. LEXIS 163522, at *14 (E.D. Pa. Nov. 15, 2013)	"It is well established that the failure to make payments when they are due is a material breach of a construction contract which excuses a contractor from further performance." *E. Elec. Corp. of New Jersey v. Shoemaker Const. Co.*, 657 F. Supp. 2d 545, 556 (E.D. Pa. 2009)	Under Pennsylvania law, "performance of a contract or offer to perform it is excused and rendered unnecessary when it is prevented by the acts of the other party or is rendered impossible by him." *Phila. TV Network, Inc. v. Reading Broad., Inc.*, 2005 Phila. Ct. Com. Pl. LEXIS 307, *71. A party "may not, in fact, take advantage of an insurmountable obstacle placed, by himself, in the part of the other party's adherence to an agreement. By preventing performance, he also excuses it." *Id.* at *71–*72 (quoting *Craig Coal Mining Co. v. Romani*, 513 A.2d 437, 440 (Pa. Super. Ct. 1986)) Accordingly, "a party may not complain of a breach caused by his own default." *Id.* at *72 (quoting *Kolbe v. Aegis Ins. Co.*, 537 A.2d 7, 8 (Pa. Super. Ct. 1987)

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STATE	GENERAL LAW OF MATERIAL BREACH	FIRST TO BREACH RULE	NONPAYMENT AS MATERIAL BREACH	PREVENTION DOCTRINE
PA cont.	contractual provisions to the contrary." *Id.* at 567 While a "material breach" relieves a non-breaching party of its obligation to perform, Pennsylvania law is clear that "executed contracts cannot be rescinded or annulled . . . simply because a party found the contract to be burdensome or a financial failure." *Int'l Diamond Imps., Ltd. v. Singularity Clark, L.P.*, 40 A.3d 1261, 1271 (Pa. Super. Ct. 2012) (quoting *Umbelina v. Adams*, 34 A.3d 151, 160 (Pa. Super. Ct. 2011)) Thus, if "the breach is an immaterial failure of performance, and the contract was substantially performed, the contract remains effective. . . . In other words, the non-breaching party does not have a right to suspend performance if the breach is not material." *Id.* (quoting *Widmer Eng'g, Inc. v. Dufalla*, 837 A.2d 459, 468–69 (Pa. Super. Ct. 2003)) Due to the importance of the latter principle, establishing "materiality" requires a substantial showing. *Id* To determine materiality, Pennsylvania courts refer to the Restatement (Second) of Contracts § 241 (1981), which sets forth the following factors to guide the inquiry: a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; b) the extent to which the injured party can be adequately compensated for that part of the benefit of which he will be deprived; c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; d) the likelihood that the party failing to perform or offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; and e) the extent to which the behavior of the party failing to perform or			

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STATE	GENERAL LAW OF MATERIAL BREACH	FIRST TO BREACH RULE	NONPAYMENT AS MATERIAL BREACH	PREVENTION DOCTRINE
PA cont.	offer to perform comports with standards of good faith and fair dealing. *Id* "The question whether there has been a material breach under Pennsylvania law is ordinarily for the jury. *Id.* at 1272			
RI	A material breach of a contract by one party may excuse the non-breaching party from subsequent performance of its obligations under the contract. *Parker v. Byrne*, 996 A.2d 627, 633 (R.I. 2010)	A party's material breach of contract justifies the non- breaching party's subsequent nonperformance of its contractual obligations. *Women's Dev. Corp. v. City of C. Falls*, 764 A.2d 151 (R.I. 2001)	In the event an owner fails to pay an installment due on a construction contract, such owner "is guilty of a breach that goes to the essence of the contract and that entitles the injured party to bring an action." *Salo Landscape & Construction Co. v. Liberty Electric Co.*, R.I., 376 A.2d 1379, 1382 (1977)	Rhode Island recognizes an implied covenant of good faith and fair dealing in virtually every contract. *See Dovenmuehle Mortg., Inc. v. Antonelli*, 790 A.2d 1113, 1115 (R.I. 2002); *Ide Farm & Stable, Inc. v. Cardi*, 110 R.I. 735, 739, 297 A.2d 643, 645 (1972). It is further evident that the duty of good faith and fair dealing provides that a party cannot escape liability on a contractual obligation by preventing the happening of a condition or taking advantage of an obstacle to performance—such action constitutes a breach of the covenant. *See Bradford Dyeing Ass'n, Inc. v. J. Stog Tech GMBH*, 765 A.2d 1226, 1237-38 (R.I. 2001)
SC	"A breach of contract claim warranting rescission of the contract must be so substantial and fundamental as to defeat the purpose of the contract." *Palmetto Mortuary Transp., Inc. v. Knight Sys.*, 818 S.E.2d 724, 734 (S.C. 2018) (quoting *Brazell v. Windsor*, 682 S.E.2d 824, 826 (S.C. 2009)) Thus, a rescission will not be granted for a minor or casual breach of a contract, but only for those breaches which defeat the object of the contracting parties." *Id.* (quoting Rogers v. Salisbury Brick Corp., 382 S.E.2d 915, 917 (S.C. 1989))	Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests. *Silver v. Abstract Pools & Spas, Inc.*, 658 S.E.2d 539, 543 (Ct. App. 2008) (citing *Willms Trucking Co., Inc. v. JW Const. Co. Inc.*, 442 S.E.2d 197, 201 (Ct. App. 1994)	The failure to pay an installment of a contract is a substantial breach of the contract. *Silver v. Aabstract Pools & Spas, Inc.*, 658 S.E.2d 539, 543 (S.C. Ct. App. 2008) (quoting *Zemp Const. Co. v. Harmon Bros Constr. Co.*, 82 S.E.2d 531, 533 (S.C. 1954))	Where a party's breach by non-performance contributes materially to the non-occurrence of a condition of one of his duties, the non-occurrence is excused." Restatement (Second) of Contracts Section 245. It is sufficient for the plaintiff to present evidence that the defendant's prevention "substantially contributed" to the nonoccurrence of the condition. Once he has made such proof, the burden shifts to the defendant. If the defendant can show that the condition would not have occurred regardless of the prevention, then the prevention did not contribute materially to its nonoccurrence and the condition is not excused. This is the rule adopted in the Restatement (Second) of Contracts Section 245, and we approve it as the proper rule in this jurisdiction. *Champion v. Whaley*, 311 S.E.2d 404, 407 (SC Ct. of App. 1984)

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SD	A "material breach" is a breach that would defeat "the very object of the contract." *Icehouse, Inc. v. Geissler*, 636 N.W.2d 459, 466 (S.D. 2001) (quoting *Thunderstik Lodge, Inc. v. Reuer*, 585 N.W.2d 819, 824 (S.D. 1998)) Whether a party's conduct constitutes a material breach of contract is a question of fact. *Id.* (citing *Moe v. John Deere Co.*, 516 N.W.2d 332, 335 (S.D. 1994))	The "first to breach" rule, under which "a party to a contract cannot claim its benefit where he is the first to violate it." *Randy Kinder Excavating, Inc. v. JA Manning Constr. Co.*, 899 F.3d 511, 517 (8th Cir. 2018) (quoting *Barnett v. Davis*, 335 S.W.3d 110, 112 (Mo. Ct. App. 2011)) The "determination of the first to breach does not end the analysis, however, as only a material breach may excuse the other party's performance." *Id.* (quoting *R.J.S. Sec., Inc. v. Command Sec. Servs.*, 101 S.W.3d 1, 18 (Mo. Ct. App. 2003))	*Mathis Implement Co. v. Heath*, 665 N.W.2d 90, 94 (S.D. 2003) (affirming trial court's ruling of judgment in favor of contractor on breach of contract for nonpayment of contract price when contract work has been substantially performed).	The prevention doctrine…operates as an exception to the general rule that one has a duty to perform under a contract containing a condition precedent until it occurs. *Johnson v. Coss*, 667 N.W.2d 701, 706. *See also* Williston Section 39:4 Prevention is similar to the concept of 'waiver by estoppel' in the context of excuses for nonperformance of contractual duties. An individual who prevents the occurrence of a condition may be said to be 'estopped' from benefiting from the fact that the condition precedent to his or her obligation failed to occur. *Id. See also* Williston Section 39:7 The prevention doctrine does not require proof that the condition would have occurred 'but for' the wrongful conduct of the promisor; instead it only requires that the conduct have 'contributed materially' to the non-occurrence of the condition. *Id.* (citing *Moore Bros. Co. v. Brown & Root, Inc.*, 207 F.3d 717, 725) Whether interference by one party to a contract amounts to prevention so as to excuse performance by the other party and constitute a breach by the interfering party is a question of fact to be decided by the jury under all of the proved facts and circumstances. *Id.* at 707. (citing Williston Section 39:3)
TN	"Tennessee courts consider the following circumstances when considering whether a breach is material: '(a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the	Generally,"'[t]here can be no recovery for damages on the theory of breach of contract by the party who himself breached the contract." *John P. Saad & Sons, Inc. v. Nashville Thermal Transfer Corp.*, 715 S.W.2d 41, 47 (Tenn. 1986) (quoting *Santa Barbara Capital Corp. v. World Christian Radio Foundation, Inc.*, 491 S.W.2d 852, 857 (Tenn.App.1972)) "A party who has materially breached a	*Tenn. Asphalt Co. v. Purcell Enters., Inc.*, 631 S.W.2d 439, 444 (Tenn. Ct. App. 1982) (holding that a substantial delay at the time of payment has generally been held to be sufficient to constitute a material breach).	The doctrine of prevention arises from the implied duty of each party of a contract to "'restrain from doing any act that would delay or prevent the other party's performance of the contract.'" *ACG, Inc. v. Se. Elevator, Inc.*, 912 S.W.2d 163, 167 (Tenn. Ct. App. 1995) (quoting The Wil–Helm Agency v. Lynn, 618 S.W.2d 748 (Tenn.App.1981)) "'Each party ha[s] the right to proceed free of hinderance by the other party, and if such other party interfered, hindered, or prevented the performance to such an extent as to render the performance difficult and diminish the benefits to

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TN cont.	circumstances including any reasonable assurances; (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.'" The Restatement (Second) of Contracts § 241 (1981)	contract is not entitled to damages stemming from the other party's later material breach of the same contract." *McClain v. Kimbrough Constr. Co.*, 806 S.W.2d 194, 199 (Tenn. Ct. App. 1990) A party will waive its rights to assert first-to-breach as a bar to recovery if it "accepts the benefits of the contract with knowledge of the breach." *See Madden Phillips Constr., Inc. v. GGAT Dev. Corp.*, 315 S.W.3d 800, 813 (Tenn. Ct. App. 2009) "Mere efforts on the part of an innocent party to persuade the promisor, who repudiates his agreement, to reject that repudiation and proceed honorably in the performance of his agreement have been held not to involve a waiver of the innocent party's right to avail himself of the breach after the efforts finally prove unsuccessful." *W.F. Holt Co. v. A&E Elec. Co.*, 665 S.W.2d 722, 733–34 (Tenn. Ct. App. 1983)		be received, the first party could treat the contract as broken and was not bound to proceed under the added burdens.'" *Id*
TX	When one party to a contract commits a material breach of that contract, the other party is discharged or excused from further performance. *Mustang Pipeline Co., Inc. v. Driver Pipeline Co., Inc.*, 134 S.W.3d 195, 196 (Tex. 2004) (quoting Hernandez v. Gulf Group Lloyds, 875 S.W.2d 691, 692 (Tex.1994) Texas has adopted the five factors set out in Section 241 of the Restatement (Second) of Contracts when considering whether a failure to perform is material. *See Mustang Pipeline, Inc., supra*, 134 S.W.3d at 199 ("The Restatement lists five	Under the first to breach rule, the second party to breach a contract can still maintain a breach of contract suit against the first to breach for the initial breach. *Atl. Richfield Co. v. Long Trs.*, 860 S.W.2d 439, 447–48 (Tex. App. 1993). In other words, a party that is first to materially breach a contract, is not entitled to damages for the other party's subsequent breach of contract. *See Id*	It is a fundamental principle of contract law that when one party to a contract commits a material breach of that contract, the other party is discharged or excused from further performance. *Hernandez v. Gulf Grp. Lloyds ,supra*, 875 S.W.2d at 692. When a party commits a nonmaterial breach, however, the other party "is not excused from future performance but may sue for the damages caused by the breach." *Levine v. Steve Scharn Custom Homes, Inc.*, 448 S.W.3d 637, 654 (Tex. App.–Houston [1st Dist.] 2014, pet. denied); see also *Shafer Plumbing & Heating, Inc. v.*	Texas cases establish that prevented performance applies to contractual disputes, *In re iHeartMedia, Inc.*, 597 B.R. 339, 352 (Bankr. S.D. Tex. 2019); *Dorsett v. Cross*, 106 S.W.3d 213, 217–18 (Tex. App.—Houston [1st Dist.] 2003).Prevention of performance by one party excuses performance by the other party, both of conditions precedent to performance and of promise. *Dorsett v. Cross*, 106 S.W.3d 213, 217 (Tex. App. 2003) (citing *O'Shea v. Int'l Bus. Mach. Corp.*, 578 S.W.2d 844, 846 (Tex. App. 2003)) When the obligation of a party to a contract depends upon a certain

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TX cont.	circumstances significant factors set out in Section 241 are "significant in determining whether a failure to perform is material…."). The factors to consider in determining whether a breach is material or not are set forth in the Restatement of Contracts as follows: In determining whether a failure to render or to offer performance is material, the following circumstances are significant: (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; and (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing. *See Mustang Pipeline, Inc., supra*, 134 S.W.3d at 199; see also The Restatement (Second) of Contracts § 241 (1981)		*Controlled Air, Inc.*, 742 S.W.2d 717, 722 (Tex. App. 1987) (affirming trial court's ruling that subcontractor was entitled to damages for nonpayment by general contractor). Texas courts have long recognized that an unjustified failure to pay may be held to be a material breach. See, e.g., *Texas Bank & Trust Co. v. Campbell Bros., Inc.*, 569 S.W.2d 35, 39–40 (Tex. Civ. App.—Dallas 1978), dismissed, (Nov. 1, 1978); *Taylor-Fichter Steel Const. Co. v. Curtis*, 144 S.W.2d 285, 288 (Tex. Civ. App.—Beaumont 1940), writ dismissed, judgment correct, (Nov. 20, 1940). However, whether nonpayment or late payment is a material breach will depend upon the facts of a particular case. See *Mustang Pipeline Co., Inc. v. Driver Pipeline Co., Inc.*, 134 S.W.3d 195, 199–200, 158 O.G.R. 810 (Tex. 2004). Materiality is an issue "to be determined by the trier of facts." *Bartush-Schnitzius Foods Co. v. Cimco Refrigeration, Inc.*, 518 S.W.3d 432, 436 (Tex. 2017). Materiality may be decided as a matter of law only if reasonable jurors could reach only one verdict. See *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005) ("If the evidence at trial would enable reasonable and fair-minded people to differ in their conclusions, then jurors must be allowed to do so.").	condition's being performed, and the fulfillment of the condition is prevented by the act of the other party, the condition is considered fulfilled. *Id.* (citing *Houston County v. Leo L. Landauer & Assocs., Inc.*, 424 S.W.2d 458, 464 (Tex. App. 1968)) Texas courts do not apply the doctrine of prevented performance as an independent cause of action. *In re iHeartMedia, Inc., supra*, 597 B.R. at 354l *Albemarle Corp. v. MEMC Elec. Materials, Inc.*, 685 F.Supp.2d 652, 656 (S.D. Tex. 2010). However, Texas courts recognize the equitable doctrine of prevented performance as a rule of contract law within a cause of action for breach of contract. See *Rich v. McMullan*, 506 S.W.2d 745, 747 (Tex. Civ. App.—San Antonio 1974); *Fluor Enters. v. Conex Int'l Corp.*, 273 S.W.3d 426, 442–443 (Tex. App.—Beaumont 2008)
UT	"[A] failure of performance which defeats the very object of the contract or [is] of such prime importance that the contract would not have been made if default in that particular had been contemplated is a material failure." *Coalville City v. Lundgren*, 930 P.2d 1206, 1210 (quoting *Polyglycoat Corp. v. Holcomb*, 591 P.2d 449, 451 (Utah 1979)	"[U]nder the first breach rule a party first guilty of a substantial or material breach of contract cannot complain if the other party thereafter refuses to perform. He can neither insist on performance by the other party nor maintain an action against the other party for a subsequent failure to perform." *Cross v. Olsen*,	In *Commercial Bldg. Servs. v. Romano*, the trial court concluded that Defendants breached the contract when they failed to pay Plaintiff the amounts due under the contracts for the work that had been completed and awarded Plaintiff $56,271.66 in damages for the unpaid, completed work. No. 14-CV-30685, 2014 Colo.	Under the prevention doctrine, "[i]t is basic contract law that a party who prevents the occurrence of a condition precedent may not stand on that condition's non-occurrence to refuse to perform his part of the contract." *Stroh v. DataMark, Inc.*, No. 2:05-CV-867, 2007 U.S. Dist. LEXIS 23629 at *7 (Dist. Ct. Mar. 29, 2007)

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STATE	GENERAL LAW OF MATERIAL BREACH	FIRST TO BREACH RULE	NONPAYMENT AS MATERIAL BREACH	PREVENTION DOCTRINE
UT cont.	Furthermore, "[a] breach which goes to only a part of the consideration, is incidental and subordinate to the main purpose of the contract, and may be compensated in damages does not warrant a rescission of the contract . . .A rescission is not warranted by a mere breach of contract not so substantial and fundamental as to defeat the object of the parties in making the agreement." *Id.* at 1035–36	303 P.3d 1030, 1035 (Utah Ct. App. 2013) (quoting *CCD, LC v. Millsap*, 116 P.3d 366, 373 (Utah 2005)) *Cross v. Olsen*, 2013 UT App 135, ¶ 26, 303 P.3d 1030, 1035 (stating that a "material breach will excuse further performance by the non-breaching party.").	Dist. LEXIS 2954, at *29 (Dist. Ct. Oct. 30, 2014)	
VT	The factors to consider in determining whether a breach is material or not are set forth in the Restatement of Contracts as follows: In determining whether a failure to render or to offer performance is material, the following circumstances are significant: (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; and (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing. The Restatement (Second) of Contracts § 241 (1981)	When one party is found to commit the first material breach of a contract, the non-breaching party cannot be held liable for its subsequent failure to fulfill its contractual obligation. *N.Y. Realty Partners, L.P. v. Appleton Papers, Inc.*, No. 1:07-CV-0867 (LEK/DRH), 2008 U.S. Dist. LEXIS 52346, at *6 (N.D.N.Y. July 3, 2008)	State-specific case law not located for this issue.	"The prevention doctrine is substantially related to the implied covenant of good faith and fair dealing implicit in every contract. . . .The implied covenant of good faith and fair dealing requires a promisor to reasonably facilitate the occurrence of a condition precedent by either refraining from conduct which would prevent or hinder the occurrence of the condition, or by taking positive action to cause its occurrence." *Westerbeke Corp. v. Daihatsu Motor Co.*, 304 F.3d 200, 212 (2d Cir. 2002) (citing *Cauff, Lippman & Co. v. Apogee Fin. Group, Inc.*, 807 F.Supp.1007, 1022 (S.D.N.Y. 1992))
VA	A material breach is a failure to do something that is so fundamental to the contract that the failure to perform that obligation defeats an essential purpose of the contract. *Mathews v. PHH Mortg. Corp.*, 724 S.E.2d 196, 199 (Va. 2012) (quoting *Horton v. Horton*, 487 S.E.2d 200, 203–04 (Va. 1997))	A party who commits the first breach of a contract is not entitled to enforce the contract. An exception to this rule arises when the breach did not go to the root of the contract but only to a minor part of the consideration. *Horton*	"[F]ailure of a . . . contractor to make progress payments as due to [a] subcontractor is a material breach of the contract." *Shen Valley Masonary v. S. P. Cahill & Assocs.*, 57 Va. Cir. 189, 198 (Cir. Ct. 2001) (quoting In re Vecco Constr. Industries, Inc., 30 B.R. 945, 948–49 (Bankr. E.D. Va. 1983) (holding subcontractor could	The prevention doctrine is a principle of contract law which states that if one party to a contract hinders, prevents, or makes impossible the performance by the other party, the latter's failure to perform will be excused. *Rastek Constr. & Dev. Corp. v. Gen. Land Commer. Co., LLC*, 294 Va. 416, 426 (2017).

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VA cont.		*v. Horton*, 487 S.E.2d 200, 203	collect $332,033 in completed but unpaid labor and $4,585 in clean up and equipment removal costs from general contractor).	The doctrine also precludes the "preventing party" from recovering "damages for the resulting nonperformance" by the party prevented or from "otherwise benefitting from its own wrongful acts." *Id*
WA	"A breach or non-performance of a promise by one party to a bilateral contract, so material as to justify a refusal of the other party to perform a contractual duty, discharges that duty." *224 Westlake, LLC v. Engstrom Props., LLC*, 281 P.3d 693, 707 (Wash. Ct. App. 2012) (quoting *Jacks v. Blazer*, 235 P.2d 187, 191 (Wash. 1951)) The materiality of a breach is a question of fact. *Id.* (citing *Bailie Commc'ns, Ltd. v. Trend Bus. Sys.*, 765 P.2d 339, 342 (Wash. Ct. App. 1988)) A material breach is one that "substantially defeats" a primary function of an agreement. *Id.* "[M]ateriality is a term of art in contract analysis, and identifies a breach so significant it excuses the other party's performance and justifies rescission of the contract. As stated in the Washington Pattern Jury Instructions: Civil, a material breach is one "serious enough to justify the other party in abandoning the contract … one that substantially defeats the purpose of the contract."" *Id.* (quoting *Park Ave. Condo. Owners Ass'n v. Buchan Devs.*, LLC, 71 P.3d 692, 698 (Wash. Ct. App. 2003)) A party is barred from enforcing a contract that it has materially breach. *Rosen v. Ascentry Techs., Inc.*, 143 Wn. App. 364, 369, 177 P.3d 765 (2008)	State-specific case law not located for this issue.	An unpaid installment is a material breach. *Rosen v. Ascentry Techs., Inc.*, 143 Wn. App. 364, 369, 177 P.3d 765 (2008)	'In every express contract for the erection of a building or for the performance of other constructive work, there is an implied term that the owner, or other person for whom the work is contracted to be done, will not obstruct, hinder, or delay the contractor, but, on the contrary, will in all ways facilitate the performance of the work to be done by him." *Haley v. Brady*, 17 Wn.2d 775, 789, 137 P.2d 505 (1943) One party to a contract who prevents another from performing his promise has no cause of action to recover for the nonperformance of that promise. *Hydraulic Supply Mfg. Co. v. Mardesich*, 57 Wn. 2d 104, 105, 352 P.2d 1023 (1960) (citing *Wolk v. Bonthius*, 13 Wn.2d 217, 124 P.2d 553 (1942))
WV	Under West Virginia law, a party who sues for damages for breach of contract must show his own compliance with the contract or that he was prevented or relieved from	The general rule in cases of anticipatory breach of contract is that where one party repudiates the contract and refuses longer to be bound by it,	State-specific case law not located for this issue.	Virginia law recognizes the prevention doctrine. Under this doctrine, proof of active conduct preventing or hindering the fulfillment of a condition precedent and proof that the condition would

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STATE	GENERAL LAW OF MATERIAL BREACH	FIRST TO BREACH RULE	NONPAYMENT AS MATERIAL BREACH	PREVENTION DOCTRINE
WV cont.	compliance by the defendant. *Milner Hotels v. Norfolk & W. Ry.*, 822 F. Supp. 341, 345 (S.D. W. Va. 1993) (citing *Jones v. Kessler*, 126 S.E. 344 (W.Va. 1925)) For it to be barred from recovery of damages by its own breach, the plaintiff's breach must be material. *Id.* (citing *Holderby v. Harvey C. Taylor Co.*, 104 S.E. 550 (W.Va. 1920)) Normally, the issue of whether a breach is a material one is a question of fact for the jury. *Id.* Where the facts presented are not in dispute, however, the issue of whether a contract has been performed or breached in a material way is a question of law for the court to decide. *Id.* (citing 17A Am. Jur. 2d, Contracts, § 608 (1991)) The Restatement (Second) of Contracts § 241 (1981) outlines the circumstances which are significant in determining whether a breach of contract is material. In determining whether a failure to render or to offer performance is material, the following circumstances are significant: (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances, including any reasonable assurances; and (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing. *Id*	the injured party has an election to pursue any of three remedies: he may treat the contract as rescinded and recover on quantum meruit so far as he has performed; or he may keep the contract alive for the benefit of both parties, being at all times ready and able to perform, and at the end of the time specified in the contract for performance, sue and recover under the contract; or he may treat the repudiation as putting an end to the contract for all purposes of performance, and sue for the profits he would have realized, if he had not been prevented from performing. *Yoak v. Marshall Univ. Bd. Of Governors*, 672 S.E.2d 191, 195 (2008)=		have occurred or the performance of the return promise would have been rendered except for such prevention or hindrance may excuse or waive the performance of the condition precedent. Of course, mere speculation and conjecture about what might have happened will not satisfy the requirements of the prevention doctrine and the plaintiff must show that the defendant's conduct substantially contributed to non-occurrence of the condition. *Moore Bros. Co. v. Brown & Root, Inc.*, 207 F.3d 717 (4th Cir. 2000)= Even when the prevention doctrine rebuts the presumption, liability falls upon the promisor subject to the threshold, but-for causation requirement. This but-for causation requirement for the prevention doctrine tracks basic breach-of-contract principles in Virginia. Prevention is a breach of the contract by the party so preventing performance and renders him or her liable to pay damages. A party who violates his or her contract with another should generally be held responsible for all direct and proximate damages which result from such violation, but damages that are so remote as not to be directly traceable to that breach, or are attributable to some other intervening cause, cannot be allowed. Because recovery of damages for a breach of contract requires causation, it thus follows that recovery of damages for the prevention of the performance of a condition, which is akin to a breach of contract, would also require causation. *Rastek Constr. & Dev. Corp. v. Gen. Land Commer. Co., LLC*, 294 Va. 416, 806 S.E.2d 740 (2017) The prevention doctrine does not require proof that the condition would have occurred "but for" the wrongful conduct of the promisor; instead it only requires that the conduct have "contributed materially" to the nonoccurrence of the condition. It is as effective an excuse of performance of a condition that the promisor has

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WV cont.				hindered performance as that he or she has actually prevented it. *Moore Bros. Co. v. Brown & Root, Inc.*, 207 F.3d 717 (4th Cir. 2000)
WI	"A material breach by one party to a contract excuses subsequent performance by the other party." *Entzminger v. Ford Motor Co.*, 177 N.W.2d 899, 902 (Wis. 1970) "However, a party is not automatically excused from future performance of contract obligations every time the other party breaches." *Mgmt. Comput. Servs. v. Hawkins, Ash, Baptie & Co.*, 557 N.W.2d 67, 77 (Wis. 1996) "If the breach is relatively minor and not 'of the essence,' the plaintiff is himself still bound by the contract; he cannot abandon performance and get damages for a 'total' breach by the defendant." *Id.* (quoting Arthur L. Corbin, Corbin On Contracts § 700, at 310 (1960)) In other words, "there must be so serious a breach of the contract by the other party as to destroy the essential objects of the contract." *Appleton State Bank v. Lee*, 148 N.W.2d 1, 3 (Wisc. 1967)	A party is not automatically excused from future performance of contract obligations every time the other party breaches; if the breach is relatively minor and not of the essence, plaintiff is still bound by the contract and cannot abandon performance and get damages for total breach by defendant. *Management Computer v. Hawkins, Ash* 557 N.W. 2d 67 (Wis.1996) A party who has breached a contract cannot take advantage of his breach; and he cannot set it up to relieve him from his contractual obligations. C.J.S., Contracts §458 at 591. See also *Lumbermens Mutual Casualty Co. v. Royal Indemnity Co.*, 10 Wis. 2d 380, 103 N.W.2d 69 (1960)	Courts have held that a contractor will be held liable for violation of the Wisconsin Contractor Theft Statute for failure to pay a subcontractor and assessed for treble damages, attorney's fees, and litigation costs. *Tri-Tech Corp. of America v. Americorp Services, Inc.*, 633 N.W.2d 683 (Wisc. Ct. App. 2001)	In contract law, the general principle known as the doctrine of prevention provides that, "if one party to a contract hinders, prevents, or makes impossible performance by the other party, the latter's failure to perform will be excused." *Tabatabai v. W. Coast Life Ins. Co.*, 664 F.3d 663, 666 (7th Cir. 2011) (quoting 13 Richard A. Lord, Williston on Contracts § 39:3 (4th ed. 2000)) However, "[t]he doctrine of prevention as an excuse for nonperformance of a contractual duty is inapplicable when the conduct alleged to have prevented performance was permissible under the express or the implied terms of the contract." *Acheron Med. Supply, LLC v. Cook Med. Inc.*, 958 F.3d 637, 646 (7th Cir. 2020) (quoting 13 Williston on Contracts § 39:11 (4th ed.))
WY	The general rule recognized by the Wyoming Supreme Court is that an injured party may rescind the contract where there has been a material breach. *Racicky v. Simon*, 831 P.2d 241, 243 (Wyo. 1992) (citing *Cady v. Slingerland*, 514 P.2d 1147 (Wyo. 1973)) In order to warrant a termination or repudiation of a contract, a breach must be substantial and material. *Stillwell Welding Co. v. Colt Trucking*, 741 P.2d 598, 600 (Wyo. 1987) To determine whether a breach was substantial and material, Wyoming courts have cited with	The first-to-breach rule provides that a party cannot claim the benefit of a contract that it was the first to materially breach. *Maverick Benefit Advisors, LLC v. Bostrom*, 382 P.3d 753, 758 (Wyo. 2016). *See Kinstler v. RTB South Greeley, Ltd. LLC*, 160 P.3d 1125, 1127 (Wyo. 2007) ("one party's material breach may excuse the other party's performance under that agreement"). The party asserting the affirmative defense bears the burden of proof. *Id*	State-specific case law not located for this issue.	State-specific case law not located for this issue.

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STATE	GENERAL LAW OF MATERIAL BREACH	FIRST TO BREACH RULE	NONPAYMENT AS MATERIAL BREACH	PREVENTION DOCTRINE
WY cont.	approval Restatement (Second) Contracts § 241 (1981): In determining whether a failure to render or to offer performance is material, the following circumstances are significant: (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; and (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing. *Seherr-Thoss v. Seherr-Thoss*, 141 P.3d 705, 713 (Wyo. 2006)	To establish the first-to-breach affirmative defense, the party asserting the defense must show that the other party breached first and that the breach was material. *Id* However, even where there has been a prior material breach, courts have held that a party may lose its right to assert the first-to-breach rule if it accepts the benefits of the contract with knowledge of the breach. *Id* Thus, when one party to a contract materially breaches the contract, the non-breaching party has two options: (1) it may continue the contract, retain its economic benefits, and sue for damages; or (2) it may repudiate the agreement, suspend performance under the contract, and sue for damages. *Id* (citing Restatement (Second) of Contracts § 246, cmt. a-c, illus. 1–3) If the party elects to continue with the contract, it cannot later suspend performance and then claim that it had no duty to perform based upon the first material breach. *Id.* at 759. That defense is waived when the party elects to continue performance of the contract. *Id*		

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50 State Legal Matrix – Offer of Judgment Provisions for 2024

An "Offer of Judgment," also known as an Offer of Settlement or Offer to Compromise, is a rule aimed at encouraging settlement and controlling unnecessary litigation. Rule 68 of Federal Rule of Civil Procedure applies to Offer of Judgment in Federal matters. This matrix discusses when a settlement offer is designated as an Offer of Judgment in a state civil litigation matter. When an Offer of Judgment is served, then later rejected and the final court decision is less than favorable than the offer made, the party rejecting the offer can be subject to certain penalties. These penalties include the opposing side's costs, and in some circumstances, these costs include the payment of attorney's fees and/or the services of expert witnesses. An Offer of Judgment is not applicable in divorce proceedings or child custody.

NOTE: *Unless otherwise provided in the Offer of Judgment Rule, the reference to costs are assumed to be taxable costs (filing costs, service of process costs, etc.) and those rendered at the court's discretion. The states that include different or additional costs, such as attorneys' fees and/or expert services, will be outlined in the Consequence of Non-Acceptance column.

Please be advised that hyperlinks were added in the CITATION column. By clicking on the citation for each state, you will be brought to the appropriate state webpage that will provide the relevant information for each section.

STATE	CITATION	PARTY	FILING DEADLINE	RESPONSE DEADLINE	CONSEQUENCE OF NON-ACCEPTANCE*
AL	Ala. R. Civ. P. 68	Any Defending Party	15 Days Before Trial (District Courts = 14 days) Note: An offer of judgment is only filed if it is accepted. If it is not accepted within the response deadline, it is deemed withdrawn.	10 Days After Service (District Courts = 7 days)	An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer.
AK	Alaska Stat. § 09.30.065	Any Party	10 Days Before Trial	10 Days After Service	If the judgment finally entered on the claim as to which an offer has been made under this section is at least five percent less favorable to the offeree than the offer, or if there are multiple defendants at least 10 percent less favorable to the offeree than the offer, the offeree, whether the party making the claim or defending against the claim, shall pay all costs as allowed under the Alaska Rules of Civil Procedure and shall pay reasonable actual **attorney fees** incurred by the offeror from the date the offer was made, as follows:

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STATE	CITATION	PARTY	FILING DEADLINE	RESPONSE DEADLINE	CONSEQUENCE OF NON-ACCEPTANCE*
AK cont.					(1) if the offer was served no later than 60 days after both parties made the disclosures required by the Alaska Rules of Civil Procedure, the offeree shall pay **75 percent** of the offeror's reasonable actual **attorney fees**; (2) if the offer was served more than 60 days after both parties made the disclosures required by the Alaska Rules of Civil Procedure but more than 90 days before the trial began, the offeree shall pay **50 percent** of the offeror's reasonable actual **attorney fees**; (3) if the offer was served 90 days or less but more than 10 days before the trial began, the offeree shall pay **30 percent** of the offeror's reasonable actual **attorney fees**.
AR	Ark. R. Civ. P. 68	Any Defending Party	10 Days Before Trial	10 Days After Service	If the judgment exclusive of interest from the date of offer finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. For purposes of this rule, the term “costs” is defined as reasonable litigation expenses, excluding **attorney's fees.**
AZ	Ariz. R. Civ. P. 68	Any Party	30 Days Before Trial (25 Days Before Arbitration)	An offer of judgment must remain effective for 30 days after it is served, except: (A) an offer made within 60 days after service of the summons and complaint must remain effective for 60 days after the offer is served; (B) an offer made within 45 days of trial must remain effective for 15 days after it is served; and (C) in an action subject to arbitration, an unexpired offer will automatically expire at 5:00 p.m. on the fifth day before the arbitration hearing. If the court enlarges the effective period, the offeror may withdraw the offer at any time after the initial effective period expires and	A party who rejects an offer, but does not obtain a more favorable judgment, must pay as a sanction **twenty percent of the difference between the amount of the offer and the amount of the final judgment**. To determine if a judgment that includes an award of taxable costs or **attorney's fees** is more favorable than the offer, the court must consider only those taxable costs and **attorney's fees** that were reasonably incurred as of the offer date.

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STATE	CITATION	PARTY	FILING DEADLINE	RESPONSE DEADLINE	CONSEQUENCE OF NON-ACCEPTANCE*
AZ cont.				before the offer is accepted.	
CA	Cal. Code Civ. Proc. § 998	Any Party	10 Days Before Trial	Prior to trial or arbitration or within 30 days after it is made, whichever occurs first.	If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover his or her post offer costs and shall pay the defendant's costs from the time of the offer. In addition, in any action or proceeding other than an eminent domain action, the court or arbitrator, in its discretion, may require the plaintiff to pay a reasonable sum to cover post offer costs of the **services of expert witnesses**, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the defendant. If an offer made by a plaintiff is not accepted and the defendant fails to obtain a more favorable judgment or award in any action or proceeding other than an eminent domain action, the court or arbitrator, in its discretion, may require the defendant to pay a reasonable sum to cover post offer costs of the **services of expert witnesses**, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the plaintiff, in addition to plaintiff's costs. If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the costs under this section, from the time of the offer, shall be deducted from any damages awarded in favor of the plaintiff. If the costs awarded under this section exceed the amount of the damages awarded to the plaintiff the net amount shall be awarded to the defendant and judgment or award shall be entered accordingly. **Exception** – An exception to this rule is outlined for FEHA cases here.
CO	Colo. Rev. Stat. § 13-17-202	Any Party	14 Days Before Trial	14 Days After Service	If the plaintiff serves an offer of settlement in writing at any time more than fourteen days before the commencement of the trial that is rejected by the defendant, and the plaintiff recovers a final judgment in excess of the amount offered, then the plaintiff

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STATE	CITATION	PARTY	FILING DEADLINE	RESPONSE DEADLINE	CONSEQUENCE OF NON-ACCEPTANCE*
CO cont.					shall be awarded **actual costs** accruing after the offer of settlement to be paid by the defendant. If the defendant serves an offer of settlement in writing at any time more than fourteen days before the commencement of the trial that is rejected by the plaintiff, and the plaintiff does not recover a final judgment in excess of the amount offered, then the defendant shall be awarded **actual costs** accruing after the offer of settlement to be paid by the plaintiff. However, if the plaintiff is the prevailing party in the action pursuant to C.R.S. 13-16-104, the plaintiff's final judgment shall include the amount of the plaintiff's **actual costs** that accrued prior to the offer of settlement. If an offer of settlement is not accepted in writing within fourteen days after service of the offer, the offer shall be deemed rejected, and the party who made the offer is not precluded from making a subsequent offer. Evidence thereof is not admissible, except in a proceeding to determine costs. For purposes of this section, "actual costs" shall not include **attorney fees** but shall mean costs actually paid or owed by the party, or his or her attorneys or agents, in connection with the case, including but not limited to filing fees, subpoena fees, **reasonable expert witness fees**, copying costs, court reporter fees, reasonable investigative expenses and fees, reasonable travel expenses, exhibit or visual aid preparation or presentation expenses, legal research expenses, and all other similar fees and expenses.
CT	Conn. Gen. Stat. §§ 52-192a; 52-193; 52-194; 52-195	Any Party	Not earlier than 180 days after service of process, but not later than 30 Days Before Trial	**Plaintiff's Offer of Compromise** 30 Days After Offer (60 Days After Offer for Wrongful Death/Personal Injury Cases involving a Health Care Provider) **Defendant's Offer of Compromise** Defendant's Offer - 60 Days After Offer	**Defendant's Failure to Accept Plaintiff's Offer of Compromise** After trial the court shall examine the record to determine whether the plaintiff made an offer of compromise which the defendant failed to accept. If the court ascertains from the record that the plaintiff has recovered an amount equal to or greater than the sum certain specified in the plaintiff's offer of compromise, the court shall add to the amount so recovered eight percent annual interest on said amount, except in the case of a counterclaim plaintiff under section 8-132, the court shall add to the amount so recovered eight percent annual interest on the difference between the amount so recovered and the sum certain specified in the counterclaim plaintiff's offer of compromise. The interest shall be

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CT cont.					computed from the date the complaint in the civil action or application under section 8-132 was filed with the court if the offer of compromise was filed not later than eighteen months from the filing of such complaint or application. If such offer was filed later than eighteen months from the date of filing of the complaint or application, the interest shall be computed from the date the offer of compromise was filed. The court may award reasonable **attorney's fees** in an amount not to exceed three hundred fifty dollars, and shall render judgment accordingly. This section shall not be interpreted to abrogate the contractual rights of any party concerning the recovery of **attorney's fees** in accordance with the provisions of any written contract between the parties to the action. **Failure to Accept Defendant's Offer of Compromise** Unless the plaintiff recovers more than the sum specified in the offer of compromise, with interest from its date, the plaintiff shall recover no costs accruing after the plaintiff received notice of the filing of such offer, but shall pay the defendant's costs accruing after the plaintiff received notice. Such costs may include reasonable **attorney's fees** in an amount not to exceed three hundred fifty dollars. This section shall not be interpreted to abrogate the contractual rights of any party concerning the recovery of **attorney's fees** in accordance with the provisions of any written contract between the parties to the action. The provisions of this section shall not apply to cases in which nominal damages have been assessed upon a hearing after a default or after a demurrer has been overruled.
DC	Fed. R. Civ. P. 68	Any Defending Party	14 Days Before Trial	14 Days After Service	If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the **costs** incurred after the offer was made.
DE	Del. R. Civ. P. Super. Ct. 68	Any Defending Party	10 Days Before Trial	10 Days After Service	If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the **costs** incurred after the making of the offer. **Note:** Offers of judgment are not available in equitable proceedings in the Court of Chancery. (*See, e.g., Huff Fund Investment Partnership v. CKx, Inc.*).

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FL	Fla. Stat. § 768.79	Any Party	A party must comply with both Florida Statute § 768.79 and Fla. R. Civ. P. 1.442 when making or accepting an offer of judgment (a/k/a "proposal for settlement" ("PFS") in Florida). The offer shall be served upon the party to whom it is made, but it shall not be filed unless it is accepted or unless filing is necessary to enforce the provisions of this section.	Strict rule of 30 days to either accept or reject, or deemed rejected.	If a plaintiff serves an offer which is not accepted by the defendant, and if the judgment obtained by the plaintiff is at least 25 percent more than the amount of the offer, the plaintiff shall be awarded reasonable costs, including investigative expenses, and **attorney's fees**, calculated in accordance with the guidelines promulgated by the Supreme Court, incurred from the date the offer was served. If a defendant serves an offer which is not accepted by the plaintiff, and if the judgment obtained by the plaintiff is at least 25 percent less than the amount of the offer, the defendant shall be awarded reasonable costs, including investigative expenses, and **attorney's fees**, calculated in accordance with the guidelines promulgated by the Supreme Court, incurred from the date the offer was served, and the court shall set off such costs in attorney's fees against the award.
FL cont.	Fla. R .Civ. P. Rule 1.442	Any Party	A proposal to a defendant shall be served no earlier than 90 days after service of process on that defendant; a proposal to a plaintiff shall be served no earlier than 90 days after the action has been commenced. No proposal shall be served later than 45 days before the date set for trial or the first day of the docket on which the case is set for trial, whichever is earlier.	30 Days After Service	If a party is entitled to costs and fees pursuant to applicable Florida law, the court may, in its discretion, determine that a proposal was not made in good faith. In such case, the court may disallow an award of costs and **attorneys' fees**. When determining the reasonableness of the amount of an award of **attorneys' fees** pursuant to this section, the court shall consider, along with all other relevant criteria, the following factors: (1) The then-apparent merit or lack of merit in the claim. (2) The number and nature of proposals made by the parties. (3) The closeness of questions of fact and law at issue. (4) Whether the party making the proposal had unreasonably refused to furnish information necessary to evaluate the reasonableness of the proposal. (5) Whether the suit was in the nature of a test case presenting questions of far-reaching importance affecting nonparties. (6) The amount of the additional delay cost and expense that the party making the

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FL cont.					proposal reasonably would be expected to incur if the litigation were to be prolonged.
GA	Ga. Code § 9-11-68	Any Party	At any time more than 30 days after the service of a summons and complaint on a party but not less than 30 days (or 20 days if counteroffer) before trial	30 Days After Service	If Plaintiff rejects offer made by Defendant and Defendant obtains final entry of judgment of no liability or judgment that is less than 75 percent of the offer, Defendant can recover reasonable **attorney's fees** and expenses incurred from the date of the rejection of the offer. If Defendant rejects offer made by Plaintiff, and the final judgment is greater than 125 percent of the offer, Plaintiff can recover reasonable **attorney's fees** and expenses incurred from the date of the rejection of the offer.
HI	Haw. R. Civ. P. 68	Any Party	10 Days Before Trial	10 Days After Service	If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. **Note:** This provision makes an offer of settlement available in addition to the offer of judgment.
ID	Idaho R. Civ. P. 68	Any Defending Party	14 Days Before Trial	14 Days After Service	**Monetary Damages** In cases involving claims for monetary damages, any costs under Rule 54(d)(1) awarded against the offeree must be based upon a comparison of the offer and the "adjusted award." **Adjusted Award Definition.** The adjusted award is defined as: (i) the verdict in addition to, (ii) the offeree's costs under Rule 54(d)(1) incurred before service of the offer of judgment and, (iii) any **attorney fees** under Rule 54(e)(1) incurred before service of the offer of judgment. Provided, in contingent fee cases where **attorney fees** are awardable under Rule 54(e)(1), the court will pro rate the offeree's **attorney fees** to determine the amount incurred before the offer of judgment in reaching the adjusted award. **Adjusted Award Less than Offer** If the adjusted award obtained by the offeree is less than the offer, then:

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ID cont.					(i) the offeree must pay those costs of the offeror as allowed under Rule 54(d)(1), incurred after the making of the offer; (ii) the offeror must pay those costs of the offeree, as allowed under Rule 54(d)(1), incurred before the making of the offer; and (iii) the offeror is not liable for costs and **attorney fees** of the offeree awardable under Rules 54(d)(1) and 54(e)(1) incurred after the making of the offer. **Adjusted Award More than Offer**. If the adjusted award obtained by the offeree is more than the offer, the offeror must pay those costs, as allowed under Rule 54(d)(1), incurred by the offeree both before and after the making of the offer. **Non-Monetary Claims** In cases involving claims for relief other than monetary damages, any costs under Rule 54(d)(1) must be based on a comparison of the offer and the judgment. **Judgment Not More Favorable than Offer**. If the judgment, including **attorney fees** awardable under Rule 54(e)(1) incurred before service of the offer of judgment, and costs incurred before service of the offer of judgment, finally obtained by the offeree is not more favorable than the offer, the offeree must pay the offeror's costs, as allowed under Rule 54(d)(1), incurred after the making of the offer. **Judgment More Favorable than Offer**. If the judgment including **attorney fees** and costs is more favorable than the offer, the offeror must pay all costs of the offeree allowable under Rule 54(d)(1) both before and after the making of the offer.
IL	735 ILCS 30/10-5-110 Eminent Domain Only	Any Defending Party	14 Days Before Trial	10 Days After Service	**EMINENT DOMAIN ONLY** If a plaintiff does not accept an offer and if the final just compensation for the defendant's interest is determined by the trier of fact to be equal to or in excess of the amount of the defendant's last written offer, then the court must order the plaintiff to pay to the defendant that defendant's **attorney's fees** as calculated under subsection (f) of this Section. The plaintiff shall also pay to the defendant that defendant's reasonable costs and litigation expenses, including, without limitation, expert witness and appraisal fees, incurred after the making of the defendant's last written offer.

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IL cont.					(f) Any award of attorney's fees under this Section shall be based solely on the net benefit achieved for the property owner, except that the court may also consider any non-monetary benefits obtained for the property owner through the efforts of the attorney to the extent that the non-monetary benefits are specifically identified by the court and can be quantified by the court with a reasonable degree of certainty. "Net benefit" means the difference, exclusive of interest, between the final judgment or settlement and the last written offer made by the condemning authority before the filing date of the condemnation complaint. The award shall be calculated as follows, subject to the Illinois Rules of Professional Conduct: (1) 33 percent of the net benefit if the net benefit is $250,000 or less; (2) 25 percent of the net benefit if the net benefit is more than $250,000 but less than $1 million; or (3) 20 percent of the net benefit if the net benefit is $1 million or more. ***The above paragraphs only refer to eminent domain actions.***
IN	Ind. R. Civ. P. 68	Any Defending Party	10 Days Before Trial	10 Days After Service	If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the **costs incurred** after the making of the offer.
IA	Iowa Code § 677.7-677.10	Any Defending Party	Any Time Before Trial	5 Days After Service	If the plaintiff fails to obtain judgment for more than was offered by the defendant, the plaintiff cannot recover costs, but shall pay the defendant's costs from the time of the offer. **Note:** This statute contains partial offers and conditional offers in addition to settling the entire case. See link provided.
KS	Kan. Stat. § 60-2002(b)	Any Defending Party	21 Days Before Trial	14 Days After Service	If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the **costs incurred** after the making of the offer.
KY	Ky. R. Civ. P. 68	Any Defending Party	10 Days Before Trial	10 Days After Service	If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer.

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LA	La. Code Civ. Proc. art. 970	Any Party	20 Days Before Trial	10 Days After Service	If the final judgment obtained by the plaintiff-offeree is at least twenty-five percent less than the amount of the offer of judgment made by the defendant-offeror or if the final judgment obtained against the defendant-offeree is at least twenty-five percent greater than the amount of the offer of judgment made by the plaintiff-offeror, the offeree must pay the offeror's costs, exclusive of **attorney fees**, incurred after the offer was made, as fixed by the court. Upon acceptance on the terms offered, either party may move the Court for a judgment. An appeal cannot be taken by a party who has consented to the judgment.
ME	Me. R. Civ. P. 68	Any Defending Party	10 Days Before Trial or Anytime with Court Approval	10 Days After Service or Within Such Shorter Time as the Court May Order	If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the **costs incurred** after the making of the offer.
MD	Md. Code, Cts. & Jud. Proc. § 3-2A-08A	Any Party	45 Days Before Trial	15 Days After Service	**MEDICAL MALPRACTICE ONLY** If the judgment finally obtained is not more favorable to the adverse party than the offeror, the adverse party who received the offer shall pay the costs of the party making the offer incurred after making the offer. Costs referenced by this Section are those set forth in Rule 2-603. Here. **Note:** This does not apply to cases dismissed following a settlement.
MA	Mass. R. Civ. P. 68	Any Defending Party	10 Days Before Trial *A defending party may also make an offer of judgment after trial if liability has been established but damages have not yet been decided.	10 Days After Service	If the judgment exclusive of interest from the date of offer finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer.
MI	Mich. Ct. R. 2.405	Any Party	28 Days Before Trial	21 Days After Service	If the adjusted verdict is more favorable to the offeror than the average offer, the offeree must pay to the offeror the offeror's actual costs incurred in the prosecution or defense of the action. If the adjusted verdict is more favorable to the offeree than the average offer, the offeror must pay to the offeree the offeree's actual costs incurred in the prosecution or defense of the action. However, an offeree who has not made a counteroffer may not

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MI cont.					recover actual costs unless the offer was made less than 42 days before trial. The court shall determine the actual costs incurred. The court may, in the interest of justice, refuse to award an **attorney fee** under this rule. "**Adjusted verdict**" means the verdict plus interest and costs from the filing of the complaint through the date of the offer. Mich. Ct. R. 2.405(A)(5). **"Actual costs"** means the costs and fees taxable in a civil action and a reasonable **attorney fees**, dating to the rejection of the prevailing party's last offer or counteroffer, for services necessitated by the failure to stipulate to the entry of judgment. Mich. Ct. R. 2.405 (A)(6). A request for costs under this sub rule must be filed and served within 28 days after the entry of the judgment or entry of an order denying a timely motion. (i) for a new trial, (ii) to set aside the judgment, or (iii) for rehearing or reconsideration.
MN	Minn. R. Civ. P. 68.01-03	Any Party	10 Days Before Trial	10 Days After Service	Applies to Damage Only and Total Obligation Offers. **Damages-only Offers**. An offer made under this rule is a "damages-only" offer unless the offer expressly states that it is a "total-obligation" offer. A damages-only offer does not include then-accrued applicable prejudgment interest, costs and disbursements, or applicable **attorney fees**, all of which shall be added to the amount stated as provided in Rules 68.02(b)(2) and (c). **Total-obligation Offers**. The amount stated in an offer that is expressly identified as a "total-obligation" offer includes then-accrued applicable prejudgment interest, costs and disbursements, and applicable **attorney fees**. **Consequences** If the offeror is a **defendant**, and the defendant-offeror prevails or the relief awarded to the plaintiff-offeree is less favorable than the offer, the plaintiff-offeree must pay the defendant-offeror's costs and disbursements incurred in the defense of the action after service of the offer, and the plaintiff-offeree shall not recover its costs and disbursements incurred after service of

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MN cont.					the offer, provided that applicable **attorney fees** available to the plaintiff-offeree shall not be affected by this provision. If the offeror is a **plaintiff**, and the relief awarded is less favorable to the defendant-offeree than the offer, the defendant-offeree must pay, in addition to the costs and disbursements to which the plaintiff-offeror is entitled under Rule 54.04, an amount equal to the plaintiff-offeror's costs and disbursements incurred after service of the offer. Applicable **attorney fees** available to the plaintiff-offeror shall not be affected by this provision. If the court determines that the obligations imposed under this rule as a result of a party's failure to accept an offer would impose undue hardship or otherwise be inequitable, the court may reduce the amount of the obligations to eliminate the undue hardship or inequity. **Measuring Result Compared to Offer**. To determine for purposes of this rule if the relief awarded is less favorable to the offeree than the offer: A **damages-only offer** is compared with the amount of damages awarded to the plaintiff; and A **total-obligation offer** is compared with the amount of damages awarded to the plaintiff, plus applicable prejudgment interest, the plaintiff's taxable costs and disbursements, and applicable **attorney fees**, all as accrued to the date of the offer.
MS	Miss. R. Civ. P. 68	Any Defending Party	15 Days Before Trial	10 Days After Service	If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer.
MO	Mo. R. Civ. P. 77.04	Any Defending Party	30 Days Before Trial	10 Days After Service	If the adverse party fails to obtain a judgment more favorable than that offered, that party shall not recover costs in the circuit court from the time of the offer but shall pay costs from that time.
MT	M.R. Civ. P., Rule 68	Any Defending Party	14 Days Before Trial	14 Days After Service	If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the **costs incurred** after the making of the offer.
NE	Neb. Rev. Stat. § 25-901	Any Defending Party	Any Time Before Trial	5 Days After Service	If the plaintiff fails to obtain judgment for more than was offered by the defendant, the plaintiff shall pay the defendant's cost from the time of the offer.

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NE cont.					Neb. Rev. Stat. 44-359 allows a plaintiff to recover **attorney fees** in first-party lawsuit against an insurer. In such a suit, if the Defendant makes an offer of judgment under Neb. Rev. Stat. 25-901 and the Plaintiff receives a verdict for less than the offer of judgment, then along with having to pay the Defendant's costs from the date of the offer, Neb. Rev. Stat. 44-359 blocks the Plaintiff from obtaining **attorney fees** despite obtaining a verdict.
NV	Nev. R. Civ. P. 68	Any Party	21 Days Before Trial	14 Days After Service	If the offeree rejects an offer and fails to obtain a more favorable judgment: The offeree cannot recover any costs, expenses, or **attorney fees** and may not recover interest for the period after the service of the offer and before the judgment; and The offeree must pay the offeror's reasonable post-offer **costs and expenses**, including expenses incurred by the offeror for each **expert witness** whose services were reasonably necessary to prepare for and conduct trial. Often the court will require the expert actually testify at trial to recover that expert's fees; and Applicable interest on the fees and expenses from the time of the offer to the time of entry of the judgment and reasonable **attorney fees**, if any be allowed, actually incurred by the offeror from the time of the offer to the date of entry of the judgment. Note that if a case is appealed and remanded, fees and expenses (and interest thereon) incurred for the appeal are also recoverable; and If the offeror's attorney is collecting a contingent fee, the amount of any attorney fees awarded to the party for whom the offer is made must be deducted from that contingent fee. **Multiple Offers to Same Party**. The penalties in this rule run from the date of service of the earliest rejected offer for which the offeree failed to obtain a more favorable judgment. NRCP 68 is a procedural rule. Nevada also has a statute (**NRS Section 17.117**) that is substantive in nature. So, it can be utilized in federal court. However, FRCP 68 does **not** provide for the award of attorney's fees, whereas NRS 17.117 does.

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NH	The New Hampshire Rules of Civil Procedure do not provide for an offer of judgment.	N/A	N/A	N/A	N/A
NJ	N.J. Ct. R. 4:58	Any Party	20 Days Before Trial	10 Days Before Trial or 90 Days After Service	In cases other than actions against an automobile insurance carrier for uninsured motorist/underinsured motorist benefits, if the offer of a claimant is not accepted and the claimant obtains a money judgment, in an amount that is 120 percent of the offer or more, excluding allowable prejudgment interest and counsel fees, the claimant shall be allowed, in addition to costs of suit: (1) all reasonable litigation expenses incurred following non-acceptance; (2) prejudgment interest of eight percent on the amount of any money recovery from the date of the offer or the date of completion of discovery, whichever is later, but only to the extent that such prejudgment interest exceeds the interest prescribed by 4:42-11(b), which also shall be allowable; and (3) a reasonable **attorney's fee** for such subsequent services as are compelled by the non-acceptance. In cases involving actions against automobile carriers for uninsured/underinsured motorist benefits, if the offer of a claimant is not accepted and the claimant obtains a monetary award by jury or non-jury verdict (adjusted to reflect comparative negligence, if any) in an amount that is 120 percent of the offer or more, excluding allowable prejudgment interest and counsel fees, the claimant shall be allowed, in addition to costs of suit: (1) all reasonable litigation expenses incurred following non-acceptance; (2) prejudgment interest of eight percent on the amount of any money recovery from the date of the offer or the date of completion of discovery, whichever is later, but only to the extent that such prejudgment interest exceeds the interest prescribed by 4:42-11(b), which also shall be allowable; and (3) a reasonable **attorney's fee** for such subsequent services as are compelled by the non-acceptance. If the offer of a party other than the claimant is not accepted, and the claimant

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NJ cont.					obtains a judgment the offeror shall be allowed in addition to costs of suit, the allowance prescribed by R. 4:58-2. A favorable determination for a non-claimant is a money judgment or verdict, excluding allowable prejudgment interest and **attorneys' fees**, is 80% of the offer or less.
NM	N.M. R. Civ. P. Dist. Ct. 1-068	Any Party	10 Days Before Trial	10 Days After Service	If an offer of settlement made by a claimant is not accepted and the judgment finally obtained by the claimant is more favorable than the offer, the defending party must pay the claimant's costs, excluding **attorney's fees**, including double the amount of costs incurred after the making of the offer. If an offer of settlement made by a defending party is not accepted and the judgment finally obtained by the claimant is not more favorable than the offer, the claimant must pay the costs, excluding **attorney's fees**, incurred by the defending party after the making of the offer and shall not recover costs incurred thereafter. **Note:** Domestic relations actions excluded. Claimant cannot make an Offer of Judgment until 120 days after the defendant has filed a responsive pleading.
NY	N.Y. C.P.L.R. § 3221	Any Party	10 Days Before Trial	10 Days After Service	If the offer is not accepted and the claimant fails to obtain a more favorable judgment, he shall not recover costs from the time of the offer, but shall pay costs from that time.
NC	N.C. Gen. Stat. § 68	Any Defending Party	10 Days Before Trial	10 Days After Service	If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. **Note:** Additionally, there is a conditional offer of judgment for damages which states a party defending against a claim arising in contract or quasi contract may serve on offer in writing with his responsive pleading that if he fails in his defense, damages shall be assessed at a specified sum. Claimant has 20 days after service to accept. If it is not accepted, the claimant must prove his damages as if offer had not been made, and if damages assessed in claimant's favor do not exceed sum in offer, the party defending shall recover the costs in respect to the question of damages.
ND	N.D.R. Civ. P. 68	Any Party	14 Days Before Trial	14 Days After Service	If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the **costs incurred** after the offer was made.

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STATE	CITATION	PARTY	FILING DEADLINE	RESPONSE DEADLINE	CONSEQUENCE OF NON-ACCEPTANCE*
OH	Ohio Civ. R. 68	Any Party	Any Time	Any Time	The Ohio Rules of Civil Procedure do not provide a consequence for non-acceptance.
OK	Okla. Stat. tit. 12 § 1101	Any Defending Party	Any Time Before Trial	5 Days After Service	If the plaintiff fails to obtain judgment for more than was offered by the defendant, he shall pay the defendant's **costs** from the time of the offer.
OR	Or. R. Civ. P. 54(E)	Any Defending Party	14 Days Before Trial	7 Days After Service	If the offer is not accepted and filed within the time prescribed, it shall be deemed withdrawn, and shall not be given in evidence at trial and may be filed with the court only after the case has been adjudicated on the merits and only if the party asserting the claim fails to obtain a judgment more favorable than the offer to allow judgment. In such a case, the party asserting the claim shall not recover costs, prevailing party fees, disbursements, or **attorney fees** incurred after the date of the offer, but the party against whom the claim was asserted shall recover from the party asserting the claim costs and disbursements, not including prevailing party fees, from the time of the service of the offer. **Exception** for Settlements prohibited between employee and employer shown here.
PA	The Pennsylvania Rules of Civil Procedure do not provide for an offer of judgment.	N/A	N/A	N/A	N/A
RI	R.I. Super. Ct. R. Civ. P. 68	Any Defending Party	10 Days Before Trial	10 Days After Service	An offer of judgment in Rhode Island includes “costs then accrued” but does not include **attorneys’ fees** or pre-judgment. As such, the offer of judgment should generally be made to specifically include **attorneys’ fees** and interest. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted, or accepted only as part payment, does not preclude a subsequent offer.

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STATE	CITATION	PARTY	FILING DEADLINE	RESPONSE DEADLINE	CONSEQUENCE OF NON-ACCEPTANCE*
SC	S.C. R. Civ. P. 68	Any Party	20 Days Before Trial	20 Days After Service or at least 10 Days Before Trial	If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until the entry of the judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment; or (3) if the offeror is a defendant, reduction from the judgment or award of eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of the judgment. **Note:** Not available in domestic relations actions. Offer of Judgment is also codified in S.C. Code Ann. 15-35-400.
SD	S.D. Codified Laws § 15-6-68	Any Party	10 Days Before Trial	10 Days After Service	If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer.
TN	Tenn. R. Civ. P. 68	Any Party	10 Days Before Trial	10 Days After Service	If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the **costs incurred** after the making of the offer.
TX	Tex. R. Civ. P. 167	The Defendant must file a declaration that the settlement procedure is available in the action. Once initiated, all parties can make use of the remedies encountered in this rule.	45 Days Before Trial	By Date Specified in the Offer (No sooner than 14 days after the offer is served)	If a settlement offer made under this rule is rejected, and the judgment to be awarded on the monetary claims covered by the offer is significantly less favorable to the offeree than was the offer, the court must award the offeror litigation costs against the offeree from the time the offer was rejected to the time of judgment. A judgment award on monetary claims is significantly less favorable than an offer to settle those claims if: (1) the offeree is a claimant and the judgment would be less than 80 percent of the offer; or (2) the offeree is a defendant and the judgment would be more than 120 percent of the offer. Litigation costs are the expenditures actually made and the obligations actually incurred--directly in relation to the claims covered by a settlement offer under this rule--for the following:

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STATE	CITATION	PARTY	FILING DEADLINE	RESPONSE DEADLINE	CONSEQUENCE OF NON-ACCEPTANCE*
TX cont.					(1) court costs; (2) reasonable deposition costs, in cases filed on or after September 1, 2011; (3) reasonable fees for not more than two testifying **expert witnesses**; and (4) reasonable **attorney fees**.
UT	Utah R. Civ. P. 68	Any Party	14 Days Before Trial	By Date Specified in the Offer (No sooner than 14 days after the offer is served)	If the adjusted award is not more favorable than the offer, the offeror is not liable for costs, prejudgment interest or **attorney fees** incurred by the offeree after the offer, and the offeree shall pay the offeror's costs incurred after the offer. "Adjusted award" means the amount awarded by the finder of fact and, unless excluded by the offer, the offeree's costs and interest incurred before the offer, and, if **attorney fees** are permitted by law or contract and not excluded by the offer, the offeree's reasonable **attorney fees** incurred before the offer. If the offeree's **attorney fees** are subject to a contingency fee agreement, the court shall determine a reasonable **attorney fee** for the period preceding the offer.
VT	Vt. R. Civ. P. 68	Any Party	14 Days Before Trial or a Shorter Time if the Court Approves	14 Days After Service or a Shorter Time if the Court Approves	If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the **costs incurred** after the making of the offer.
VA	The Virginia Rules of Civil Procedure do not provide for an offer of judgment.	N/A	N/A	N/A	N/A
WA	Wash. Sup. Ct. Civ. R. 68	Any Defending Party	10 Days Before Trial	10 Days After Service	If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. For offers of judgments in construction defect cases, see RCW 64.55.160.
WV	W. Va. R. Civ. P. 68	Any Defending Party	10 Days Before Trial	10 Days After Service	If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer.
WI	Wis. Stat. § 807.01	Any Party	20 Days Before Trial	10 Days After Service	If there is an offer of settlement by a party under this section which is not accepted and the party recovers a judgment which is greater than or equal to the amount specified in the offer of settlement, the

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WI cont.					party is entitled to interest at an annual rate equal to 1 percent plus the prime rate in effect on January 1 of the year in which the judgment is entered if the judgment is entered on or before June 30 of that year or in effect on July 1 of the year in which the judgment is entered if the judgment is entered after June 30 of that year, as reported by the federal reserve board in federal reserve statistical release H. 15, on the amount recovered from the date of the offer of settlement until the amount is paid.
WY	Wyo. R. Prac. & P. 68	Any Party	28 Days Before Trial (But more than 60 days after service of the complaint)	14 Days After Service	If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the **costs incurred** after the making of the offer.

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50 State Legal Matrix – Patient Record Subpoena Responses for 2024

This matrix identifies state laws such as who is authorized to access a patient's records with or without a subpoena and by when a subpoena must be responded to. This matrix also discusses whether there are certain restrictions on types of information that may be disclosed, as well as other laws that must be considered in determining the type of information that is permissible for disclosure. Subpoenas requesting patient records require careful consideration of a variety of state and federal laws, including HIPAA and 42 C.F.R. Part 2. For example, specific laws govern the disclosure of substance use disorders and psychotherapy or mental health records. Certain privileges such as peer review privileges or the Patient Safety and Quality Improvement Act may also impact the analysis regarding a permissible response to a subpoena.

Please be advised that hyperlinks were added to the statutory and regulatory citations. By clicking on the citation hyperlink, you will be brought to the regulatory webpage containing the statutes and rules that will provide the relevant information.

STATE	STATE REQUIREMENTS COMPARED TO HIPAA	WHO CAN ACCESS PATIENT RECORDS	TIME TO COMPLY/ TIME TO OBJECT	RESTRICTIONS ON DISCLOSURE (Citations to the Code of Federal Regulations (C.F.R.) refer to federal law)	ACCESSIBLE INFORMATION: MENTAL HEALTH/ PSYCHOTHERAPY	ACCESSIBLE INFORMATION: SUBSTANCE ABUSE
AL	Preempted by HIPAA	**Without subpoena:** Patient; Authorized representative Ala. Admin. Code r. 660-1-6-.14(4)(h) **With subpoena**: Parties to the lawsuit may subpoena the records. Issued by: Court clerk (ordinarily sent by counsel) Ala. R. Civ. P. 45(a)(3)	**Without subpoena:** No later than 30 days after receipt of the request; 60 days if not on site; 90 days if written reasons for delay are given. Ala. Admin. Code r. 660-1-6-.14(4)(g) **With subpoena**: Time for compliance: The subpoena shall specify a reasonable time to comply of no less than fifteen (15) days after service.	**Without subpoena**: The client has the right to inspect and copy his/her PHI. This means the client may inspect and obtain a copy of PHI contained in the record, including medical and billing records. Under federal law, however, the client may not inspect or copy the following records: psychotherapy notes; information compiled in reasonable anticipation of, or use in, a civil, criminal, or administrative action or proceeding; such as a child or adult abuse investigation, and PHI subject to law that prohibits access to PHI.	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Alabama Law: A client may not inspect or copy psychotherapy notes. Ala. Admin. Code r. 660-1-6-.14(4)(a)	**Without subpoena:** Alabama law requires substance use disorder treatment programs to comply with state and federal confidentiality laws, including 42 C.F.R. Part 2. (See below) Ala. Admin. Code r. 580-2-20-.04(6)(a) A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Alabama law requires substance use disorder treatment programs to comply with state and federal

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AL cont.			Ala. R. Civ. P. 45(a)(3)(C) Time for objection: Within ten (10) days after the notice of intent to serve subpoena for production is issued. Ala. R. Civ. P. 45(a)(3)(B)	Ala. Admin. Code r. 660-1-6-.14(4)(a) **With subpoena**: Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Alabama Law: When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection . . . the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim. Ala. R. Civ. P. 45(d)(2)	**With subpoena:** Ordinarily, the psychologist/client privilege prevents disclosure of records. The treating psychotherapist/counselor must move to quash the subpoena. In criminal matters, the Court may perform an in-camera review of those records to protect the accused's Sixth Amendment rights. Ala. R. Evid. 503	confidentiality laws, including 42 C.F.R. Part 2. (See below) Ala. Admin. Code r. 580-2-20-.04(6)(a) A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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AK	Preempted by HIPAA	**Without subpoena:** Patient Alaska Stat. § 18.23.005 **With subpoena**: Parties to the lawsuit may subpoena the records. Issued by: Court clerk Alaska R. Civ. P. 45(a)	**Without subpoena:** The covered entity must act on a request for access no later than 30 days after receipt of the request. 7 Alaska Admin. Code § 166.040(f); 45 C.F.R. § 164.524(b)(2)(i) **With subpoena**: Time for compliance: Time specified in the subpoena for compliance. Alaska R. Civ. P. 45 Time for objection: Within 10 days after service of the subpoena or on or before the time specified for compliance if such time is less than 10 days after service. Alaska R. Civ. P. 45(d)(1)	**Without subpoena**: No information could be located on this issue. **With subpoena**: Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Alaska Law: No information could be located on this issue.	**Without subpoena**: **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Alaska Law: Information and records may be copied and disclosed under regulations established by the department only to . . . the patient or an individual to whom the patient has given written consent to have information disclosed. Alaska Stat. § 47.30.845(2) **With subpoena:** Mental health records may be released pursuant to a court order. Alaska Stat. § 47.30.845(3) Medical Review Organization records are not subject to subpoenas. AK Stat § 18.23.030	**Without subpoena**: Alaska law requires Health Information Exchanges to comply with 42 C.F.R. Part 2 when applicable. (See below) 7 Alaska Admin. Code § 166.040(c) A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Alaska law requires Health Information Exchanges to comply with 42 C.F.R. Part 2 when applicable. (See below) 7 Alaska Admin. Code § 166.040(c) A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61 Medical Review Organization records are not subject to subpoenas. AK Stat § 18.23.030

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AZ	Preempted by HIPAA	**Without subpoena:** Patient; Patient representative; third parties with patient or patient representative written authorization. A.R.S. § 12-2292 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk Ariz. R. Civ. P. 45(a)(2)	**Without subpoena:** The covered entity must act on a request for access no later than 30 days after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified in the subpoena for compliance. Ariz. R. Civ. P. 45 Time for objection: Before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier. Ariz. R. Civ. P. 45(c)(6)(A)(ii)	**Without subpoena:** A provider may only disclose that part or all of a patient's medical records and payment records as authorized by state or federal law or written authorization signed by the patient or the patient's representative. A.R.S. § 12-2292 **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Arizona Law: If a subpoena does not meet the requirements of the law or an objection exists, the provider may file an objection with the court and shall send a copy of the objection to the patient, patient attorney, if known, and party seeking the records. A.R.S. § 12-2294.01(E) A person withholding subpoenaed information under a claim that it is privileged or subject to protection as work-product material must	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Arizona Law: A patient, or a patient's health care decision maker, may consent to the disclosure of information relating to their mental health. A.R.S. § 36-509 **With subpoena:** Confidential information may be disclosed pursuant to a court order. Providers are not liable for attempting to comply with the statute in good faith. A.R.S. § 36-509	**Without subpoena:** Arizona law permits health care entities to disclose information contained in records "as permitted" by 42 C.F.R. Part 2. (See below) A.R.S. § 36-509 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Arizona law permits health care entities to disclose information contained in records "as permitted" by 42 C.F.R. Part 2. (See below) A.R.S. § 36-509 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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AZ cont.				promptly comply with Rule 26(b)(6)(A). (See below) Ariz. R. Civ. P. 45(c)(5)(A)-(B) The party must promptly identify in writing the information, document, or electronically stored information withheld and describe the nature of that information, document, or electronically stored information in a manner that-without revealing information that is itself privileged or protected-will enable other parties to assess the claim. Ariz. R. Civ. P. 26(b)(6)(A)(i)		
AR	Preempted by HIPAA	**Without subpoena:** Patient; Patient representative A.C.A. § 16-46-106 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney Ark. R. Civ. P. 45(a)	**Without subpoena:** The covered entity must act on a request for access no later than 30 days after receipt of the request. A.C.A. § 16-46-106; 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified in the subpoena for compliance. Ark. R. Civ. P. 45 Time for objection:	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Arkansas Law: No information could be located on this issue.	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Arkansas Law: No information could be located on this issue. **With subpoena:**	**Without subpoena:** Arkansas law requires drug and alcohol abuse counselors/treatment programs to comply with 42 C.F.R. Part 2. (See below) 201-00-04 Ark. Code R. § 2 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Arkansas law requires drug and alcohol abuse counselors/treatment programs to comply with 42 C.F.R. Part 2. (See below) 201-00-04 Ark. Code R. § 2

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AR cont.			Within ten (10) days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than ten (10) days after service. Ark. R. Civ. P. 45(e)		No information could be located on this issue.	A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61
CA	Stronger than HIPAA	**Without subpoena:** Patient; Patient representative HSC § 123110(a) **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: The clerk or judge to a party requesting it; Attorney CCP § 1985(c)	**Without subpoena:** Right to inspection within 5 working days after receipt of the written request. Right to copy of records within 15 days after receipt of the request. Special considerations if patient needs records to support claim/appeal of public benefit program (may be 30 days). HSC § 123110(a)-(e) **With subpoena**: Time for compliance: Time specified for compliance in subpoena. CCP § 1985 Response date: Response date must be no earlier than 20 days	**Without subpoena**: An agency is not required to disclose personal information to a patient as to the physical or psychological condition of the patient, if the agency determines that disclosure would be detrimental to the patient. CIV § 1798.40(f) **With subpoena**: An agency shall not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed to any person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law. CIV § 1798.24(k)	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) California Law: The consent of the patient, or the patient's guardian or conservator, shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care. Cal. Welf. & Inst. Code § 5328(a)(1) **With subpoena:**	**Without subpoena:** Alcohol and drug treatment program patients may authorize the disclosure of their information in writing. HSC § 11845.5(b) **With subpoena:** Courts may authorize disclosure of alcohol and drug abuse treatment information upon a finding of "probable cause." HSC § 11845.5(c)(5) A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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CA cont.			after the issuance, or 15 days after service, whichever is later. CCP § 2020.410(c); see also CCP §§ 1985.3(d), 1985.6(d)	California Law: No information could be located on this issue.	Confidential mental health information may be released pursuant to a court order. Cal. Welf. & Inst. Code § 5328(a)(6)	
CO	Stronger than HIPAA	**Without subpoena:** Patient; Patient representative 6 CCR 1011-1-02-6 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney Colo. R. Civ. P. 45(a)(2)	**Without subpoena:** Hospitals must provide discharged patients copies of their medical records within 10 days from the request. Inpatients in a hospital must be provided the opportunity to inspect their records within 24 hours from the request based on the regulation. 6 CCR 1011-1-02-6 Physicians must provide copies of patient medical records to patients within a reasonable time or 30 days. Colo. Rev. Stat. § 25-1-802; 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Service of any subpoena commanding	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Colorado Law: A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must: (I) Make the claim expressly; and (II) Describe the nature of the withheld records or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Colorado Law: A patient may consent to disclosure of information relating to their mental health by submitting a signed release with the following elements: (1) persons who shall receive the information; (2) for what purpose; (3) the information to be released; (4) that it may be revoked by the individual, parent, or legal guardian at any time; (5) that the release of information shall be time limited up to two (2) years. 2 CCR § 502-1-21.170.3(A)-(B) **With subpoena:** If information is ordered by a court to be released, providers	**Without subpoena:** Colorado law requires substance abuse treatment facilities to comply with 42 C.F.R. Part 2. (See below) Colo. Rev. Stat. § 27-80-212 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Colorado law requires substance abuse treatment facilities to comply with 42 C.F.R. Part 2. (See below) Colo. Rev. Stat. § 27-80-212 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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CO cont.			a person to produce records or tangible things in that person's possession, custody, or control shall be made not later than 14 days before compliance is required. Colo. R. Civ. P. 45(b)(1)(C) Time for objection: The objection must be submitted before the earlier of the time specified for compliance or 14 days after the subpoena is served. Colo. R. Civ. P. 45(c)(2)(C)	Colo. R. Civ. P. 45(d)(2)(A)	should attempt to notify the source of the information about the compelled disclosure. 2 CCR § 502-1-21.170.3(D)	
CT	Same as HIPAA	**Without subpoena:** Patient; Patient's attorney; Authorized representative. Conn. Gen. Stat. § 20-7c(d) Consent is not required when: (b) Consent of the patient or his authorized representative shall not be required for the disclosure of such communication or	**Without subpoena:** Within 30 days of the request. Conn. Gen. Stat. § 20-7c(d) **With subpoena:** Time for compliance: Time specified for compliance in subpoena.	**Without subpoena:** No information could be located on this issue. **With subpoena:** Prior to responding to a subpoena, a provider must receive "satisfactory assurances" that the person whose records are requested received notice of the request by: (1) written notice to the affected individual; (2) sufficient information for the individual to raise an objection; and (3) time for	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Connecticut Law: A patient, or a patient's authorized representative, may consent to the disclosure of information relating to their mental health. The consent	**Without subpoena:** Connecticut law prohibits disclosure of patient information if the disclosure would violate federal law and regulations such as 42 C.F.R. Part 2. (See below) Conn. Gen. Stat. § 17a-688(c) A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:**

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CT cont.		information (1) pursuant to any statute or regulation of any state agency or the rules of the court, (2) by a physician, surgeon or other licensed healthcare provider against whom a claim has been made…. (3) to the Commissioner of Public Health for records of a patient …, or (4) if child abuse, abuse of an elderly individual, abuse of an individual whom is physically disabled or incompetent or abuse of an individual with mental retardation is known or in good faith suspected. Conn. Gen. Stat. § 52-146o **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Judge; Court clerk; Justice of the peace; Notary public; Commissioner of the Superior Court	Conn. Gen. Stat. Ann. § 52-148e Time for objection: Within fifteen days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than fifteen days after service. Conn. Gen. Stat. Ann. § 52-148e(c)	the individual to raise an objection or confirm that there are no objections or that all objections have been resolved. Byrne v. Avery Ctr., 314 Conn. 433 (2014) Connecticut Law: *See* Byrne v. Avery Ctr., 314 Conn. 433 (2014)	authorization must specify the intended recipient of the disclosed information, and the intended use of the information. A patient or a patient's authorized representative may withdraw consent in writing. Conn. Gen. Stat. § 52-146e **With subpoena:** Subpoena must be accompanied by an order from the court signed by the presiding judge or accompanied by a signed authorization from the patient or their personal representative to produce the record. Conn. Gen. Stat. § 4-104 In addition, before making a production of documents, the disclosing entity/party should comply with the requirements set forth in Byrne v. Avery Ctr., 314 Conn. 433 (2014).	Connecticut law prohibits disclosure of patient information if the disclosure would violate federal law and regulations such as 42 C.F.R. Part 2. (See below) Conn. Gen. Stat. § 17a-688(c) A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61 In addition, before making a production of documents, the disclosing entity/party should comply with the requirements set forth in Byrne v. Avery Ctr., 314 Conn. 433 (2014)

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CT cont.		Conn. Gen. Stat. Ann. § 52-148e(a)				
DE	Preempted by HIPAA	**Without subpoena:** Patient; Guardian; Patient representative Del. Code tit. 10 § 3926(a) **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Prothonotary; Attorney Del. R. Civ. P. Super. Ct. 45(a)(3)	**Without subpoena:** Within 45 days of receipt of the request. Upon payment of any prepayment charge, the health care provider shall produce the requested records within the latter of 14 days of receiving payment or 45 days of receipt of the original request. Del. Code tit. 10 § 3926(a) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. Del. R. Civ. P. Super. Ct. 45 Time for objection: Within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service.	**Without subpoena:** A facility may withhold information if they determine that a patient's requested disclosure would be "seriously detrimental to the patient's health or treatment progress." Del. Code tit. 16 § 5161(b)(13)(a) **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Delaware Law: When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Delaware Law: A patient, or, if the patient is a minor, parent or legal guardian may request information relating to their own mental health treatment. Del. Code tit. 16 § 5161(b)(13)(a) **With subpoena:** Confidential information may be disclosed pursuant to a court order. Del. Code tit. 16 § 5161(b)(13)(b)	**Without subpoena:** Delaware law Prohibits licensed chemical dependency professionals from disclosing patient information unless authorized by 42 C.F.R, Part 2. (See below) 24 DE Code § 3042 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Delaware law Prohibits licensed chemical dependency professionals from disclosing patient information unless authorized by 42 C.F.R, Part 2. (See below) 24 DE Code § 3042 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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			Del. R. Civ. P. Super. Ct. 45(c)(2)(B)	Del. R. Civ. P. Super. Ct. 45(d)(2)		
D.C.	Same as HIPAA	**Without subpoena:** Patient; Patient representative D.C. Mun. Regs. tit. 17 § 4612.2 **With subpoena**: Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney Sup. Ct. R. D.C. 45(a)(3)	**Without subpoena:** Within 30 days of the request. D.C. Mun. Regs. tit. 17 § 4612.2 **With subpoena**: Time for compliance: Time specified for compliance in subpoena. Sup. Ct. R. D.C. 45 Time for objection: Before the earlier of the time specified for compliance or 14 days after the subpoena is served. Sup. Ct. R. D.C. 45(c)(2)(B)	**Without subpoena:** A mental health professional may refuse or limit disclosure if they believe it necessary to protect the client from "a substantial risk of imminent psychological impairment" or "imminent and serious physical injury." D.C. Code § 7–1202.06 **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) D.C. Law: A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation materials must: (i) expressly make the claim; and (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) D.C. Law: A client may consent to the disclosure of information relating to their mental health treatment by completing a written release with the following elements: (1) information to be disclosed, (2) information regarding the client's right to inspect his or her record, (3) information regarding the client's right to revoke consent, (4) the client's signature, (5) the date. D.C. Code § 7–1202.02 **With subpoena:** Mental health information may be disclosed in connection with a court-ordered examination. D.C. Code § 7–1204.01	**Without subpoena:** D.C. law requires the Department of Behavioral Health to maintain applicant information in compliance with 42 C.F.R. Part 2 and District laws that regulate the confidentiality of patient information. (See below) D.C. Mun. Regs. tit. 29 § 2400 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** D.C. law requires the Department of Behavioral Health to maintain applicant information in compliance with 42 C.F.R. Part 2 and District laws that regulate the confidentiality of patient information. (See below) D.C. Mun. Regs. tit. 29 § 2400 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena.

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D.C cont.				protected, will enable the parties to assess the claim. Sup. Ct. R. D.C. 45(d)(2)(A)		42 C.F.R. § 2.61
FL	Preempted by HIPAA	**Without subpoena:** Patient; Patient representative Fla. Stat. § 456.057(6) **With subpoena**: Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney Fla. R. Civ. P. 1.410(a)	**Without subpoena:** The covered entity must act on a request for access no later than 30 days after receipt of the request. Fla. Stat. § 456.057(6); 45 C.F.R. § 164.524(b)(2)(i) **With subpoena**: Time for compliance: Time specified for compliance in subpoena. Fla. R. Civ. P. 1.410	**Without subpoena:** A patient or their legal representative or health care provider may obtain copies of the patient's medical records (except for psychological or psychiatric records which may be provided as a report instead of copies of records) upon request Fla. Stat. § 456.057; Fla. Stat. §395.3025 **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to:	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Florida Law: A patient, or the patient's guardian, may consent to the release of information relating to their mental health treatment. Information may be released to the patient's attorney if the	**Without subpoena:** Florida law requires licensed substance abuse treatment providers to comply with 42 C.F.R. Part 2. (See below) Fla. Admin. Code R. 65D-30.004 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Substance abuse records and information maintained by

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FL cont.			Time for objection: Within 10 days after its service, or on or before the time specified in the subpoena for compliance if the time is less than 10 days after service. Fla. R. Civ. P. 1.410(e)(1)	(1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Florida Law: Under Fla. Stat. §456.059, communications between a patient and a psychiatrist, as defined in §394.455, shall be held confidential and may not be disclosed except upon the request of the patient or the patient's legal representative. Provision of psychiatric records and reports is governed by §456.057. Notwithstanding other provisions of the section or Fla. Stat. §90.503. Fla. Stat. §456.059	information is needed for the attorney to represent the patient. Fla. Stat. § 394.4615 **With subpoena:** Mental health information may be disclosed pursuant to a court order; the court conducts a balancing test, weighing the need for disclosure against the potential harm to the patient. Any provider that in good faith releases information under this statute will not be subject to criminal or civil liability. Fla. Stat. § 394.4615(2)(c)	substance abuse treatment facilities are confidential in accordance with Florida law and federal confidentiality regulations. (See below) Fla. Stat. § 397.501(7)(a) A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61
GA	Same as HIPAA	**Without subpoena:** Patient; Authorized representative Ga. Code § 31-33-2(b) **With subpoena:** Parties to the lawsuit may subpoena the records.	**Without subpoena:** Within 30 days after receipt of the written request. Ga. Code § 31-33-2(b) **With subpoena:** Time for compliance: Time specified for compliance in subpoena.	**Without subpoena:** A licensed health care professional may deny an individual access to their medical records if the professional determines that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person. 45 C.F.R. § 164.524(a)(3)(i) **With subpoena:**	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Georgia Law: A patient, parent of a minor patient, or legal guardian of a patient may consent in writing	**Without subpoena:** Georgia law requires drug abuse treatment programs to comply with 42 C.F.R. Part 2. (See below) Ga. Code § 26-5-17 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:**

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GA cont.		Issued by: Court clerk Ga. Code § 9-11-45(a)(1)(A)	Ga. Code § 9-11-45 Time for objection: Within 10 days after the receipt of the subpoena or before the time specified for compliance in the subpoena, if such time is less than ten days. Ga. Code § 9-11-45(a)(2)	Notification requirements of the HIPAA Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Georgia Law: Unless the court orders otherwise, a filing with the court that contains a social security number, taxpayer identification number, financial account number, or birth date shall include only the last four digits of the identifying information. Ga. Code § 9-11-7.1(a)	to the disclosure of information relating to a patient's mental health. Ga. Code § 37-3-166(a)(2) **With subpoena:** Mental health information may be disclosed pursuant to a valid subpoena or court order unless the information is privileged. Ga. Code § 37-3-166(a)(8) Privileges: Privileged communications are: (5) Communications between psychiatrist and patient; (6) Communications between licensed psychologist and patient as provided in Code Section 43-39-16; (7) Communications between a licensed clinical social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and family therapist, or licensed professional counselor and patient; and (8) Communications between or among any psychiatrist, psychologist, licensed clinical social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and	Georgia requires drug abuse treatment records to be produced in response to a valid court order of any court of competent jurisdiction after a full and fair show-cause hearing. Ga. Code § 26-5-17 A subpoena for records maintained relating to substance abuse is insufficient. A valid court order of any court of competent jurisdiction after a full and fair show-cause hearing is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61; Ga. Code § 26-5-17

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GA cont.					family therapist, and licensed professional counselor who are rendering psychotherapy or have rendered psychotherapy to a patient, regarding that patient's communications which are otherwise privileged by paragraph (5), (6), or (7) of this subsection. (b) As used in this Code section, the term: (1) "Psychotherapy" means the employment of psychotherapeutic techniques. (2) "Psychotherapeutic techniques" shall have the same meaning as provided in Code Section 43-10A-3 Ga. Code § 24-5-501(a)(5)-(7)	
HI	Stronger than HIPAA	**Without subpoena:** Patient; Authorized representative Haw. Rev. Stat. § 622-57(a)-(b) **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk Haw. R. Civ. P. 45(a)	**Without subpoena:** Within a reasonable time not to exceed 10 working days. Haw. Rev. Stat. § 622-57(b) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. Haw. R. Civ. P. 45	**Without subpoena:** If the health care provider is of the opinion that release of the records to the patient would be detrimental to the health of the patient, the health care provider may deny an individual access to their medical records. Haw. Rev. Stat. § 622-57(a) **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1)	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Hawaii Law: Mental health treatment information may be disclosed if the person or their legal guardian consents to the disclosure.	**Without subpoena:** Hawaii law makes records and information maintained in accordance with Hawaii's mental health and substance abuse law confidential in accordance with HIPAA. (See below) Haw. Rev. Stat. § 334-5 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31

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HI cont.			Time for objection: Within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service. Haw. R. Civ. P. 45(d)(1)	notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Hawaii Law: When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, electronically stored information, or tangible things not produced that is sufficient to enable the demanding party to contest the claim. Haw. R. Civ. P. 45(e)(2)	Haw. Rev. Stat. § 334-5 **With subpoena:** Mental health treatment information may be disclosed pursuant to a court order upon determination that disclosure is necessary for the proceeding, and that failure to disclose would be contrary to the public interest. Haw. Rev. Stat. § 334-5	**With subpoena:** Hawaii law permits disclosure of substance abuse treatment records, within the context of Hawaii's child welfare services program, with patient consent or a court order. Requires a court to find (1) reasonable cause to believe the abuse or neglect of a child; (2) treatment for the child and their family must be provided and the safety of the child ensured; (3) an alternative way to obtain the information does not exist or would not be effective; (4) information must be shared among providers of services to the family and child; and (5) the need to share the information to protect the child and obtain treatment outweighs possible injuries to the patient, the doctor-patient relationship, and treatment services. Haw. Code R. § 17-1601-10 Hawaii law makes records and information maintained in accordance with Hawaii's mental health and substance abuse law confidential in accordance with HIPAA. Haw. Rev. Stat. § 334-5 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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ID	No state-specific laws, HIPAA applies	**Without subpoena:** No identifiable state-specific law—HIPAA applies. (See below) Individual/Patient 45 C.F.R. § 164.524(a)(1) **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney Idaho R. Civ. P. 45(a)(3)	**Without subpoena:** No identifiable state-specific law—HIPAA applies. (See below) Under HIPAA, the covered entity must act on a request for access no later than 30 days after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. Idaho R. Civ. P. 45 Time for objection: Prior to the time specified for compliance in subpoena. Idaho R. Civ. P. 45	**Without subpoena:** There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in certain cases. Please see the confidential relations and communications statute below: Idaho Code § 9-203 **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Idaho Law: A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must: (i) expressly make the claim; and (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Idaho Law: Records may be released with patient consent. Idaho Admin. Code 16.07.33.006 **With subpoena:** Records may be released pursuant to a court order. Idaho Admin. Code 16.07.33.006	**Without subpoena:** Idaho law permits the disclosure of substance abuse treatment records in accordance with 42 C.F.R. Part 2. (See below) Idaho Admin. Code r. 16.05.01.250 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Idaho law permits the disclosure of substance abuse treatment records in accordance with 42 C.F.R. Part 2. (See below) Idaho Admin. Code r. 16.05.01.250 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

STATE	STATE REQUIREMENTS COMPARED TO HIPAA	WHO CAN ACCESS PATIENT RECORDS	TIME TO COMPLY/ TIME TO OBJECT	RESTRICTIONS ON DISCLOSURE (Citations to the Code of Federal Regulations (C.F.R.) refer to federal law)	ACCESSIBLE INFORMATION: MENTAL HEALTH/ PSYCHOTHERAPY	ACCESSIBLE INFORMATION: SUBSTANCE ABUSE
ID cont.				protected, will enable the parties to assess the claim. Idaho R. Civ. P. 45(e)(2)(A)		
IL	Same as HIPAA	**Without subpoena:** Patient; Authorized representative 735 ILCS 5/8-2001(b)-(c) **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney Ill. Sup. Ct. R. 204 (a)(1)	**Without subpoena:** Within 30 days from such a request, or if more time is needed the provider must give the patient an explanation within 30 days but must provide the record within 60 days of the request. 735 ILCS 5/8-2001(e) **With subpoena:** Time for compliance: The request shall specify a reasonable time, which shall not be less than 28 days after service of the request except by agreement or by order of court. Ill. Sup. Ct. R. 214(a)	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Illinois Law: No information could be located on this issue.	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Illinois Law: Records may be released with patient consent if he or she is over 12 years of age or to the parent or guardian of the patient if he or she is under 12 years of age. 740 Ill. Comp. Stat. 110/9—110/17 **With subpoena:** Confidential information may be disclosed in a civil, criminal or administrative proceeding if the patient introduces “his mental condition or any aspect	**Without subpoena:** Illinois law classifies substance abuse records and information as confidential in accordance with 42 C.F.R. Part 2. (See below) 20 ILCS 301/30-5; 89 Ill. Adm. Code 431.105; 77 Ill. Adm. Code 2060.319 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Illinois law classifies substance abuse records and information as confidential in accordance with 42 C.F.R. Part 2. (See below) 20 ILCS 301/30-5; 89 Ill. Adm. Code 431.105; 77 Ill. Adm. Code 2060.319 A subpoena for records maintained relating to substance abuse is

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IL cont.			Time specified for compliance in subpoena. Ill. Sup. Ct. R. 214 Time for objection: Prior to the time specified for compliance in subpoena. Ill. Sup. Ct. R. 214		of his services received for such condition as an element of his claim or defense." Relevant and admissible mental health treatment information may be disclosed pursuant to court order if good cause is shown. 740 Ill. Comp. Stat. 110/9—110/17	insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61
IN	Preempted by HIPAA	**Without subpoena:** Patient Ind. Code § 16-39-1-1 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney Ind. R. Civ. P. 45(A)(2)	**Without subpoena:** A health care provider must supply to a patient access to his or her medical record upon written request and reasonable notice. Ind. Code § 16-39-1-1 Under HIPAA, the covered entity must act on a request for access no later than 30 days after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified for compliance in subpoena.	**Without subpoena:** If a provider that is responsible for the patient's mental health records determines for good medical cause, upon the advice of a physician, that the information requested under this section is detrimental to the physical or mental health of the patient or is likely to cause the patient to harm the patient or another person, the provider may withhold the information from the patient. Ind. Code § 16-39-2-4 **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Indiana Law: A patient is entitled to inspect and copy the patient's own mental health record. Ind. Code § 16-39-2-4 **With subpoena:** A court may order the release of the patient's mental health record without the patient's consent upon the showing of good cause following a hearing under IC 16-39-3 or in a proceeding under IC 31-30 through IC 31-40 following	**Without subpoena:** Indiana law prohibits disclosure of alcohol and drug abuse records unless authorized by 42 U.S.C. 290dd-2. (See below) IC 16-39-1-9 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Indiana law prohibits disclosure of alcohol and drug abuse records unless authorized by 42 U.S.C. 290dd-2. (See below) IC 16-39-1-9 A subpoena for records maintained relating to substance abuse is insufficient. A court order

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IN cont.			Ind. R. Civ. P. 45 Time for objection: Before the time specified in the subpoena for compliance therewith. Ind. R. Civ. P. 45(B)	the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Indiana Law: No information could be located on this issue.	a hearing held under the Indiana Rules of Trial Procedure. Ind. Code § 16-39-2-8	authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61
IA	Preempted by HIPAA	**Without subpoena:** Patient; Authorized representative Iowa Admin. Code r. 653-13.7 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney Iowa R. Civ. P. 1.1701(2)	**Without subpoena:** Physicians must give patients access to their medical records in a "timely manner." Iowa Admin. Code r. 653-13.7 Under HIPAA, the covered entity must act on a request for access no later than 30 days after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. Iowa R. Civ. P. 1.1701	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Iowa Law: A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must: (1) expressly make the claim; and (2) describe the nature of the withheld documents, communications, or tangible things	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Iowa Law: A patient or a patient's legal representative may consent to the disclosure of information relating to their mental health in writing. Iowa Code § 228.2 **With subpoena:** No information could be located on this issue.	**Without subpoena:** Iowa law requires substance abuse treatment programs to comply with 42 C.F.R. Part 2. (See below) Iowa Admin. Code r. 641-157.6 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Iowa law requires substance abuse treatment programs to comply with 42 C.F.R. Part 2. (See below) Iowa Admin. Code r. 641-157.6 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena.

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IA cont.			Time for objection: Before the earlier of the time specified for compliance or 14 days after the subpoena is served. Iowa R. Civ. P. 1.1701(4)(b)(2)	in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim. Iowa R. Civ. P. 1.1701(5)(b)(1)		42 C.F.R. § 2.61
KS	No state-specific laws, HIPAA applies	**Without subpoena:** No identifiable state-specific law—HIPAA applies. (See below) Individual/Patient 45 C.F.R. § 164.524(a)(1) **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk K.S.A. 60-245(a)(3)	**Without subpoena:** No identifiable state-specific law—HIPAA applies. (See below) Under HIPAA, the covered entity must act on a request for access no later than 30 days after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. K.S.A. 60-245 Time for objection: Before the earlier of the time specified for	**Without subpoena:** Kansas law permits the head of a substance abuse treatment facility to refuse to disclose portions of a patient's record if they believe the disclosure would harm the patient's welfare. Kan. Stat. § 59-29b79(a)(1) **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Kansas Law: A person withholding subpoenaed information under a claim that it is	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Kansas Law: A patient, or alternatively if applicable, a parent, guardian, or other representative may authorize the disclosure of information relating to the patient's mental health treatment. Kan. Admin. Regs. § 30-60-47 **With subpoena:** No information could be located on this issue.	**Without subpoena:** Kansas law permits substance abuse treatment records to be disclosed upon the written consent of the patient. Kan. Stat. § 59-29b79(a)(1) **With subpoena:** Kansas law permits substance abuse treatment records to be disclosed upon a court order after a determination has been made by the court issuing the order that such records are necessary for the conduct of proceedings before the court and are otherwise admissible as evidence. Kan. Stat. § 59-29b79(a)(4)

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KS cont.			compliance or 14 days after the subpoena is served. K.S.A. 60-245(c)(2)(B)	privileged or subject to protection as trial-preparation material must: (i) expressly make the claim; and (ii) describe the nature of the withheld documents, communications or things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim. K.S.A. 60-245(d)(2)		

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KY	No state-specific laws, HIPAA applies	**Without subpoena:** No identifiable state-specific law—HIPAA applies. (See below) Individual/Patient 45 C.F.R. § 164.524(a)(1) **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney Ky. R. Civ. P. 45.01(2)	**Without subpoena:** No identifiable state-specific law—HIPAA applies. (See below) Under HIPAA, the covered entity must act on a request for access no later than 30 days after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. Ky. R. Civ. P. 45 Time for objection: Within ten (10) days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than ten (10) days after service. Ky. R. Civ. P. 45.04(2)	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Kentucky Law: No information could be located on this issue.	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Kentucky Law: A patient or the patient's guardian may consent to the disclosure of information relating to their mental health. Ky. Rev. Stat. § 210.235(1) **With subpoena:** Disclosure of mental health information is permitted when a court orders the disclosure in the context of a proceeding before it, provided that the court finds that the failure to disclose the information would be "contrary to the public interest." Ky. Rev. Stat. Ann. § 210.235(5)	**Without subpoena:** Kentucky law requires community mental health centers to comply with 42 C.F.R. Part 2 to the extent that federal law requires compliance with such part. (See below) 902 Ky. Admin. Regs. 20:091 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Kentucky law requires community mental health centers to comply with 42 C.F.R. Part 2 to the extent that federal law requires compliance with such part. (See below) 902 Ky. Admin. Regs. 20:091 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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LA	Stronger than HIPAA	**Without subpoena:** Patient; Authorized representative La. Stat. tit. 40 § 1165.1(A)(2)(b) **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Judge La. Code Civ. Proc. art. 1351	**Without subpoena:** A health care provider must furnish a copy of a medical record within 15 days from a patient's request. La. Stat. tit. 40 § 1165.1(A)(2)(c) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. La. Code Civ. Proc. art. 1354 Time for objection: Within fifteen days after service of the subpoena or before the time specified for compliance if such time is less than fifteen days after service. LA Code Civ Pro 1354(B)	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Louisiana Law: No information could be located on this issue.	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Louisiana Law: No information could be located on this issue. **With subpoena:** No information could be located on this issue.	**Without subpoena:** Louisiana law requires federally assisted substance abuse treatment providers to comply with 42 C.F.R. Part 2. (See below) La. Stat. tit. 13 § 3715.1 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Louisiana law requires federally assisted substance abuse treatment providers to comply with 42 C.F.R. Part 2. (See below) La. Stat. tit. 13 § 3715.1 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61
ME	Preempted by HIPAA	**Without subpoena:** Patient; Authorized representative	**Without subpoena:** Hospitals and health care practitioners must provide patients access to their medical records	**Without subpoena:** If the hospital or health care practitioner is of the opinion that release of the records to the patient would be detrimental to the	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health	**Without subpoena:** Maine law requires health care practitioners and facilities subject to 42 C.F.R. Part 2 to comply with

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ME cont.		ME. REV. STAT. tit. 22, § 1711 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney Me. R. Civ. P. 45(a)(3)	within a "reasonable time" from the request. ME. REV. STAT. tit. 22, § 1711; ME. REV. STAT. tit. 22, § 1711-B Under HIPAA, the covered entity must act on a request for access no later than 30 days after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. Me. R. Civ. P. 45 Time for objection: Within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service. Me. R. Civ. P. 45(c)(2)(B)	health of the patient, the hospital shall advise the patient that copies of the records will be made available to the patient's authorized representative upon presentation of a proper authorization signed by the patient. ME. REV. STAT. tit. 22, § 1711; ME. REV. STAT. tit. 22, § 1711-B **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Maine Law: When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim. Me. R. Civ. P. 45(d)(2)	information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Maine Law: A client, a client's legal guardian, if any, or, if the client is a minor, the client's parent or legal guardian may give informed written consent to the disclosure of information. 34 M.R.S § 1207(1)(A) **With subpoena:** All orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any client may be disclosed if ordered by a court of record. 34 M.R.S § 1207(1)(C)	Part 2's authorization requirements. (See below) 22 M.R.S.A. § 1711-C A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Maine law requires health care practitioners and facilities subject to 42 C.F.R. Part 2 to comply with Part 2's authorization requirements. (See below) 22 M.R.S.A. § 1711-C A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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MD	Stronger than HIPAA	**Without subpoena:** Patient Md. Code, Health-Gen. § 4-309 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk Md. R. Civ. P. Cir. Ct. 2-510(b)	**Without subpoena:** A health care provider or hospital must provide a patient access to his or her medical records within 21 days from the request. Md. Code, Health-Gen. § 4-309 **With subpoena:** Time for compliance: Time specified for compliance in subpoena. Md. R. Civ. P. Cir. Ct. 2-510 Time for objection: Within ten days after service of the subpoena. Md. R. Civ. P. Cir. Ct. 2-510(f)	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Maryland Law: A claim that information is privileged or subject to protection shall be supported by a description of each item that is sufficient to enable the demanding party to evaluate the claim. Md. R. Civ. P. Cir. Ct. 2-510(f)	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Maryland Law: A patient may make a written request for disclosure, and documentation relating to the disclosure must be included in the patient's record. Md. Code, Health-Gen. § 4-307 **With subpoena:** Mental health information may be disclosed pursuant to a court order to a court, an administrative law judge, a health claims arbitrator, or a party to a legal proceeding, provided that the Rules of Evidence are observed. Md. Code, Health-Gen. § 4-307	**Without subpoena:** Maryland law requires substance abuse treatment programs to maintain and disclose records in compliance with 42 C.F.R. Part 2. (See below) Md. Code, Health-Gen. § 8-601; COMAR 10.47.01.08 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Maryland law requires substance abuse treatment programs to maintain and disclose records in compliance with 42 C.F.R. Part 2. (See below) Md. Code, Health-Gen. § 8-601; COMAR 10.47.01.08 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

STATE	STATE REQUIREMENTS COMPARED TO HIPAA	WHO CAN ACCESS PATIENT RECORDS	TIME TO COMPLY/ TIME TO OBJECT	RESTRICTIONS ON DISCLOSURE (Citations to the Code of Federal Regulations (C.F.R.) refer to federal law)	ACCESSIBLE INFORMATION: MENTAL HEALTH/ PSYCHOTHERAPY	ACCESSIBLE INFORMATION: SUBSTANCE ABUSE
MA	Preempted by HIPAA	**Without subpoena:** Patient; Authorized representative 243 Mass. Reg. 2.07(13)(b) **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Public notary; Justice of the peace Mass. R. Dom. Rel. P. 45(a)	**Without subpoena:** Upon request, physicians, hospitals, and other health care facilities must provide access to a patient's medical record within a timely manner. 243 Mass. Reg. 2.07(13)(b); M.G.L.A. 111 §70E Under HIPAA, the covered entity must act on a request for access no later than 30 days after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. Mass. R. Dom. Rel. P. 45 Time for objection: Within 10 days after the service thereof or on or before the time specified in the subpoena for	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Massachusetts Law: No information could be located on this issue.	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Massachusetts Law: The Commissioner may issue a permit for a third party to inspect the mental health records of a patient if the inspection would be permitted by HIPAA and its implementing regulations, and the disclosure would be in the best interests of the patient, provided that written authorization is attempted to be obtained from the patient in advance. “Best interest” is defined to include disclosure to a health care provider in an emergency situation and to facilitate the delivery of services. 104 Mass. Reg. 27.16 **With subpoena:** A court may order the disclosure of a patient’s mental health record, whether or not the disclosure is in connection with a pending judicial proceeding.	**Without subpoena:** Massachusetts law requires facilities that provide drug abuse treatment services to maintain confidential records and authorizes disclosure of these records in accordance with federal law. (See below) M.G.L.A. 111E § 18; 104 CMR 27.18; 105 CMR 164.084 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 Massachusetts law classifies records of patients receiving detoxification services as confidential and prohibits disclosure absent a court order. M.G.L.A. 111B § 11 **With subpoena:** Massachusetts law authorizes the disclosure of records regarding patients receiving detoxification treatment pursuant to a court order. M.G.L.A. 111B § 11 Massachusetts law requires facilities that provide drug abuse treatment services to maintain confidential records and authorizes disclosure of these records in

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MA cont.			compliance if such time is less than 10 days after service. Mass. R. Dom. Rel. P. 45(d)(1)		104 Mass. Reg. 27.16	accordance with federal law. (See below) A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61
MI	Same as HIPAA	**Without subpoena:** Patient; Authorized representative who requests in writing M.C.L.A. § 333.26265 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Parties to the lawsuit Mich. Ct. R. 2.305(A)	**Without subpoena:** Physicians and hospitals must furnish the medical record to a patient within 30 days of a request for access unless written reasons for further delay subject to one 30-day extension. M.C.L.A. § 333.26265 **With subpoena:** Time for compliance: Time specified for compliance in subpoena. The subpoena must provide a minimum of 14 days after service to comply with the command. Mich. Ct. R. 2.305(A)(3)	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Michigan Law: No information could be located on this issue.	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Michigan Law: The recipient, the recipient's guardian with authority to consent, the parent with legal custody of a minor recipient, or the court-appointed personal representative or executor of the estate of a deceased recipient may consent to the disclosure of information relating to their mental health. Mich. Comp. Laws § 330.1748 **With subpoena:** Confidential mental health information may be disclosed	**Without subpoena:** Michigan law authorizes persons receiving substance use disorder services to consent in writing to the disclosure of their information. M.C.L.A. § 330.1262 **With subpoena:** Michigan law permits court ordered disclosure of substance abuse information for use in hearings related to the court ordered treatment of a minor; permits court ordered disclosure of whether an individual is receiving treatment in a program; states that "in all other respects, the confidentiality shall be the same as the physician-patient relationship provided by law." M.C.L.A. § 330.1263

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MI cont.			Time for objection: No later than 10 days after being served with the subpoena. Mich. Ct. R. 2.305(A)(6)		pursuant to a court order or pursuant to a subpoena, provided that the information is not privileged. Mich. Comp. Laws § 330.1748	
MN	Preempted by HIPAA	**Without subpoena:** Patient; Authorized representative M.S.A. §144.292 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court administrator; Attorney Minn. R. Civ. P. 45.01(c)	**Without subpoena:** Upon request, a provider shall supply to a patient within 30 calendar days of receiving a written request for medical records complete and current information possessed by that provider concerning any diagnosis, treatment, and prognosis of the patient in terms and language the patient can reasonably be expected to understand. M.S.A. §144.292 **With subpoena:** Time for compliance: Time specified for compliance in subpoena. Minn. R. Civ. P. 45.01 Time for objection:	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Minnesota Law: When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes and Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding. 45 C.F.R. § 164.524(a)(1) Minnesota Law: A patient may authorize the disclosure of information relating to their mental health to their parent, child, spouse or sibling. Minn. Stat. § 144.294 **With subpoena:** No information could be located on this issue.	**Without subpoena:** Minnesota law requires licensed chemical dependency programs to maintain records in compliance with 42 C.F.R. Part 2. (See below) Minnesota Rules, Part 9530.6585 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Minnesota law authorizes disclosure of substance use disorder information pursuant to a court order if the court determines that the information is relevant to the purpose for which disclosure is requested. In determining whether to compel disclosure, the court weighs the public interest and the need for disclosure against the injury to the patient, to the treatment relationship in the program affected and in other programs similarly situated, and the actual or potential

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MN cont.			Within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service. Minn. R. Civ. P. 45.03(b)(2)	sufficient to enable the demanding party to contest the claim. Minn. R. Civ. P. 45.04(b)(1)		harm to the ability of programs to attract and retain patients if disclosure occurs. M.S.A. § 254A.09
MS	Preempted by HIPAA	**Without subpoena:** Patient; Authorized representative 30 Miss. Code R. § 2635-10.5 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk Miss. R. Civ. P. 45(a)	**Without subpoena:** Upon written request, a physician must provide a patient copies of his or her medical record "within a reasonable period of time." 30 Miss. Code R. § 2635-10.5 Under HIPAA, the covered entity must act on a request for access no later than 30 days after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. Miss. R. Civ. P. 45	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Mississippi Law: When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Mississippi Law: Where the medical provider believes release of psychiatric or psychological records directly to a patient would be deemed harmful to the patient's mental health or well-being, the provider need not release the records directly to the patient, but shall, upon request, release the records to the patient's legal representative. 30 Miss. Code R. § 2635-10.5 The hospital records of and information pertaining to patients at treatment facilities or patients being treated by physicians, psychologists . . . licensed master	**Without subpoena:** Mississippi law authorizes substance abuse treatment facilities to disclose information with patient consent. Miss. Code § 41-30-33 **With subpoena:** Mississippi law authorizes disclosure of substance use disorder information pursuant to a court order for purposes unrelated to treatment after a showing of good cause. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the person to whom such information pertains. Miss. Code § 41-30-33

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MS cont.			Time for objection: Within ten days after the service thereof or on or before the time specified in the subpoena for compliance, if such time is less than ten days after service. Miss. R. Civ. P. 45(d)(2)(B)	sufficient to enable the demanding party to contest the claim. Miss. R. Civ. P. 45(e)(2)(A)	social workers or licensed professional counselors shall be confidential and shall be released only . . . upon written authorization of the patient. Miss. Code § 41-21-97 **With subpoena:** Confidential information may be disclosed pursuant to a court order. Miss. Code § 41-21-97	
MO	Preempted by HIPAA	**Without subpoena:** Patient; Authorized representative Mo. Rev. Stat. § 191.227 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk Mo. R. Civ. P. 57.09(a)	**Without subpoena:** All health care providers must furnish a copy of a patient's medical record to the patient within a reasonable time of the receipt of the request. Mo. Rev. Stat. § 191.227 **With subpoena:** Time for compliance: A subpoena for the production of documents and things must be served not fewer than 10 days before the time specified for compliance.	**Without subpoena:** The right of a patient or patient's representative to the patient's medical records shall be limited to access consistent with the patient's condition and sound therapeutic treatment as determined by the provider. Mo. Rev. Stat. § 191.227(1) **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e)	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Missouri Law: A patient, or a patient's guardian having legal custody of the patient, may consent to the disclosure of information maintained by a residential facility or mental health facility relating to the patient's mental health. If the patient is a minor, the patient's parents may consent on the minor's behalf.	**Without subpoena:** Missouri law grants substance use disorder patients the right to have their information maintained confidentially in compliance with federal and state law. (See below) Mo. Code Regs. tit. 9 § 10-7.020(3) A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. §§ 2.23; 2.32 **With subpoena:** Missouri law grants substance use disorder patients the right to have their information maintained confidentially in compliance with federal and state law. (See below) Mo. Code Regs. tit. 9 § 10-7.020(3)

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MO cont.			Mo. R. Civ. P. 57.09(c) Time for objection: Within 10 days after service of the subpoena or before the time specified for compliance, whichever is earlier. Mo. R. Civ. P. 57.09(c)	Missouri Law: No information could be located on this issue.	Mo. Rev. Stat. § 630.140 **With subpoena:** Confidential information may be disclosed pursuant to court or administrative agency order, upon good cause shown. Mo. Rev. Stat. § 630.140	A subpoena for records maintained relating to substance abuse is insufficient; a court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61
MT	HIPAA applies to covered entities; state has additional requirements for non-covered entities	**Without subpoena:** Patient Mont. Code Ann. § 50-16-541 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney MT R. Civ P. 45(a)(3)	**Without subpoena:** Upon receipt of a written request, a health care provider must give an individual access to his or her medical records no later than 10 days after receiving the request. Mont. Code Ann. § 50-16-541 **With subpoena:** Time for compliance: Time specified for compliance in subpoena. MT. R. Civ. P. 45 The subpoena must allow a reasonable time to comply or it may be modified or quashed.	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Montana Law: A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must: (i) expressly assert the claim; and (ii) describe the nature of the withheld documents, communications, or things in a	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Montana Law: A patient may consent to the disclosure of information relating to their mental health. If the patient is a ward, the patient's guardian or conservator may consent on the patient's behalf. Mont. Code Ann. § 53-21-166 **With subpoena:** Confidential information may be disclosed pursuant to a court order, provided that notice and opportunity for a hearing was	**Without subpoena:** Montana law requires chemical dependency facilities to obtain client consent before disclosing information. Mont. Admin. R. 37.106.1450 **With subpoena:** No identifiable state-specific law—HIPAA applies. (See below) Under HIPAA, subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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MT cont.			MT. R. Civ. P. 45(a)(1); (d)(3) Time for objection: Before the earlier of the time specified for compliance or 14 days after the subpoena is served. MT R. Civ P. 45(d)(2)(B)	manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim. MT R. Civ P. 45(e)(2)(A)	provided to the patient and record custodian. Mont. Code Ann. § 53-21-166	
NE	Stronger than HIPAA	**Without subpoena:** Patient; Authorized representative Neb. Rev. Stat. § 71-8403 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney Neb. Ct. R. Disc. § 6-334(a)(3)	**Without subpoena:** Health care providers must allow an individual to examine his or her medical records within 10 days of receiving a written request and must provide a copy such records within 30 days of receiving a written request. Neb. Rev. Stat. § 71-8403(2)-(3) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. A party intending to serve a subpoena must give written notice to every other party to the	**Without subpoena:** Mental health medical records may be withheld if any treating physician, psychologist, or mental health practitioner determines in his or her professional opinion that release of the records would not be in the best interest of the patient unless the release is required by court order. Neb. Rev. Stat. § 71-8403(1) **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e)	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Nebraska Law: Information may be disclosed with the written consent of the person or, in the case of death or disability, of the person's personal representative, any other person authorized to sue on behalf of the person, or the beneficiary of an insurance policy on the person's life, health, or physical condition. Neb. Rev. Stat. § 38-2136	**Without subpoena:** Nebraska law requires individuals to sign a consent form that complies with 42 C.F.R. Part 2 prior to participating in a "problem-solving" court. (A court which includes a program established for the treatment of problems related to issues such as substance abuse, mental health, and domestic violence). Neb. Ct. R. Disc. 6-1208 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. §§ 2.23 and 2.31 **With subpoena:** Nebraska law requires individuals to sign a consent form that complies with 42 C.F.R. Part 2 prior to participating in a problem-solving

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NE cont.			action at least 10 days before the subpoena will be issued. Neb. Ct. R. Disc. § 6-334(A)(a)(1)(B)(2) Time for objection: Within 10 days after service of the subpoena. Neb. Ct. R. Disc. § 6-334(c)(2)(B)	Nebraska Law: When information subject to a subpoena is withheld on an objection that it is privileged, not within the scope of discovery, or otherwise protected from discovery, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the party who requested the subpoena to contest the objection. Neb. Ct. R. Disc. § 6-334(c)(2)	**With subpoena:** No information could be located on this issue.	court. (A court which includes a program established for the treatment of problems related to issues such as substance abuse, mental health, and domestic violence). Neb. Ct. R. Disc. 6-1208 A subpoena for records maintained relating to substance abuse is insufficient; a court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61
NV	Stronger than HIPAA	**Without subpoena:** Patient; Patient representative with written authorization from patient NV Rev. Stat. § 629.061(1) **With subpoena**: Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney Nev. R. Civ. P. 45(a)(3)	**Without subpoena:** Within 10 working days after the request if within the state. NV Rev. Stat. § 629.061(2)(a) Within 20 working days after the request if outside of the state. NV Rev. Stat. § 629.061(2)(b) **With subpoena:** Time for compliance: Time specified for compliance in subpoena.	**Without subpoena**: A licensed health care professional may deny an individual access to their medical records if the professional determines that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person. 45 C.F.R. § 164.524(a)(3)(i) **With subpoena**: Notification requirements of the HIPAA Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Nevada Law: A patient, the patient's parent if he or she is a minor, a patient's guardian or attorney may consent to the disclosure of information relating to their mental health in writing. Nev. Rev. Stat. § 433A.360(1)(b) **With subpoena:**	**Without subpoena:** Nevada law requires substance abuse programs to comply with 42 C.F.R. Part 2. (See below) Nev. Admin. Code § 458.163 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Nevada requires substance abuse programs to comply with 42 C.F.R. Part 2. (See below) Nev. Admin. Code § 458.163;Nev. Admin. Code § 458.272(1)(e)

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NV cont.			Nev. R. Civ. P. 45 Time for objection: Must object by the earlier of the time specified for compliance or 14 days after the subpoena is served. Nev. R. Civ. P. 45(c)(2)(B)	(2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Any document submitted to an electronic filing system (EFS) must not contain any personal information, or if it does, the personal information must be redacted. Nev. R. Elec. Fil'g. & Conv. 14(d)(2) Under NRS 52.325, the custodian of records is required to return the medical records under the SDT to the Clerk of the Court. It least one Discovery Commissioner in the Second Judicial Dist. Court in Washoe County has determined this express evidentiary code supersedes conflicting provisions of NRCP 45. Under this provision the Court determines whether the medical records are discoverable. For the most part the current practice is to employ NRCP 45. NRS 52.325	A patient's clinical record must be released to persons authorized by court order and the record must be released to physicians, advanced practice registered nurses, attorneys and social agencies as specifically authorized in writing by the consumer, the consumer's parent, guardian or attorney. NV Rev. Stat. § 433A.360(1)(b) and (c)	A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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NH	Preempted by HIPAA	**Without subpoena:** Patient; Authorized representative (signed by patient) N.H. Rev. Stat. § 151:21; N.H. Rev. Stat. § 151:21 Information or records can be disclosed without a subpoena for a long list of public policy reasons, such as "public health activities" (45 C.F.R § 164.512(b)) and health oversight activities (45 C.F.R § 164.512(d)), to public protective agencies for domestic violence (45 C.F.R § 164.512(c)), for certain "judicial and administrative proceedings" (45 C.F.R § 164.512(e)), and certain "law enforcement purposes" (45 C.F.R § 164.512(f)), and a number of other reasons. 45 C.F.R § 164.512 **With subpoena:** Parties to the lawsuit may subpoena the records.	**Without subpoena:** A patient has a right to receive a copy of his or her medical records from a health care facility/practitioner upon request. N.H. Rev. Stat. § 151:21; N.H. Rev. Stat. Ann. § 332-I:1 As there is no state statutorily-prescribed response time, HIPAA applies and prescribes a 30-day time limitation, as measured from provider's receipt of a request, to provide requested records. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. Notice is unreasonable if not providing at least 3 days between date of service and the date of compliance. Generally, 20 days' notice is	**Without subpoena:** HIPAA applies in New Hampshire. Thus, when obtaining health information without a subpoena, if not being requested for exempted public policy purposes, the request cannot be for psychotherapy notes and must be made with an authorization that complies with HIPAA. 45 C.F.R § 164.508(c) **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) New Hampshire Law: No information could be located on this issue.	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) New Hampshire Law: A patient may consent to the disclosure of information relating to their mental health in writing. N.H. Rev. Stat. § 135-C:19-a **With subpoena:** No information could be located on this issue.	**Without subpoena:** New Hampshire law requires opioid treatment programs to maintain client information in compliance with 42 C.F.R. Part 2. (See below) N.H. Code Admin. R. He-A 304.18 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** New Hampshire law permits substance abuse treatment facilities and programs to disclose patient records pursuant to a court order that complies with "appropriate" federal regulations. (See below) N.H. Rev. Stat. § 172:8-a A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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STATE	STATE REQUIREMENTS COMPARED TO HIPAA	WHO CAN ACCESS PATIENT RECORDS	TIME TO COMPLY/ TIME TO OBJECT	RESTRICTIONS ON DISCLOSURE (Citations to the Code of Federal Regulations (C.F.R.) refer to federal law)	ACCESSIBLE INFORMATION: MENTAL HEALTH/ PSYCHOTHERAPY	ACCESSIBLE INFORMATION: SUBSTANCE ABUSE
NH cont.		Issued by: Court clerk NH R. Civ. P. 26 Subpoenas may also be issued by any "justice" which includes a "justice of the peace", a judge (RSA 516:3), and/or a Notary Public (RSA 516:4) for a witness to appear for deposition (via subpoena duces tecum). RSA 516:3; RSA 516:4 Any justice or judge may issue such writs for witnesses, in cases pending before himself or herself or any other justice or judge, in any case in any court, in all matters before the general court, or before auditors, referees, arbitrators or commissioners. RSA 516:4	considered reasonable in all cases. NH R. Civ. P. 26(b) Time for objection: No information could be located on this issue.			

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STATE	STATE REQUIREMENTS COMPARED TO HIPAA	WHO CAN ACCESS PATIENT RECORDS	TIME TO COMPLY/ TIME TO OBJECT	RESTRICTIONS ON DISCLOSURE (Citations to the Code of Federal Regulations (C.F.R.) refer to federal law)	ACCESSIBLE INFORMATION: MENTAL HEALTH/ PSYCHOTHERAPY	ACCESSIBLE INFORMATION: SUBSTANCE ABUSE
NJ	Same as HIPAA	**Without subpoena:** Patient; Authorized representative N.J. Admin. Code § 8:43G-4.1 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney NJ. Ct. R. Disc. § 1:9-1	**Without subpoena:** Every hospital patient has a right to have prompt access to the information contained in the patient's medical record and to obtain a copy of the patient's medical record, at a reasonable fee, within 30 days of a written request to the hospital. N.J. Admin. Code § 8:43G-4.1 **With subpoena:** Time for compliance: Time specified for compliance in subpoena. NJ. Ct. R. Disc. § 1:9-1 Time for objection: No information could be located on this issue.	**Without subpoena:** Every hospital patient has a right to have prompt access to the information contained in the patient's medical record, unless a physician prohibits such access as detrimental to the patient's health, and explains the reason in the medical record. N.J. Admin. Code § 8:43G-4.1 **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) New Jersey Law: No information could be located on this issue.	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) New Jersey Law: A patient, a patient's legal guardian, or a patient's parent if the patient is a minor, may consent to the disclosure of information relating to their mental health. N.J. Stat. § 30:4-24.3 **With subpoena:** Confidential information may be disclosed if a court determines that disclosure is necessary to conduct proceedings before it, and that failure to make the disclosure would contravene the public interest. N.J. Stat. § 30:4-24.3	**Without subpoena:** New Jersey law requires licensed alcohol and drug counselors and substance abuse treatment facilities to comply with 42 C.F.R. Part 2. (See below) N.J. Stat. § 45:2D-11; N.J. Admin. Code § 10:161B-16.2; N.J. Admin. Code § 10:161B-18.1 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** New Jersey law requires licensed alcohol and drug counselors and substance abuse treatment facilities to comply with 42 C.F.R. Part 2. (See below) N.J. Stat. § 45:2D-11; N.J. Admin. Code § 10:161B-16.2; N.J. Admin. Code § 10:161B-18.1 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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NM	Preempted by HIPAA	**Without subpoena:** Patient; Authorized representative N.M. Code R. § 16.10.17.8 A provider, health care institution, health information exchange or health care group purchaser shall not use or disclose health care information in an individual's electronic medical record to another person without the consent of the individual except as allowed by state or federal law. N.M. Stat. § 24-14B-6(A) **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney.	**Without subpoena:** Physicians must provide complete copies of medical records to a patient in a timely manner when legally requested to do so by the patient. N.M. Code R. § 16.10.17.8 **With subpoena:** Time for compliance: Time specified for compliance in subpoena. N.M. R. Civ. P. Dist. Ct. 1-045(A) Time for objection: Within 14 days after service of the subpoena. N.M. R. Civ. P. Dist. Ct. 1-045(C)	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e)(1)(ii) New Mexico Law: A subpoenaed person may withhold information on a claim that it is privileged or subject to protection as trial preparation materials, as long as the claim is expressly made, and is supported by a description of the nature of the documents that is sufficient to enable the demanding party to contest the claim. N.M. Dist. Ct. R.C.P. Rule 1-045(D)(2)(a)	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes and information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding. 45 C.F.R. § 164.524(a)(1) New Mexico Law: No person shall, without the authorization of the client, disclose or transmit any confidential information from which a person well acquainted with the client might recognize the client as the described person, or any code, number or other means that can be used to match the client with confidential information regarding the client. N.M. Stat. § 43-1-19(A) **With subpoena:** No information could be located on this issue.	**Without subpoena:** New Mexico law requires opioid treatment facilities to comply with 42 C.F.R. Part 2. (See below) N.M. Code R. § 7.32.8.28 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23(a); 42 C.F.R. § 2.31(a) **With subpoena:** New Mexico prohibits treatment facilities from disclosing records regarding persons that voluntarily seek substance abuse treatment unless they obtain that person's consent or receive a court order. N.M. Stat. § 43-2-11(C)

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NY	Stronger than HIPAA	**Without subpoena:** Patient; Authorized representative N.Y. Pub. Health Law § 18 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney; Judge NY CPLR § 2302	**Without subpoena:** Health care providers must provide an individual with the opportunity to inspect his or her patient information within 10 days of a written request; a copy of such information must be provided within a reasonable time of a request. N.Y. Pub. Health Law § 18 Under HIPAA, the covered entity must act on a request for access no later than 30 days after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. NY CPLR § 2301 Where a subpoena duces tecum is served	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) New York Law: No information could be located on this issue.	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) New York Law: A patient may consent to the disclosure of information relating to their mental health. A person authorized to consent on the patient's behalf may also authorize disclosure, provided that disclosure is not expected to be detrimental to the patient. N.Y. Mental Hyg. Law § 33.13 **With subpoena:** Confidential information may be disclosed pursuant to a court order, provided that the court finds that the interests of justice significantly outweigh the need for confidentiality. N.Y. Mental Hyg. Law § 33.13	**Without subpoena:** New York law requires substance abuse providers and programs to comply with 42 C.F.R. Part 2. (See below) N.Y. Comp. Codes R. & Regs. tit. 14 § 815.4 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** New York law requires chemical dependence programs and facilities to maintain the confidentiality of client records but permits disclosure in accordance with relevant state or federal laws or pursuant to a court order. (See below) N.Y. Mental Hygiene Law § 22.05 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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NY cont.			upon a hospital, it must be served at least three days before the time specified for compliance. NY CPLR § 2306 Time for objection: Before the time specified for compliance in subpoena. NY CPLR § 2301			
NC	No state-specific laws, HIPAA applies	**Without subpoena:** No law specifically grants individual access, so HIPAA applies. (See below) Individual/Patient 45 C.F.R. § 164.524(a)(1) **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney; Judge G.S. 1A-45 Rule 45(a)(4)	**Without subpoena:** Under HIPAA, the covered entity must act on a request for access no later than 30 days after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. G.S. 1A-45 Rule 45 Time for objection: Within 10 days after service of the subpoena or before the time	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) North Carolina Law: When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) North Carolina Law: A patient, or a patient's legally responsible person, may consent to the disclosure of information relating to their mental health in writing. The release must specify the length of consent, and the patient's right to revoke consent. N.C. Gen. Stat. § 122C-53 **With subpoena:**	**Without subpoena:** North Carolina law prohibits mental health and substance abuse treatment facilities and professionals from disclosing confidential information unless in accordance with 42 C.F.R. Part 2 (See below) N.C. Gen. Stat. § 122C-52 N.C. Gen. Stat. § 122C-53; N.C. Gen. Stat. § 122C-54; 10A N.C. Admin. Code 26B.0102 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** North Carolina law prohibits mental health and substance abuse

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NC cont.			specified for compliance if the time is less than 10 days after service. G.S. 1A-45 Rule 45(c)(3)	privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, or tangible things not produced, sufficient for the requesting party to contest the objection. G.S. 1A-45 Rule 45(d)(2)	Confidential information may be disclosed pursuant to a court order, provided that the court determines that the disclosure is appropriate under the circumstances and that it is in the best interest of the patient or of the public to have the information disclosed. N.C. Gen. Stat. § 122C-54	treatment facilities and professionals from disclosing confidential information unless in accordance with 42 C.F.R. Part 2 (See below) N.C. Gen. Stat. § 122C-52 N.C. Gen. Stat. § 122C-53; N.C. Gen. Stat. § 122C-54; 10A N.C. Admin. Code 26B.0102 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61
ND	Preempted by HIPAA	**Without subpoena:** Patient; Authorized representative N.D. Cent. Code § 23-12-14 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney N.D. R. Civ. P. 45(a)(2)	**Without subpoena:** A health care provider, upon the request of a health care provider's patient or any person authorized by a patient, must provide a patient with a copy of his or her medical record and/or bills once a patient submits a signed authorization making such request. N.D. Cent. Code § 23-12-14 Under HIPAA, the covered entity must act on a request for access no later than 30 days	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) North Dakota Law: A person withholding subpoenaed information under a claim that it is	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) North Dakota Law: No information could be located on this issue. **With subpoena:** No information could be located on this issue.	**Without subpoena:** North Dakota law requires substance abuse treatment programs to obtain client consent prior to releasing confidential information. N.D. Admin. Code 75-09.1-01-22 **With subpoena:** North Dakota law permits drug and alcohol treatment records that are protected by 42 C.F.R. Part 2 to be disclosed during a juvenile court proceeding if a court orders disclosure in accordance with Part 2. (See below) Rule 19, N.D.R. Juv. P

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ND cont.			after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. Time for objection: Before the earlier of 24 hours before the time specified for compliance or ten days after the subpoena is served. N.D. R. Civ. P. 45(c)(2)(B)	privileged or subject to protection as trial preparation material must: (i) expressly make the claim; and (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim. N.D. R. Civ. P. 45(d)(2)(A)		Under HIPAA, subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61
OH	HIPAA applies to covered entities; state has additional requirements for non-covered entities	**Without subpoena:** Patient; Authorized representative Ohio Rev. Code § 3798.03(A)(1) **With subpoena:** Parties to the lawsuit may subpoena the records, though the subpoena does not override the confidential status of patient records.	**Without subpoena:** Covered entities must grant an individual access to his or her protected health information "in a manner consistent" with HIPAA. Ohio Rev. Code § 3798.03(A)(1) Under HIPAA, the covered entity must act on a request for access no later than 30 days	**Without subpoena:** Covered entities must grant an individual access to his or her protected health information "in a manner consistent" with HIPAA. Ohio Rev. Code § 3798.03(A)(1) **With subpoena:** Notification requirements of HIPAA must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1)(i) Ohio Law: For a patient receiving hospitalization for mental health conditions, the patient, patient's legal guardian, or patient's parent	**Without subpoena:** Ohio law requires that mental health and substance abuse providers comply with applicable federal and state confidentiality laws, including 42 C.F.R. Part 2. (See below) Ohio Admin. Code § 5122-26-08 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. §§ 2.23 and 2.31

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OH cont.		Issued by: Court clerk; Attorney Ohio R. Civ. P. 45(A)(2)	after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified for compliance in subpoena, which must be "reasonable. Ohio R. Civ. P. 45(C)(3)(a) Time for objection: Within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service. Ohio R. Civ. P. 45(C)(2)(b)	subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e)(1)(ii) Ohio Law: When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim. Ohio R. Civ. P. 45(D)(4)	if the patient is a minor, may consent to the disclosure of information relating to their mental health in writing. Consent to disclosure is only effective if it is in the best interests of the patient, as may be determined by the "court for judicial records and by the chief clinical officer for medical records." Ohio Rev. Code Ann. § 5122.31 **With subpoena:** Patient records relating to hospitalization for mental health conditions may be disclosed pursuant to a court order signed by a judge. Ohio Rev. Code Ann. § 5122.31	**With subpoena:** Ohio law requires that mental health and substance abuse providers comply with applicable federal and state confidentiality laws, including 42 C.F.R. Part 2. (See below) Ohio Admin. Code § 5122-26-08 A subpoena for records maintained relating to substance abuse is insufficient; a court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61
OK	Preempted by HIPAA	**Without subpoena:** Patient; Authorized representative Okla. Stat. tit. 76 § 19(A)(1) **With subpoena:**	**Without subpoena:** A physician or health care facility must give a patient access to the information in his or her medical record upon request.	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1)	**Without subpoena:** Oklahoma law permits patients to consent to the disclosure of information relating to their substance abuse treatment by providing written authorization but limits the type of information that a patient may personally access. (See statute for list of limitations)

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OK cont.		Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney Okla. Stat. tit. 12 § 2004.1(A)(4)	Okla. Stat. tit. 76 § 19(A)(1) Under HIPAA, the covered entity must act on a request for access no later than 30 days after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. If the subpoena commands production of documents and things or inspection of premises from a nonparty before trial but does not require attendance of a witness, the subpoena shall specify a date for the production or inspection that is at least seven (7) days after the date that the subpoena and copies of the subpoena are served on the witness and all parties. Okla. Stat. tit. 12 § 2004.1(B)(1)	were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Oklahoma Law: When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim. Okla. Stat. tit. 12 § 2004.1(D)(2)(a)	Oklahoma Law: A patient may sign a release for disclosure of information relating to their mental health or substance abuse treatment. Okla. Stat. tit. 43A § 1-109(D) **With subpoena:** Confidential information regarding a deceased patient shall require either a court order or a written release of an executor, administrator or personal representative appointed by the court, or if there is no such appointment, by the spouse of the consumer or, if none, by any responsible member of the family of the consumer. Okla. Stat. tit. 43A § 1-109(D)	Okla. Stat. tit. 43A § 1-109(D) **With subpoena:** Oklahoma law authorizes disclosure of substance abuse treatment information pursuant to a valid court order issued by a court of competent jurisdiction. Okla. Stat. tit. 43A § 1-109(D)

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STATE	STATE REQUIREMENTS COMPARED TO HIPAA	WHO CAN ACCESS PATIENT RECORDS	TIME TO COMPLY/ TIME TO OBJECT	RESTRICTIONS ON DISCLOSURE (Citations to the Code of Federal Regulations (C.F.R.) refer to federal law)	ACCESSIBLE INFORMATION: MENTAL HEALTH/ PSYCHOTHERAPY	ACCESSIBLE INFORMATION: SUBSTANCE ABUSE
OK cont.			Time for objection: Within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service. Okla. Stat. tit. 12 § 2004.1(C)(2)(b)			
OR	Same as HIPAA	**Without subpoena:** Patient; Authorized representative Or. Admin. R. 847-012-0000 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney; Judge, justice, or authorized officer Or. R. Civ. P. 55(A)(3)	**Without subpoena:** A physician must permit a patient to inspect and obtain a copy of the patient's medical record within 30 days after receiving a request. Or. Admin. R. 847-012-0000 **With subpoena:** Time for compliance: Time specified for compliance in subpoena. Or. R. Civ. P. 55 Time for objection: No later than 14 days after service of the subpoena.	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Oregon Law: No information could be located on this issue.	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Oregon Law: A patient, or a patient's personal representative, may consent to the disclosure of information relating to their mental health in writing. Or. Rev. Stat. § 179.505 **With subpoena:** Confidential information may be disclosed pursuant to a court order. Or. Rev. Stat. § 179.505	**Without subpoena:** Oregon law requires outpatient behavioral health services providers, opioid treatment programs, and prison-based substance abuse programs to comply with 42 C.F.R. Part 2. (See below) OAR 309-019-0115; OAR 309-019-0135; OAR 415-057-0030 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Oregon law requires outpatient behavioral health services providers, opioid treatment programs, and prison-based substance abuse programs to

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OR cont.			Or. R. Civ. P. 55(A)(7)(a)			comply with 42 C.F.R. Part 2. (See below) OAR 309-019-0115; OAR 309-019-0135; OAR 415-057-0030 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61
PA	Preempted by HIPAA	**Without subpoena:** Patient; Authorized representative; or upon death of patient, executor of decedent's estate; or in the absence of an executor, the decedent's next of kin. 28 Pa. Code § 115.29 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: A subpoena may be served without leave of court upon the plaintiff after commencement of the action and upon any other party with or after	**Without subpoena:** Hospitals must give a patient access to and/or provide a copy of his or her medical records upon request. 28 Pa. Code § 115.29 Under HIPAA, the covered entity must act on a request for access no later than 30 days after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: A party to the action shall have thirty (30) days after service of the subpoena to comply.	**Without subpoena:** The hospital shall provide the patient, or patient designee, upon request, access to all information contained in his medical records, unless access is specifically restricted by the attending physician for medical reasons. 28 Pa. Code § 103.22(b)(15) **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Pennsylvania Law:	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Pennsylvania Law: A patient may consent to the disclosure of information relating to their mental health in writing. 50 Pa. Stat. Ann. § 7111 All documents concerning persons in treatment shall be kept confidential and, without the person's written consent, may not be released or their contents disclosed to anyone. In no event . . . shall privileged communications, whether written	**Without subpoena:** Pennsylvania law requires substance abuse treatment clients to consent to the disclosure of their information and establishes restrictions on the type of information that may be disclosed and the people or entities that may receive the information in accordance with Federal law. (See below) 71 Pa. Stat. § 1690.108(b) A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Pennsylvania law permits disclosure of substance abuse

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PA cont.		service of the original process upon that party. 231 Pa. Code § 4009.11	231 Pa. Code § 4009.12(a) A party seeking production from a person not a party to the action shall give written notice to every other party of the intent to serve a subpoena at least twenty days before the date of service. A copy of the subpoena proposed to be served shall be attached to the notice. 231 Pa. Code § 4009.21(a) A person not a party to the action shall have twenty (20) days after service of the subpoena to comply. 231 Pa. Code § 4009.23(a) Time for objection: A party to the action shall have thirty (30) days after service of the subpoena to object. 231 Pa. Code § 4009.12(a) A person not a party to the action has twenty (20) days after service	No information could be located on this issue.	or oral, be disclosed to anyone without such written consent. 50 Pa. Stat. Ann. § 7111 **With subpoena:** No information could be located on this issue.	records if a court determines there is good cause for disclosure. In determining whether there is good cause for disclosure, the court shall weigh the need for the information sought to be disclosed against the possible harm of disclosure to the person to whom such information pertains, the physician-patient relationship, and to the treatment services, and may condition disclosure of the information upon any appropriate safeguards. 71 Pa. Stat. § 1690.108(b)

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PA cont.			of the subpoena to object. 231 Pa. Code § 4009.24(a)			
RI	Same as HIPAA	**Without subpoena:** Patient; Authorized representative R.I. Gen. Laws § 5-37.3-4 (note that exceptions to consent are listed at 5-37.3.4(5) **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Notary public; Officer authorized by statute. R.I. Super. Ct. R. Civ. P. 45(a)(1)(A)	**Without subpoena:** Hospitals and physicians must provide a patient with a requested record within 30 days of receiving the request. R.I. Gen. Laws § 5-37-22(d) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. R.I. Super. Ct. R. Civ. P. 45 Time for objection: Within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service. R.I. Super. Ct. R. Civ. P. 45(c)(2)(B)	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Rhode Island Law: When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim. R.I. Super. Ct. R. Civ. P. 45(d)(2)	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Rhode Island Law: A patient may consent to the disclosure of information relating to their mental health in writing. R.I. Gen. Laws § 40.1-24.5-11 **With subpoena:** Confidential information may be disclosed pursuant to a court order. R.I. Gen. Laws § 40.1-24.5-11	**Without subpoena:** Rhode Island law requires licensed chemical dependency professionals to comply with 42 C.F.R. Part 2. Gen.Laws 1956, § 5-69-10 Rhode Island also classifies health care information as confidential but authorizes disclosure with a patient's consent. The statute applies to all health care information and is less stringent than 42 C.F.R. Part 2, so Part 2 controls. (See below) Gen.Laws 1956, § 5-37.3-4 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Under HIPAA, a subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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SC	Preempted by HIPAA	**Without subpoena:** Patient; Authorized representative S.C. Code § 44-7-325 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney S.C. R. Civ. P. 45(a)(3)	**Without subpoena:** Health care providers must provide a copy of a patient's medical record within 45 days of receiving a request, or within 45 days after the patient is discharged, whichever is later S.C. Code § 44-7-325 Under HIPAA, the covered entity must act on a request for access no later than 30 days after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. S.C. R. Civ. P. 45 Time for objection: Within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service.	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) South Carolina Law: When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim. S.C. R. Civ. P. 45(d)(2)(A)	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) South Carolina Law: A patient, or a patient's guardian, may consent to the disclosure of information relating to their mental health. S.C. Code § 44-22-100 **With subpoena:** Confidential information may be disclosed pursuant to a court order, provided that the court determines that the disclosure is necessary for a proceeding before it, and that failure to disclose the information contravenes the public interest. S.C. Code § 44-22-100	**Without subpoena:** South Carolina law requires substance abuse treatment facilities to maintain records in accordance with local, state, and federal laws, codes, and regulations. (See below) S.C. Code Regs. § 61-93.700.708(B) A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** South Carolina law requires substance abuse treatment facilities to maintain records in accordance with local, state, and federal laws, codes, and regulations. (See below) S.C. Code Regs. § 61-93.700.708(B) A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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SC cont.			S.C. R. Civ. P. 45(c)(2)(B)			
SD	Preempted by HIPAA	**Without subpoena:** Patient; Authorized representative S.D. Codified Laws § 36-2-16 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Clerks of courts; Judges; Magistrates; Notaries public; Referees; Attorney; Any other public officer or agency S.D. Codified Laws § 15-6-45(a)	**Without subpoena:** A health care practitioner must provide copies of all available medical records to a patient upon receipt of a written request. S.D. Codified Laws § 36-2-16 Under HIPAA, the covered entity must act on a request for access no later than 30 days after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. S.D. Codified Laws § 15-6-45 Time for objection:	**Without subpoena:** A licensed health care professional may deny an individual access to specific material in their medical records if a qualified mental health professional responsible for a patient's mental health services concerned has made a determination in writing that such access would be detrimental to the patient's health. S.D. Code § 27A-12-26.1 **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) South Dakota Law: No information could be located on this issue.	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) South Dakota Law: A patient, a patient's parent if he or she is a minor, or a guardian, may consent to the disclosure of information relating to their mental health. S.D. Code § 27A-12-26 **With subpoena:** Confidential information may be disclosed pursuant to an order **or** subpoena of a board of mental illness **or** a court of record **or** a subpoena of the Legislature. S.D. Code § 27A-12-27	**Without subpoena:** South Dakota law grants substance use disorder patients the right to have their information maintained confidentially in compliance with 42 C.F.R. Part 2. (See below) ARSD 67:61:06:02 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** South Dakota law grants substance use disorder patients the right to have their information maintained confidentially in compliance with 42 C.F.R. Part 2. (See below) ARSD 67:61:06:02 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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SD cont.			Within ten days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than ten days after service. S.D. Codified Laws § 15-6-45(d)			
TN	Stronger than HIPAA	**Without subpoena:** Patient; Authorized representative Tenn. Code § 63-2-101; Tenn. Code § 68-11-304 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk Tenn. R. Civ. P. 45.01	**Without subpoena:** Health care providers must provide a copy or summary of a patient's medical record within 10 working days of receiving a request for access. Tenn. Code § 63-2-101 Hospitals must provide medical records to a patient upon written request "without unreasonable delay." The law does not specify a time period for access to hospital records. Tenn. Code § 68-11-304 **With subpoena:** Time for compliance:	**Without subpoena:** Patient's name or other identifying information shall not be divulged except for (1) statutorily required reporting to health or government authorities; (2) access by third party payer or designee for administrative functions; (3) name, location and general health status ("directory information") to all inquirers absent objection by patient after notification of right to object; (4) request by inspector general or Medicaid fraud unit…Notwithstanding these provisions, it shall not be unlawful to disclose, nor shall there be any liability for disclosing medical information in response to a subpoena, court order, or request authorized by state or federal law. Tenn. Code § 68-11-1503 **With subpoena:** Notification requirements of the Privacy Rule must be met before	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Tennessee Law: A patient, if he or she is over the age of 16, may consent to the disclosure of information relating to their mental health. A parent or legal guardian can consent to the disclosure if the patient is under 16. Tenn. Code § 33-3-104 **With subpoena:** Confidential information may be disclosed pursuant to court order,	**Without subpoena:** Tennessee law requires opioid treatment programs to maintain client information in compliance with 42 C.F.R. Part 2. (See below) Tenn. Comp. R. & Regs. 0940-05-35-.18; Tenn. Comp. R. & Regs. 0940-05-42-.27 Records from treatment facilities shall remain confidential. The director may make patients' records available if it is used for research into the causes and treatment of alcoholism. However, any information published may not disclose a patient's name or any other identifying information. Tenn. Code § 33-10-408 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31

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TN cont.			A party or attorney responsible for issuing and serving a subpoena shall provide the non-party witness at least twenty-one (21) days after service of the subpoena to respond. Tenn. R. Civ. P. 45.07(1) Time for objection: Within twenty-one days after the subpoena is served. Tenn. R. Civ. P. 45.07(1)	responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Tennessee Law: When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim. Tenn. R. Civ. P. 45.08(2)(A)	after a hearing, upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make the disclosure would be contrary to public interest or to the detriment of a party to the proceedings. Tenn. Code § 33-3-105	**With subpoena:** Tennessee law requires opioid treatment programs to maintain client information in compliance with 42 C.F.R. Part 2. (See below) Tenn. Comp. R. & Regs. 0940-05-35-.18; Tenn. Comp. R. & Regs. 0940-05-42-.27 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61
TX	Stronger than HIPAA	**Without subpoena:** Patient; Authorized representative Tex. Health & Safety Code § 241.154(a) **With subpoena:** Parties to the lawsuit may subpoena the records.	**Without subpoena:** Within 15 days after receipt of the request. Tex. Health & Safety Code § 241.154(a) **With subpoena:** Time for compliance:	**Without subpoena:** A physician does not have to furnish copies of medical records pursuant to a written release of the information if the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient. 22 Tex. Admin. Code § 165.2(a) A physician may delete confidential information about	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Texas Law: A patient or patient's parent if the patient is a minor, or a guardian if	**Without subpoena:** Texas law requires narcotic treatment programs and substance abuse treatment facilities to maintain client information in compliance with 42 C.F.R. Part 2. (See below) 25 Tex. Admin. Code § 229.148(k)(1)(D)(i) A patient may access their own records and authorize the

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TX cont.		Issued by: Court clerk; Attorney; officer authorized to take depositions Tex. R. Civ. P. 176.4	Time specified for compliance in subpoena. Tex. R. Civ. P. 176.6 Time for objection: Before the time specified for compliance in subpoena. Tex. R. Civ. P. 176.6(d)	another patient or family member of the patient who has not consented to the release. 22 Tex. Admin. Code § 165.2(a) **With subpoena:** Notification requirements of the HIPAA Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Texas Law: Unless the inclusion of sensitive data is specifically required by a statute, court rule, or administrative regulation, a document containing sensitive data may not be filed with a court unless the sensitive data is redacted. Tex. R. Civ. P. 21c(b) Sensitive data consists of: (1) a driver's license number, passport number, social security number, tax identification number, or similar government-issued personal identification number; (2) a bank account number, credit card number, or other financial	the patient has been adjudicated as incompetent may consent to the disclosure of information relating to their mental health in writing. Tex. Health & Safety Code § 611.004(a)(4) **With subpoena:** A professional may disclose confidential mental health records in a judicial or administrative proceeding where the court or agency has issued an order or subpoena. Tex. Health & Safety Code § 611.006(a)(11)	disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Texas requires narcotic treatment programs and substance abuse treatment facilities to maintain client information in compliance with 42 C.F.R. Part 2. (See below) 25 Tex. Admin. Code § 229.148(k)(1)(D)(i) A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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STATE	STATE REQUIREMENTS COMPARED TO HIPAA	WHO CAN ACCESS PATIENT RECORDS	TIME TO COMPLY/ TIME TO OBJECT	RESTRICTIONS ON DISCLOSURE (Citations to the Code of Federal Regulations (C.F.R.) refer to federal law)	ACCESSIBLE INFORMATION: MENTAL HEALTH/ PSYCHOTHERAPY	ACCESSIBLE INFORMATION: SUBSTANCE ABUSE
TX cont.				account number; and (3) a birth date, a home address, and the name of any person who was a minor when the underlying suit was filed. Tex. R. Civ. P. 21c(a) Sensitive data must be redacted by using the letter "X" in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted. Tex. R. Civ. P. 21c(c)		
UT	HIPAA applies to covered entities; state has additional requirements for non-covered entities	**Without subpoena:** Patient; Patient representative Utah Code Ann. § 78B-5-618 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney; Utah R. Civ. P. 45(a)(2)	**Without subpoena:** Non-covered health care providers must permit a patient to inspect or obtain a copy of his or her records unless access is restricted by law or judicial order. Providers must comply with HIPAA deadlines when providing a copy of a patient's records. (See below) Utah Code Ann. § 78B-5-618 Under HIPAA, the covered entity must act on a request for access no later than 30 days	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Utah Law: When information subject to a subpoena is withheld on a claim that it is privileged or subject to a protective order, the party must	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Utah Law: A mental health therapist may not disclose any confidential communication without the express written consent of the patient, the patient's authorized agent, or the patient's parent or legal guardian if the patient is a minor. Utah Code Ann. § 58-60-114	**Without subpoena:** A substance use disorder counselor may not disclose any confidential communication without the express written consent of the patient, the patient's authorized agent, or the patient's parent or legal guardian if the patient is a minor. Utah Code Ann. § 58-60-509 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** A substance use disorder counselor may disclose confidential communication if they are permitted

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STATE	STATE REQUIREMENTS COMPARED TO HIPAA	WHO CAN ACCESS PATIENT RECORDS	TIME TO COMPLY/ TIME TO OBJECT	RESTRICTIONS ON DISCLOSURE (Citations to the Code of Federal Regulations (C.F.R.) refer to federal law)	ACCESSIBLE INFORMATION: MENTAL HEALTH/ PSYCHOTHERAPY	ACCESSIBLE INFORMATION: SUBSTANCE ABUSE
UT cont.			after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) A provider who provides a copy of a patient's records to a patient's attorney, legal representative, or other authorized third party must do so within 30 days after receipt of notice. Utah Code Ann. § 78B-5-618(5) **With subpoena:** Time for compliance: Time specified for compliance in subpoena, but at least 14 days after service. Utah R. Civ. P. 45(e)(2) Time for objection: Before the time specified for compliance. Utah R. Civ. P. 45(e)(4)(A)	sufficiently describe the nature of the documents, communications, or things not produced to enable the party or attorney responsible for issuing the subpoena to contest the claim. Utah R. Civ. P. 45(e)(4)(C)	**With subpoena:** No identifiable state-specific law. A mental health therapist may disclose confidential communication if they are permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication. Utah Code Ann. § 58-60-114	or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication. Utah Code Ann. § 58-60-509 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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VT	No state-specific laws, HIPAA applies	**Without subpoena:** No identifiable state-specific law—HIPAA applies. (See below) Individual/Patient 45 C.F.R. § 164.524(a)(1) **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney; Magistrate Vt. R. Civ. P. 45(a)(3)	**Without subpoena:** A physician's failure to make a copy of a patient's records available "promptly" to a patient when given proper written request is considered unprofessional conduct. The statute does not identify an affirmative right to access and does not specify a time period for access. 26 V.S.A. § 1354 Under HIPAA, the covered entity must act on a request for access no later than 30 days after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. Vt. R. Civ. P. 45	**Without subpoena:** Unless the patient waives the confidential information privilege or unless the privilege is waived by an express provision of law, a person authorized to practice medicine, chiropractic, or dentistry, a registered professional or licensed practical nurse, or a mental health professional as defined in 18 V.S.A. § 7101(13) shall not be allowed to disclose any information acquired in attending a patient in a professional capacity, including joint or group counseling sessions, and which was necessary to enable the provider to act in that capacity. Vt. Stat. tit. 12 § 1612 **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Vermont Law: When information subject to a subpoena is withheld on a claim	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Vermont Law: A patient, a patient's designated health care agent, or a patient's legal guardian may consent to the disclosure of information relating to their mental health in writing. A parent or legal guardian may consent on behalf of a minor. 18 V.S.A. § 7103 **With subpoena:** Mental health information may be disclosed pursuant to a court order, provided that the court finds that the disclosure is necessary to conduct a proceeding currently before it, and that failure to make the disclosure would contravene the public interest. 18 V.S.A. § 4229	**Without subpoena:** Vermont law requires opioid treatment programs to obtain authorizations to release information for care coordination purposes to the extent permissible pursuant to 42 C.F.R. Part 2; Requires such programs to comply with Part 2 when exchanging information. (See below) 18 V.S.A. § 4229 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** No identifiable state-specific law—HIPAA applies. (See below) Under HIPAA, a subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

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VT cont.			Time for objection: Within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service. Vt. R. Civ. P. 45(c)(2)(B)	that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim. Vt. R. Civ. P. 45(d)(2)(A)		
VA	Stronger than HIPAA	**Without subpoena:** Patient; Authorized representative Va. Code Ann. § 32.1-127.1:03 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Judge; Attorney Va. Code § 16.1-89	**Without subpoena:** Health care entities must furnish copies of or allow access to a patient's health care records in an electronic format within 30 days of receiving a written request for access to such records. Va. Code Ann. § 32.1-127.1:03 **With subpoena:** Time for compliance: Time specified for compliance in subpoena. Va. Code § 16.1-89 Time for objection:	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the HIPAA Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Virginia Law: Access to a minor's health records may be denied if the minor's treating physician, clinical psychologist, clinical social worker, or licensed professional counselor has made a part of the minor's record a written statement	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Virginia Law: A patient or a patient's authorized representative may consent to the disclosure of information relating to their mental health. 12 VAC 35-115-80 **With subpoena:** Mental health information may be disclosed pursuant to a proper subpoena **or** court order. Information may also be disclosed in court in connection with an involuntary admission, or if a patient introduces his or her	**Without subpoena:** Virginia law requires providers licensed by the Department of Behavioral Health and Developmental Services to comply with 42 C.F.R. Part 2. (See below) 12 VAC 35-115-80 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Virginia law requires providers licensed by the Department of Behavioral Health and Developmental Services to comply with 42 C.F.R. Part 2. (See below) 12 VAC 35-115-80 A subpoena for records maintained relating to substance abuse is insufficient. A court order

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VA cont.			Within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service. Va. Code § 16.1-89	that, in the exercise of his professional judgment, the furnishing to or review by the requesting parent of such health records would be reasonably likely to cause substantial harm to the minor or another person. Va. Code § 20-124.6	mental condition or services as a relevant issue in a proceeding. 12 VAC 35-115-80	authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61
WA	Stronger than HIPAA	**Without subpoena:** Patient; Authorized representative Wash. Rev. Code § 70.02.080 **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney; Under seal of court Wash. Sup. Ct. Civ. R. 45(a)(4)	**Without subpoena:** Health care providers must permit a patient to examine or copy his or her recorded health care information no later than 15 working days after receiving a written request. Wash. Rev. Code § 70.02.080 **With subpoena:** Time for compliance: Time specified for compliance in subpoena.	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Washington Law: When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Washington Law: A patient may consent to the disclosure of their mental health information to a designated person. A patient's guardian may consent on the patient's behalf. If the patient is a minor, the minor's parent may consent on the patient's behalf. Wash. Rev. Code 70.02.230	**Without subpoena:** Washington law requires agencies that provide court ordered substance use disorder treatment to develop release of information forms that comply with 42 C.F.R. Part 2. (See below) Wash. Admin. Code § 246-341-0800 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** No identifiable state-specific law—HIPAA applies. (See below)

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WA cont.			Wash. Sup. Ct. Civ. R. 45 Time for objection: Within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service. Wash. Sup. Ct. Civ. R. 45(c)(2)(B)	materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim. Wash. Sup. Ct. Civ. R. 45(d)(2)(A)	**With subpoena:** Records and information relating to the mental health treatment of an individual may be disclosed pursuant to a lawful court order. Wash. Rev. Code 70.02.230	Under HIPAA, subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61
WV	Preempted by HIPAA	**Without subpoena:** Patient; Authorized representative W. Va. Code § 16-29-1(a) **With subpoena:** Parties to the lawsuit may subpoena the records. Issued by: Court clerk; Attorney W.Va. R. Civ. P. 45	**Without subpoena:** Health care providers must furnish a copy of a patient's record no more than 30 days from the receipt of a written request. W. Va. Code § 16-29-1(a) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. W.Va. R. Civ. P. 45 Time for objection:	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the HIPAA Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) West Virginia Law: When information subject to a subpoena is withheld on a claim	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) West Virginia Law: Confidential mental health information may be disclosed pursuant to a written and signed consent form completed by the patient or the patient's legal guardian. W.Va. Code § 27-3-1	**Without subpoena:** West Virginia law requires opioid treatment programs to develop policies that guarantee clients the right to confidentiality in accordance with 42 C.F.R. Part 2. (See below) W. Va. Code R. § 69-7-25 A patient may access their own records and authorize the disclosure of their records in writing. 42 C.F.R. § 2.23; 42 C.F.R. § 2.31 All records must be maintained for a minimum of five (5) years from the date of treatment, or in the case of juvenile patients, five (5) years

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WV cont.			Within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service. W.Va. R. Civ. P. 45(d)(2)(B)	that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim. W.Va. R. Civ. P. 45(e)(2)	**With subpoena:** Mental health information may be disclosed pursuant to a court order if the court determines that the disclosure is relevant to a proceeding before the court, and the need for disclosure outweighs the need for confidentiality. W.Va. Code § 27-3-1	after the patient's eighteenth (18) birthday. W. Va. Code. R. § 69-7-25.2 **With subpoena:** West Virginia law requires opioid treatment programs to develop policies that guarantee clients the right to confidentiality in accordance with 42 C.F.R. Part 2. (See below) W. Va. Code R. § 69-7-25 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61
WI	Preempted by HIPAA	**Without subpoena:** Patient; Authorized representative Wis. Stat. § 146.83 **With subpoena:** Parties to the lawsuit may subpoena the records.	**Without subpoena:** Health care providers must permit a patient to inspect his or her records once the patient submits a statement of informed consent; providers must furnish a copy of such records after receiving the patient's informed consent and payment of the applicable fee. Wis. Stat. § 146.83	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the HIPAA Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the person who is the subject of the information about the request or (2) seek a qualified protective order from the court.	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Wisconsin Law: Mental health information may be disclosed if a patient or a patient's legally authorized	**Without subpoena:** Wisconsin law requires health care providers that are subject to 42 C.F.R. Part 2 to maintain substance abuse records and information in accordance with Part 2. (See below) Wis. Stat. Ann. § 51.30; Wis. Adm. Code § DHS 92.04 A patient may access their own records and authorize the disclosure of their records in writing.

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WI cont.		Issued by: Court clerk; Judge; Attorney Wis. Stat. § 805.07	Under HIPAA, the covered entity must act on a request for access no later than 30 days after receipt of the request. 45 C.F.R. § 164.524(b)(2)(i) **With subpoena:** Time for compliance: Time specified for compliance in subpoena. Wis. Stat. § 805.07 Time for objection: Before the time specified for compliance in the subpoena. Wis. Stat. § 805.07	45 C.F.R. § 164.512(e) Wisconsin Law: If information inadvertently produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. Wis. Stat. § 805.07(d)	representative gives informed consent in writing Wis. Stat. Ann. § 51.30 **With subpoena:** Mental health information may be disclosed pursuant to a lawful court order. Wis. Stat. Ann. § 51.30	42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Wisconsin law requires health care providers that are subject to 42 C.F.R. Part 2 to maintain substance abuse records and information in accordance with Part 2. (See below) Wis. Stat. Ann. § 51.30; Wis. Adm. Code § DHS 92.04 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61
WY	Stronger than HIPAA	**Without subpoena:** Patient; Authorized representative 052-3 Wyo. Code R. § 3-4 **With subpoena:** Parties to the lawsuit may subpoena the records.	**Without subpoena:** A physician must make information in a patient's medical records readily available, or provide a copy or summary of such records no later than 30 days after receiving a signed, written release	**Without subpoena:** No information could be located on this issue. **With subpoena:** Notification requirements of the HIPAA Privacy Rule must be met before responding to the subpoena. There must be evidence that there were reasonable efforts to: (1) notify the	**Without subpoena:** **HIPAA Exception:** An individual has a right of access to inspect and obtain a copy of protected health information (PHI), except for psychotherapy notes. 45 C.F.R. § 164.524(a)(1) Wyoming Law:	**Without subpoena:** Wyoming law requires substance abuse treatment programs to comply with 42 C.F.R. Part 2. (See below) 048-4 Wyo. Code R. § 4-2 A patient may access their own records and authorize the disclosure of their records in writing.

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WY cont.		Issued by: Court clerk; Attorney Wyo. R. Prac. & P. 45(a)(3)	052-3 Wyo. Code R. § 3-4 **With subpoena:** Time for compliance: Time specified for compliance in subpoena. Wyo. R. Prac. & P. 45 Time for objection: Within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service. Wyo. R. Prac. & P. 45(c)(2)(B)	person who is the subject of the information about the request or (2) seek a qualified protective order from the court. 45 C.F.R. § 164.512(e) Wyoming Law: When information or material subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim. Wyo. R. Prac. & P. 45(d)(2)(A)	Mental health information may be disclosed if a patient or the patient's legal representative provides informed written consent for the disclosure, provided that the disclosure is limited to the terms of the written consent. WY Stat § 9-2-125 **With subpoena:** Mental health information may be disclosed pursuant to a lawful search warrant or court order. WY Stat § 9-2-125	42 C.F.R. § 2.23; 42 C.F.R. § 2.31 **With subpoena:** Wyoming law requires substance abuse treatment programs to comply with 42 C.F.R. Part 2. (See below) 048-4 Wyo. Code R. § 4-2 A subpoena for records maintained relating to substance abuse is insufficient. A court order authorizing disclosure is necessary in conjunction with the subpoena. 42 C.F.R. § 2.61

50 State Legal Matrix – Right to Independent Counsel for 2024

An insured's right to independent counsel, i.e., an insured's right to select their own counsel and control their own defense, varies by state and is generally determined on a case-by-case basis depending on the facts and circumstances of the particular case. In some states, courts have held that an insured has a right to independent counsel under specific circumstances, such as when a conflict of interest arises between the insurer and the insured, or when the insurer outright fails to adequately represent the insured's interests. In other states, the right to independent counsel is expressly provided for by statute. Few states will address both. While the insurer-insured relationship generally imposes a duty on the insurer to defend the insured and hire counsel for the defense, a conflict of interest between the insured and the insurer will often allow the insured to control their own defense. The following legal matrix analyzes an insured's right to independent counsel in all 50 states and the District of Columbia.

Please be advised that hyperlinks were added to the statutory and case citations. By clicking on the citation hyperlinks, you will be brought to the webpage containing the statutes and case law that will provide the relevant information.

STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
AL	No	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** In *L&S Roofing Supply Co. v. St. Paul Fire & Marine Insurance Co.,* the Alabama Supreme Court held that the "[m]ere fact that the insurer chooses to defend its insured under a reservation of rights does not ipso facto constitute such a conflict of interest that the insured is entitled at the outset to engage defense counsel of its choice at the expense of the insurer." *L & S Roofing Supply Co. v. St. Paul Fire & Marine Ins. Co.*, 521 So. 2d 1298, 1304 (Ala. 1987). However, because potential conflicts of interest exist in a reservation of rights defense, the insurer has an enhanced duty of good faith. *Id.* An insurer's failure to meet the enhanced obligation of good faith entitles the insured "[t]o retain defense counsel of its choice at the expense of the carrier." *Id.* at 13
AK	Yes	Statute: If an insurer has a duty to defend an insured under a policy of insurance, and a conflict of interest arises that imposes a duty on the insurer to provide independent counsel to the insured, the insurer shall provide independent counsel to the insured unless the insured, in writing, waives the right to independent counsel. Alaska Stat. § 21.96.100(a) The statute also contains an allocation provision: "In providing independent counsel, the insurer is not responsible for the fees and costs of defending an allegation for which coverage is properly denied and shall be responsible only for the fees and costs to defend those allegations for which the insurer either reserves its position as to coverage or accepts coverage. The independent counsel shall keep detailed records allocating fees and costs accordingly." Alaska Stat. § 21.96.100(d) Case Law: In *CHI of Alaska v. Employers Reinsurance Corp.*, 844 P.2d 1113, 1118 (Alaska 1993), the Alaska Supreme Court held that when an insurer reserves its rights based upon either a coverage or a policy defense, the insurer must provide independent counsel. The Alaska Legislature responded to *CHI* by enacting legislation to codify the rule set forth by the Court. *See* Alaska Stat. § 21.96.100 In *Attorneys Liab. Prot. Soc'y, Inc. v. Ingaldson Fitzgerald, P.C.*, the Alaska Supreme Court held that Alaska law prohibits enforcement of a policy provision entitling an insurer to reimbursement of fees and costs incurred by the insurer defending claims under a reservation of rights where: (1) the insurer explicitly reserved the right to seek such reimbursement in its offer to tender a defense provided by independent counsel, (2) the insured

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STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
AK cont.		accepted the defense subject to the reservation of rights, and (3) the claims are later determined to be excluded from coverage under the policy, or it is later determined that the duty to defend never arose under the policy because there was no possibility of coverage. *Attorneys Liab. Prot. Soc'y, Inc. v. Ingaldson Fitzgerald, P.C.*, 370 P.3d 1101,1112 (Alaska 2016)
AR	Undecided	**Statute**: The right to independent counsel is not provided for by statute. **Case Law**: The Supreme Court of Arkansas has not directly addressed an insured's right to independent counsel. However, the Eastern District of Arkansas held that where a conflict of interest exists between the insured and the insurer, the insured may select counsel of its own choosing. *Northland Ins. Co. v. Heck's Service Co.*, 620 F.Supp. 107, 108 (E.D. Ark. 1985) In *Union Ins. Co. v. The Knife Co., Inc.*, 902 F. Supp. 877, 881 (W.D. Ark. 1995), the Court noted that "an attorney employed by an insurance company will slant his efforts, perhaps unconsciously, in the interests of his real client—the one who is paying his fee and from whom he hopes to receive future business—the insurance company." Relying on the Eighth Circuit's reasoning in *Howard v. Russell Stover Candies, Inc.*, 649 F.2d 620 (8th Cir. 1981), the Court found that the insured was entitled to select its own counsel because "the conflict situation cannot be eliminated so long as the insurance company selects the counsel [,] [i]t is simply a matter of human nature." *Union Ins. Co. v. The Knife Co., Inc.*, 902 F. Supp. 877, 881 (W.D. Ark. 1995)
AZ	No	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** A law firm retained by an insurer to defend an insured owes its loyalty and agency solely to the insured. *Parsons v. Continental Nat. Am. Group*, 113 Ariz. 223, 550 P.2d 94 (1976) In *Paradigm*, the Arizona Supreme Court held that when an insurer assigns an attorney to represent the insured, the lawyer owes a duty to the insurer arising from the understanding that the lawyer's services are ordinarily intended to benefit both insurer and insured when their interests coincide. *Paradigm Ins. Co. v. Langerman Law Offices, P.A.*, 200 Ariz. 146, 155 (2001) Conflicts between the insurer and the insured may arise over "the existence of coverage, the manner in which the case is to be defended, the information to be shared, the desirability of settling at a particular figure or the need to settle at all, and an array of other factors applicable to the circumstances of a particular case. . . . [W]hen a conflict actually arises, and not simply when it potentially exists, the lawyer's duty is exclusively owed to the insured and not the insurer. Because a lawyer is expressly assigned to represent the insured, the lawyer's primary obligation is to the insured, and the lawyer must exercise independent professional judgment on behalf of the insured." *Id.* at 150 Generally, "when a defense is provided by a liability insurer, 'as part of the insurer's obligation to provide for the insured's defense, the policy grants the insurer the right to control that defense—which includes the power to select the lawyer that will defend the claim.'" *Nucor Corp. v. Emps. Ins. Co. of Wausau*, 975 F. Supp. 2d 1048, 1055 (D. Ariz. 2013) (quoting *Paradigm Ins. Co. v. The Langerman L. Offs., P.A.*, 200 Ariz. 146, 149 (2001)) While Arizona law does not specifically permit an insured to seek independent counsel, if a conflict of interest is present, the defense counsel's primary obligation must be to the insured, and the insured and its attorney control the litigation. *Safeway Ins. Co., Inc. v. Guerrero*, 210 Ariz. 5, 12 (2005)

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STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
CA	Yes	**Statute:** If the provisions of a policy of insurance impose a duty to defend upon an insurer, and a conflict of interest arises which creates a duty on the part of the insurer to provide independent counsel to the insured, the insurer shall provide independent counsel to represent the insured unless, at the time the insured is informed that a possible conflict may arise or does exist, the insured expressly waives, in writing, the right to independent counsel. An insurance contract may contain a provision which sets forth the method of selecting that counsel consistent with this section. Cal. Civ. Code § 2860(a) In preparing Section 2860, the California Legislature rejected the notion that a mere potential conflict of interest creates a right to independent counsel. Section 2860 provides that a conflict of interest exists when an insurer reserves its rights on a coverage issue and the outcome of that coverage issue can be controlled by defense counsel retained by the insurer. Cal. Civ. Code § 2860(b) **Case Law:** The "*Cumis"* Case In *Cumis*, the California Court of Appeals for the Fourth Appellate District held that insureds have a right to independent counsel paid for by the insurer whenever "there are divergent interests of the insured and the insurer brought about by the insurer's reservation of rights based on possible non-coverage under the insurance policy." *San Diego Navy Federal Credit Union, et al. v. Cumis Ins. Society, Inc.*, 162 Cal.App.3d 358, 375 (1984) ("Cumis"). The Appellate Court, citing California's Rules of Professional Conduct, held that in a situation where a potential conflict of interest arises, an insurer is contractually obligated to pay for independent counsel. *Id.* at 373-74. The California Legislature responded to *Cumis* by enacting California Civil Code § 2860 three years later. However, in *Dynamic Concepts*, the Appellate Court noted that Cal. Civ. Code § 2860 did not adopt the absolutist view that every reservation of rights creates a conflict of interest requiring the retention of independent counsel. *Dynamic Concepts, Inc. v. Truck Ins. Exchange*, 61 Cal. App. 4th 999, 1007–08 (1998). Instead, the Court held that "[t]he potential for conflict requires a careful analysis of the parties' respective interests to determine whether they can be reconciled . . . or whether an actual conflict of interest precludes insurer-appointed defense counsel from presenting a quality defense for the insured." *Id.* at 1007–08
CO	Undecided	**Statute:** The right to independent counsel is not provided for by statute. **Case Law: No Instructive Authority** In *Hartford Insurance Group*, the Supreme Court of Colorado chose not to address under which circumstances insurers had to furnish separate counsel for the insured or pay the fees of counsel chosen . *Hartford Ins. Group v. District Court,* 625 P.2d 1013, 1018 (Colo. 1981). In fact, no Colorado court has addressed whether an insurer must provide independent counsel for its insured under a reservation of rights. *See, e.g., Hecla Min. Co. v. New Hampshire Ins. Co.,* 811 P.2d 1083, 1098 n.7 (Colo. 1991) However, in *Shelter*, the Colorado Court of Appeals noted that, under the Colorado Rules of Professional Conduct, an insurance company's defense counsel owes a duty to only the policyholder. *Shelter Mut. Ins. Co. v. Vaughn*, 300 P.3d 998 (Colo. Ct. App. 2013) More recently the Colorado Court of Appeals addressed the issue by concluding, as an apparent matter of first impression in Colorado, "that issue preclusion will not bar an insurer from later denying coverage to its insured when the insurer defended the insured under a reservation of rights and the insurer had an interest in establishing a different set of facts than its insured advanced in the underlying litigation." *Shelter Mut. Ins. Co. v. Vaughn*, 300 P.3d 998 (Colo. Ct. App. 2013)

STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
CT	Undecided	**Statute:** The right to independent counsel is not provided for by statute. **Case Law: No Instructive Authority** In *Higgins*, the Supreme Court of Connecticut held that the trial court abused its discretion when it viewed the defense attorney as a representative of the insurer, rather than as a representative of the insured, emphasizing the well-settled principle that "[a]n attorney's allegiance is to his client, not to the person who happens to be paying for his services." *Higgins v. Karp*, 239 Conn. 802, 810 (1997) (quoting *Martyn v. Donlin*, 151 Conn. 402, 414 (1964)). The Court held that this rule applies with equal force in the context of the relationship between an attorney, an insured, and the insurer. *Id.* Thus, even when an attorney is compensated or expects to be compensated by a liability insurer, his or her duty of loyalty and representation nonetheless remains exclusively with the insured. *Id*
DE	Undecided	**Statute:** The right to independent counsel is not provided for by statute. **Case Law:** Delaware has not yet addressed an insured's right to independent counsel. However, in *Stevenson*, the trial court held that "[i]f an insurer has a conflict of interest, either real or potential, it is not relieved of its duty to defend. The insurer must either provide independent counsel to represent its insured, or pay the cost of defense incurred by the insured." *Int'l Underwriters, Inc. v. Stevenson Enters., Inc.*, 1983 Del. Super. LEXIS 649, at *7 (Del. Super. Ct. Oct. 4, 1983). The *Stevenson* Court provided no explanation of its decision. However, the court characterized the counsel retained by the insurer as "independent." *Id*
D.C.	Sometimes	**Statute:** The right to independent counsel is not provided for by statute. **Case Law:** In *O'Connell,* the United States District Court held that a policy should make clear whether the insurer or the insured can designate the "separate counsel" when an insurer decides to defend under a reservation of right. *O'Connell v. Home Ins.* Co., CIV. A. No. 88-3523, 1990 WL 137386, at *4 (D.D.C. Sept. 10, 1990). Where a policy does not state and the insurer does not make clear that it will not compensate the insured for attorney fees incurred to retain separate counsel, the ambiguity in an insurance contract must be construed in favor of the insured. *Id* A District of Columbia District Court, while not addressing the issue in detail, suggested that an insured, being defended under a reservation of rights, is entitled to independent counsel if it can prove a conflict of interest. In *Aetna,* the court rejected the argument that an insured was entitled to independent counsel. *Athridge v. Aetna Cas. And Sur. Co.*, 2001 U.S. Dist. (D.D.C. Mar. 2, 2001). However, the court's reason for doing so was that a conflict did not exist between the insurer and the insured. *Id*
FL	No	**Statute:** The Florida legislature has recognized the right to independent counsel, but requires that it be mutually agreeable to the parties, and reasonable fees for the counsel may be agreed upon between the parties or, if no agreement is reached, shall be set by the court. Fla. Stat. § 627.426 **Case Law:**

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STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
FL cont.		In *Travelers Indemnity Co.*, the United States District Court held that when an insurer offers to defend under a reservation of rights, "Florida law provides that the insured may, at its election, reject the defense and retain its own attorneys without jeopardizing its right to seek indemnification from the insurer for liability." *Travelers Indem. Co. v. Royal Oak Enters., Inc.*, 344 F. Supp. 2d 1358, 1370 (M.D. Fla. 2004) "Whether a conflict of interest between the insurer and its insured entitles the insured to select counsel of its choice to supplement or monitor the defense at the expense of the insurer is apparently an issue of first impression for Florida courts." *Id.* at 1371-72. In making an "educated guess" as to how the Florida Supreme Court would decide, the District Court concluded that the Florida Supreme Court would hold that the insurer is not obligated to pay for the fees and expenses incurred by the insured for independently retained counsel. *Id.* at 1374
GA	Undecided	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** The Eleventh Circuit Court of Appeals concluded that " 'where a conflict of interest exists between the insurer and the insured in the conduct of the defense of the action brought against the insured, the insured has the right to refuse to accept an offer of the counsel appointed by the insurer[.] In such circumstances, [the insurer] would have been obligated to pay for [the insured's] defense.'" *Am. Family Life Assurance Co. v. U.S. Fire Co.*, 885 F.2d 826, 831 (11th Cir. 1989)
HI	No	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** The Hawaii Supreme Court determined that an insured does not have the right to select independent counsel and has rejected the *Cumis* counsel requirement from California: Upon balancing the respective pros and cons of suggested solutions to the issue, we are convinced that the best result is to refrain from interfering with the insurer's contractual right to select counsel and leave the resolution of the conflict to the integrity of retained defense counsel. Adequate safeguards are in place already to protect the insured in the case of misconduct. If the retained attorney scrupulously follows the mandates of the Hawai'i Rules of Professional Conduct (HRPC), the interests of the insured will be protected. In the event that the attorney violates the HRPC, the insured has recourse to remedies against both the attorney and the insurer. *Finley v. Home Ins. Co.*, 90 Hawaii 25, 31–32, 975 P.2d 1145, 1151–52 (1998)
IA	Undecided	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** In *First Newton National Bank v. General Casualty Co.*, the Iowa Supreme Court held that if an "inherent conflict of interest" exists between an insurer and an insured, the insurer can allow the insured to retain its own counsel and then reimburse it for the cost of the entire defense. *First Newton Nat'l. Bank v. General Cas. Co.*, 426 N.W.2d 618, 630 (Iowa 1988) (citing *Howard v. Russell Stover Candies, Inc.* 649 F.2d 620, 625 (8th Cir. 1981) An Eighth Circuit case held an insured may reject an insurer's offer to defend with a reservation of rights, and if the insurer refuses to withdraw the reservation of rights, the insured is then free to hire independent counsel to defend the underlying suit and obtain compensation from the insurer if the underlying suit is later held to be

STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
		covered by the policy. *Heubel Materials Handling Co., Inc. v. Universal Underwriters Ins. Co.,* 704 F.3d 558 (2013) The Eighth Circuit Court of Appeals held that to avoid the potential conflict of interest, the insurer must either provide an independent attorney to represent the insured, or pay the costs incurred by the insured in hiring counsel of its own choice. *Howard v. Russell Stover Candies, Inc.* 649 F.2d 620, 625 (8th Cir. 1981)
ID	Undecided	**Statute**: The right to independent counsel is not provided for by statute. **Case Law: No Instructive Authority** This issue has not been clearly or unambiguously addressed under Idaho law. However, in *Boise Motor Car Co. v. St. Paul Mercury Indemn. Co.*, 62 Idaho 438, 112 P.2d 1011 (1941), the Idaho Supreme Court held that under a garage liability policy obligating the insurer to defend, where the insurer elected to proceed with defending its insured after receiving notice that the insured would not consent to the insurer's reservation of right to withdraw the defense, the insurer's continued assertion of such right created a hazard which justified the insured in retaining its own counsel.
IL	Sometimes	**Statute**: The right to independent counsel is not provided for by statute. **Case Law**: In *Nandorf*, the Appellate Court of Illinois rejected the rule that a defense provided by an insurer, under a reservation of rights, creates a conflict of interest that automatically entitles the insured to retain independent counsel at the insurer's expense. *Nandorf, Inc. v. CNA Ins. Cos.*, 134 Ill.App.3d 134, 137 (1985). The court reasoned: "In determining whether a conflict of interest exists, Illinois courts have considered whether, in comparing the allegations of the complaint to the policy terms, the interest of the insurer would be furthered by providing a less-than-vigorous defense to those allegations[,] [a]n insurer's interest in negating policy coverage does not, in and of itself, create sufficient conflict of interest to preclude the insurer from assuming the defense of its insured[,] [h]owever, a conflict of interest has been found where the underlying action asserts claims that are covered by the insurance policy and other causes which the insurer is required to defend but asserts are not covered by the policy." *Id.* (citations omitted) In *Joseph T. Ryerson & Son, Inc. v. Travelers Indem. Co. of Am.*, the Appellate Court of Illinois provided that "[o]rdinarily, an insurer's duty to defend its insured includes the right to control the defense, which allows insurers to protect their financial interest in the outcome of the litigation." *Joseph T. Ryerson & Son, Inc. v. Travelers Indem. Co. of Am.*, 2020 IL App (1st) 182491, 165 N.E.3d 439, 458.; *see Xtreme Protection Services, LLC v. Steadfast Insurance Co.*, 2019 IL App (1st) 181501, ¶ 19, 436 Ill.Dec. 633, 143 N.E.3d 128 (citing *Illinois Masonic Medical Center v. Turegum Insurance Co.*, 168 Ill. App. 3d 158, 163, 118 Ill.Dec. 941, 522 N.E.2d 611 (1988)). "A limited exception to this rule exists where a conflict of interest arises between the insurer and insured." *Id.*; *see Williams v. American Country Insurance Co.*, 359 Ill. App. 3d 128, 137-38, 295 Ill.Dec. 765, 833 N.E.2d 971 (2005). "Where a conflict exists, the insured, rather than the insurer, is entitled to assume control of the defense of the underlying action." *Id.*; *see Illinois Masonic Medical Center*, 168 Ill. App. 3d at 163, 118 Ill.Dec. 941, 522 N.E.2d 611. "If this occurs, the insurer satisfies its obligation to defend by reimbursing the insured for the cost of defense provided by independent counsel selected by the insured." *Id.* at 459.; *see Standard Mutual Insurance Co. v. Lay*, 2014 IL App (4th) 110527-B, ¶ 35, 377 Ill.Dec. 972, 2 N.E.3d 1253 (citing *Maryland Casualty Co. v. Peppers*, 64 Ill. 2d 187, 198-99, 355 N.E.2d 24 (1976)) Under Illinois law, if a conflict of interest exists, the insurer ordinarily must pay the costs of independent counsel instead of participating in the defense itself. *Utica Mut. Ins. Co. v. David Agency Ins., Inc.,* N.D. Il.2004, 327 F.Supp.2d 922

STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
IN	No	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** An Indiana District Court declined to hold that a reservation of rights presents a per se conflict of interest for defense counsel. *Armstrong Cleaners, Inc. v. Erie Ins. Exch.*, 364 F. Supp. 2d 797, 816 (S.D. Ind. 2005). Instead, the court concluded that the determination must be made on a case-by-case basis and requires that some predictions be made about the course of the representation. *Id.* "If there is a reasonable possibility that the manner in which the insured is defended could affect the outcome of the insurer's coverage dispute, then the conflict may be sufficient to require the insurer to pay for counsel of the insured's choice. Evaluating that risk requires close attention to the details of the underlying litigation. The court must then make a reasonable judgment about whether there is a significant risk that the attorney selected by the insurance company will have the representation of the insureds significantly impaired by the attorney's relationship with the insurer." *Id.* at 808 In *Gallant Insurance Co. v. Wilkerson,* the Court of Appeals of Indiana held that "when an insurer questions whether an injured party's claim falls within the scope of policy coverage, or raises a defense that its insured has breached a policy condition, the insurer essentially has two options: (1) file a declaratory judgment action for a judicial determination of its obligations under the policy; or (2) hire independent counsel and defend its insured under a reservation of rights." *Gallant Ins. Co. v. Wilkerson*, 720 N.E.2d 1223, 1227 (Ind. Ct. App. 1999). Thus, the insurer has the option of either providing defense counsel or reimbursing the insured for costs incurred by the insured's chosen counsel. *Snodgrass v. Baize*, 405 N.E.2d 48, 51 (Ind. Ct. App. 1980)
KS	No	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** In *Patrons Mutual Insurance Association v. Harmon*, the Supreme Court of Kansas held that when a conflict of interest exists between the insured and the insurer, the proper way for the insurer to protect both its insured's and its own interest is to hire independent counsel to defend the insured and notify the insured that it is reserving all rights under the policy. *Patrons Mut. Ins. Ass'n v. Harmon*, 240 Kan. 707, 712 (1987) (citing *Bell v. Tilton*, 234 Kan. 461, 468 (1983))
KY	Undecided	**Statute**: The right to independent counsel is not provided for by statute. **Case Law: No Instructive Authority** A lawyer paid by an insurer to defend an insured in a personal injury action in which claims are also made against the insurer under the UCSPA may not represent both the insured and the insurer since the lawyer would face conflicting duties by representing both if facts bearing upon coverage were revealed by the insured, and if the insured is the lawyer's only client this information would be considered confidential; loyalty is an essential element in the lawyer's relationship with the client and the insured is entitled to competent and zealous representation that is not adversely affected by prohibited conflicts of interest. KBA E-378 (March 1995) In *Davis*, the Court of Appeals of Kentucky held that an insured is not required to accept a defense offered by the insurer, and may conduct its own defense when the insurer reserves a right to assert its nonliability for payment. *Medical Protective Co. v. Davis*, 581 S.W.2d 25, 26 (Ky. Ct. App. 1979)

STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
KY cont.		If a conflict of interest arises, the insured has the right to be represented by independent counsel of the insured's choosing. *O'Bryan v. Leibson*, 446 S.W.2d 643, 644 (1969) If an insurance company timely denies coverage, both sides may then act independently of each other. *Cincinnati Ins. Co. v. Vance*, 730 S.W.2d 521, 524 (1987)
LA	Sometimes	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** In *Belanger*, the Louisiana Appellate Court held that "in cases [where the insurance company and the insured have a conflict of interest] the insured, rather than the insurance company, is entitled to assume control of the defense of the underlying action and select [its] own attorney[,] [h]owever, the insurance company must underwrite the reasonable costs incurred by insured in defending the action with counsel of [its] own choosing. *Belanger v. Gabriel Chemical, Inc.*, 787 So.2d 559, 566 (La. App. 1st Cir. 2001). In addition, a denial of coverage by the insurer is an event which entitles the insured to select independent counsel to represent it at the insurer's expense. *Id.* at 565-66. The insurer is responsible for the reasonable costs incurred by the insured in defending the action with the independent counsel. *Id* If an insurer chooses to represent the insured but denies coverage, it must employ separate counsel. *Emery v. Progressive Cas.*, 49 So. 3d 17, 20-21 (La. Ct. App. 2010). Where an insurer fails to timely appoint separate counsel, it waives its right to raise coverage defenses in the matter. *Id*
MA	Yes	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** The Supreme Judicial Court of Massachusetts held that a reservation of rights creates a per se conflict that allows the insured to choose its own counsel to be paid for by the insurer. *Sullivan, Inc. v. Utica Mut. Ins. Co.*, 788 N.E.2d 522, 539 (Mass. 2003). The *Sullivan* court stated that "[w]hen an insurer seeks to defend its insured under a reservation of rights, and the insured is unwilling that the insurer do so, the insured may require the insurer either to relinquish its reservation of rights or relinquish its defense of the insured and reimburse the insured for its defense costs." *Id* In *Magoun*, the Court held that where the insured's interest in controlling tort litigation against him conflicts with the similar interest of the insurer, the insured may have good cause to ask that he be represented by counsel independent of the insurer. *Magoun v. Liberty Mut. Ins. Co.*, 346 Mass. 677, 684 (1964). Where there exists a possible divergence of interests, an insurer may be required to pay the reasonable costs of the defense provided by independent counsel. *Id*
MD	No	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** In *Brohawn*, the Court of Appeals of Maryland held that when a conflict of interest between the insured and the insurer arises, the insured must be informed of the nature of the conflict and given the right either to accept an independent attorney selected by the insurer or to select an attorney himself to conduct his defense. *Brohawn*

STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
		v. Transamerica Ins. Co., 276 Md. 396, 414-15 (1975). If the insured elects to choose his own attorney, the insurer must assume the reasonable costs of the defense provided. *Id.* at 415 In *Cardin*, the United States District Court for the District of Maryland expanded the *Brohawn* holding and held that when an insurer, which retained counsel for the insured after issuing a reservation of rights, instructed that counsel devote itself exclusively to the representation of the insured, the insurer had satisfied its duty to defend. *Cardin v. Pacific Employers Insurance Co.*, 745 F. Supp. 330, 337-38 (D. Md. 1990). As a result, the insurer was not required to pay for the fees of the separate counsel selected by the insured. *Id* In *Allstate Insurance Co.,* the Court of Appeals of Maryland held that "[t]he existence of a potential conflict does not require the insurer to pay for independent counsel to take over the defense of the insured." *Allstate Insurance Co. v. Campbell*, 334 Md. 381, 397 (1994). "In the absence of a conflict of interest on other grounds that would necessitate the retention of independent counsel for the insured, the defense of the claim in such a situation remains in the control of the insurer." *Id*
ME	Undecided	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** The Supreme Judicial Court of Maine held that "an insured being defended under a reservation of rights is entitled to enter into a reasonable, noncollusive, nonfraudulent settlement with a claimant, after notice to, but without the consent of, the insurer. The insurer is not bound by any factual stipulations entered as part of the underlying settlement, and is free to litigate the facts of coverage in a declaratory judgment action brought after the settlement is entered. If the insurer prevails on the coverage issue, it is not liable on the settlement. If the insurer does not prevail as to coverage, it may be bound by the settlement, provided the settlement, including the amount of damages, is shown to be fair and reasonable, and free from fraud and collusion." *Patrons Oxford Insurance Company v. Harris*, 905 A.2d 819, 828 (Me. 2006) While Maine courts have not yet addressed an insured's right to independent counsel, in *Travelers Indemnity Co. v. Dingwell*, the United States Court of Appeals for the First Circuit, applying Maine law, held that it is "well-established policy that an insurer who reserves the right to deny coverage cannot control the defense of a lawsuit brought against its insured by an injured party." *Travelers Indemnity Co. v. Dingwell,* 884 F.2d 629 (1st Cir. 1989). *See also Travelers Indem. Co. v. Dingwell,* 414 A.2d 220, 227 (1980)("Of course the insurers' obligation to defend can lead to a serious dilemma for the insurer. In some cases, the parties may agree that the insurer hire independent counsel for the insured. [citations omitted] The difficulties which these cases may pose will have to be addressed as they arise.")
MI	No	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** The Supreme Court of Michigan has not directly addressed an insured's right to independent counsel. However, in *Allstate Insurance Co. v. Freeman*, Justice Boyle, in his concurrence, recognized that when a conflict of interest arises between an insurer and the insured, the "insured must be informed of the nature of the conflict and given the right either to accept an independent attorney selected by the carrier or to select an attorney himself to conduct his defense; if the insured elects to choose his own attorney, the carrier must assume the reasonable costs of the defense provided." *Allstate Ins. Co. v. Freeman*, 432 Mich. 656, 704 n.3 (1989) (concurring opinion) "This Court agrees with the learned judge from the Western District and finds that under Michigan law an insurer complies with its duty to defend when, after it has reserved its rights to contest its obligation to indemnify, it fully informs the insured of the nature of the conflict and selects independent counsel to represent the insured in the underlying litigation. The insured has no absolute right to select the attorney himself, as long as the insurer

STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
MI cont.		exercises good faith in its selection and the attorney selected is truly independent." *Cent. Michigan Bd. of Trustees v. Emps. Reinsurance Corp.*, 117 F. Supp. 2d 627, 634–35 (E.D. Mich. 2000) The Court of Appeals of Michigan held that "[a]n insurance company may tender a defense under a reservation of rights and retain independent counsel to represent its insured. No attorney-client relationship exists between an insurance company and the attorney representing the insurance company's insured. The attorney's sole loyalty and duty is owed to the client, not the insurer. In the absence of any record showing by Bronson that the law firm acted in fact against the interests of Bronson, we will not presume that the firm had or would fail to carry out its responsibilities to its client." Michigan Millers Mutual Insurance Company v. Bronson Plating Co., 496 NW 2d 373 (Mich. Ct. App. 1992)
MN	Sometimes	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** In *Prahm*, the Supreme Court of Minnesota recognized that conflicts of interest may arise between an insurer and an insured in instances where the insurer would be required to take opposing positions at trial and simultaneously defend on the issue of coverage. *Prahm v. Rupp Const. Co.*, 277 N.W.2d 389, 391 (Minn. 1979). The Court held that such a conflict of interest does not relieve the insurer of its duty to defend, but rather transforms that duty into a duty to reimburse the insured for reasonable attorneys' fees incurred in defending a lawsuit. *Id* While Minnesota courts have held that an insured has a right to independent counsel in cases where a conflict of interest exists between the insurer and the insured, Minnesota has been clear on its position that the conflict must be "actual" rather than apparent. *Mutual Service Cas. Ins. Co. v. Luetmer*, 474 N.W.2d 365, 368 (Minn. Ct. App. 1991). Specifically, the Minnesota Court of Appeals held that "a conflict of interest will not be established simply by showing that the insurer wished to remain fully informed of the progress of the litigation in the main action while also litigating a declaratory judgment action." *Id*
MO	Yes	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** In *Ballmer*, the Missouri Court of Appeals held that insurers cannot force insureds to accept a reservation of rights defense. *Ballmer v. Ballmer*, 923 S.W.2d 365, 369 (Mo. App. W.D. 1996). "When insureds exercise their right to reject the defense, insurers can act in one of three ways: (1) They may represent the insured without a reservation of rights defense; (2) They may withdraw from representing the insured altogether; or (3) They may file a declaratory judgment action to determine the scope of their policy's coverage." *Id* An insured has the right to reject a reservation of rights defense because of the potential conflict of interest between the insurer and the insured. *State ex rel. Rimco, Inc. v. Dowd*, 858 S.W.2d 307, 308 (Mo. App. E.D. 1993). To avoid the potential conflict of interest, an insurer must either provide independent counsel to represent the insured, or pay the costs incurred by the insured in hiring counsel of its own choice. *Howard v. Russell Stover Candies, Inc.*, 649 F.2d 620, 625 (Mo. 8th Cir. 1981)
MS	Yes	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** In *Moeller*, the Mississippi Supreme Court held that whenever the insurer undertakes a defense of an insured under a reservation of rights, "not only must the insured be given the opportunity to select his own counsel to defend the claim, the carrier must also pay the legal fees reasonably incurred in the defense." *Moeller v. American Guar. and Liability Ins. Co.*, 707 So. 2d 1062, 1069 (Miss. 1996)

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STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
MT	Undecided	**Statute**: Under Montana's Rules of Professional Conduct, the insured is the sole client of defense counsel. *In re Rules of Prof'l Conduct and Insurer Imposed Billing Rules and Procedures*, 299 Mont. 321, 333 (2000) **Case Law:** In *Rules of Professional Conduct,* the Montana Supreme Court recognized potential conflicts of interest that arise in cases where an insured's exposure exceeds his insurance coverage, where the insurer provides a defense subject to a reservation of rights, and where an insurer's obligation to indemnify its insured may be excused because of a policy defense. *In re Rules of Prof'l Conduct and Insurer Imposed Billing Rules and Procedures*, 299 Mont. 321, 333 (2000). The Court ultimately held that the insured is the sole client of defense counsel, but failed to address the issue of whether independent counsel is required when a conflict exists. *Id* A Montana trial court concluded that the Montana Supreme Court "would hold that when an insurer has a duty to defend but sends a reservation of rights letter to its insured on a coverage issue, the inherent conflict of interest between the insurer and the insured affords the insured the opportunity to choose counsel of his or her own choice at the insurer's expense." *Safeco Ins. Co. v. Liss*, 2005 Mont. Dist. LEXIS 1073, at *40–*41 (Mont. Dist. Ct. Mar. 11, 2005)
NC	Undecided	**Statute**: The right to independent counsel is not provided for by statute. **Case Law: No Instructive Authority** While the North Carolina Supreme Court has not directly addressed an insured's right to independent counsel, in *National Mortgage Corporation v. American Title Insurance Company*, the Court of Appeals of North Carolina held that an insured is not required to accept a conditional defense of an action by the insurer under a reservation of rights, and may still seek indemnity for the costs incurred in its own defense of the action. *National Mortgage Corp. v. American Title Ins. Co.*, 41 N.C.App. 613, 621-22 (1979) (rev'd on other grounds by *National Mortg. Corp. v. American Title Ins. Co.*, 299 N.C. 369 (1980))
ND	Undecided	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** North Dakota courts have yet to directly address an insured's right to independent counsel. However, in *Allickson*, the North Dakota Supreme Court held that if an insurer wishes to retain control of the litigation in a case involving a coverage dispute, the appropriate response is for the insurer to continue to defend the insured and bring a declaratory judgment action to determine coverage. *D.E.M. v. Allickson*, 555 N.W.2d 596, 602 (N.D. 1996) In the event of a conflict of interest, an insurer may either retain independent counsel of its own choosing or should reimburse the insured for independent counsel of the insured's choosing. *Fetch v. Quam,* 530 N.W. 2d 337, 341(N.D. 1995)
NE	Undecided	**Statute**: The right to independent counsel is not provided for by statute.

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STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
NE cont.		**Case Law**: An Eighth Circuit case held an insured may reject an insurer's offer to defend with a reservation of rights, and if the insurer refuses to withdraw the reservation of rights, the insured is then free to hire independent counsel to defend the underlying suit and obtain compensation from the insurer if the underlying suit is later held to be covered by the policy. *Heubel Materials Handling Co., Inc. v. Universal Underwriters Ins. Co.*, 704 F.3d 558 (2013) The Eighth Circuit Court of Appeals held that to avoid the potential conflict of interest, the insurer must either provide an independent attorney to represent the insured, or pay the costs incurred by the insured in hiring counsel of its own choice. *Howard v. Russell Stover Candies, Inc.* 649 F.2d 620, 625 (8th Cir. 1981)
NH	Undecided	**Statute**: The right to independent counsel is not provided for by statute. **Case Law**: In *White Mountain Construction Co.,* the Supreme Court of New Hampshire held that if a conflict of interest exists between the insurer and the insured, the insurer may not "control" the insured's defense. *White Mountain Cable Const. Co. v. Transamerica Ins. Co.*, 137 N.H. 478, 486-87 (1993). "Controlling the defense, however, is not synonymous with providing a defense." *Id.* at 486. "Having a duty to defend, and faced with a conflict of interest, the [insurer] could have hired independent counsel to defend the [insured] while intervening on its own behalf." *Id.* at 487. "In the alternative, the [insurer] could have provided the defense but reserved its right to later deny coverage." *Id*
NJ	Sometimes	**Statute**: The right to independent counsel is not provided for by statute. **Case Law**: New Jersey does not recognize the insured's right to unilaterally select defense counsel to be paid concurrently by the carrier when a carrier issues a reservation of rights letter. If the carrier desires to defend under a reservation of rights, the carrier cannot assume control of the defense absent the specific agreement by the insured to the reservation of rights after being informed of the conflict. In the event the insured does not accept a defense or reservation of rights the insured is allowed to select its own defense counsel, with a right of reimbursement from the carrier, if it is later found in the underlying lawsuit that the claim falls within the ambit of coverage under the policy. *Burd v. Sussex Mut. Ins. Co.*, 56 N.J. 383, 389-90 (1970) The Supreme Court of New Jersey held that an insurer that wishes to control its insured's defense, and simultaneously reserve the right to deny coverage, can do so only with the insured's consent. *Merchants Indem. Corp. v. Eggleston*, 179 A.2d 505, 512 (N.J. 1962). If the insured does not consent, it is free to defend itself, but the insurer's potential obligation to reimburse defense costs is subject to the applicability of *SL Indus. Inc. v. Am. Motorists Ins. Co.*, 607 A.2d 1266 (N.J. 1992) and its progeny (permitting allocation of defense costs between covered and uncovered claims when feasible). *Id*
NM	No	**Statute**: The right to independent counsel is not provided for by statute. **Case Law**: In *Crawford*, the Supreme Court of New Mexico, relying on the Supreme Court of Rhode Island's decision in *Employers' Fire Ins. Co. v. Beals*, 103 R.I. 623 (1968) (overruled on other grounds by *Peerless Ins. Co. v. Viegas*, 667 A.2d 785 (R.I. 1995)), held that there are several methods of resolving a conflict of interest between the insurer and the insured, which includes insisting that the insured hire independent counsel, or the insurer

STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
NM cont.		hiring two sets of attorneys—one to represent the insured and the other to represent the insurer. *Am. Employers' Ins. Co. v. Crawford*, 87 N.M. 375, 381 (1975)
NV	Yes	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** In *Hansen*, the Nevada Supreme Court addressed the question of whether Nevada law requires an insurer to provide independent counsel for its insured when a conflict of interest arises between the insurer and the insured. *State Farm Mut. Auto. Ins. Co. v. Hansen*, 131 Nev. 743, 747 (2015). Relying on the California Supreme Court's decision in *Cumis*, the Court held that Nevada law requires the insurer to satisfy its contractual duty to provide representation by permitting the insured to select independent counsel, and by paying the reasonable costs of such counsel. *Id*. at 748-749 In *Young*, the United States District Court found that "Nevada law requires that an insurer obtain an explicit waiver of the right to independent counsel from an insured before it can proceed with dual or concurrent representation in an action in which an actual conflict of interest between the insurer and insured exists or has arisen." This requirement derives directly from the Nevada Supreme Court's decision in *Hansen*. *Starr Indemnity & Liability Company v. Young*, 379 F. Supp. 3d 1103, 1107 (D. Nev. 2019)
NY	Sometimes	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** In *Goldfarb*, the New York Court of Appeals concluded that independent counsel is only required in cases where a clear conflict of interest exists between the interests of the insured and the insurer, as where counsel's duty to the insured would require him to seek to dismiss the action on grounds that would affect the insurer's interests. *Public Service Mutual Ins. Co. v. Goldfarb*, 53 N.Y.2d 392, 401 (1981). Specifically, the court held that "[i]ndependent counsel is only necessary in cases where the defense attorney's duty to the insured would require that he defeat liability on any ground and his duty to the insurer would require that he defeat liability only upon grounds which would render the insurer liable." *Id* When the insured is entitled to independent counsel, the insurer is required to pay for independent counsel of the insured's choosing. *69th Street and 2d Ave. Garage Associates v. Ticor Title Guaranty Co.*, 207 A.D.2d 225, 228 (New York Ct. App. 1995)
OH	Sometimes	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** In *Lusk*, the Ohio Court of Appeals held that an insured is entitled to independent counsel only in those situations where it is impossible for the carrier to represent the insured's interests. *Lusk v. Imperial Casualty & Indemnity Co.*, 78 Ohio App.3d 11, 16 (1992). When such a conflict of interest exists between an insurer and an insured, the insurer must hire independent counsel to represent the insured, or allow the insured to select private counsel that the insurer must pay. *Socony-Vacuum Oil Co. v. Continental Cas. Co.*, 144 Ohio St. 382 (1945)

STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
		An Ohio Appeals Court declined to adopt a rule that a reservation of rights automatically requires the insurer to pay for the insured's private counsel. *Red Head Brass, Inc. v. Buckeye Union Ins.*, 735 N.E.2d 48, 55 (Ohio Ct. App. 1999). The *Red Head Brass* court instead held that "an insurer in Ohio may proceed to defend the insured so long as the situation does not arise that the insurer's defense of the insured and its defense of its own interests are mutually exclusive. In such a case, the insurer, still bound in its duty to defend the insured, would have to pay the cost of the insured's private counsel." *Id.* at 55
OK	Sometimes	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** In *Nisson*, the Court of Appeals of Oklahoma concluded that not every perceived or potential conflict of interest automatically gives rise to a duty on the part of the insurer to pay for the insured's choice of independent counsel. *Nisson v. American Home Assurance Co.*, 917 P.2d 488, 490 (Okla. App. 1996). Instead, the court held that "independent counsel is only necessary in cases where the defense attorney's duty to the insured would require that he defeat liability on any ground and his duty to the insurer would require that he defeat liability only upon grounds that would render the insurer liable." *Id*
OR	No	**Statute**: If the provisions of a general liability insurance policy impose a duty to defend upon an insurer, and the insurer has undertaken the defense of an environmental claim on behalf of an insured under a reservation of rights, or if the insured has potential liability for the environmental claim in excess of the limits of the general liability insurance policy, the insurer shall provide independent counsel to defend the insured who shall represent only the insured and not the insurer. O.R.S. § 465.483(1) **Case Law:** Oregon law does not provide insureds with a right to independent counsel in non-environmental matters. In *Ferguson*, the Oregon Supreme Court held that the insurer is not relieved of its duty to defend if it issues a reservation of right, but may still retain control of the defense. *Ferguson v. Birmingham Fire Ins. Co.*, 254 Or. 496, 509-510 (1969).The Court further addressed the conflict issue by concluding that the judgment in the original action is not binding on the insurer or insured in a subsequent coverage action. *Id.* at 510-11. As such, "there would be no conflict of interests between the insurer and the insured in the sense that the insurer could gain any advantage in the original action which would accrue to it in a subsequent action in which coverage is in issue." *Id*
PA	Sometimes	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** Pennsylvania courts have rejected the argument that a reservation of rights creates an automatic, actual conflict, and held that even when an insured is provided defense by the insurance company under a reservation of rights, it may not be entitled to independent counsel at the insurance company's expense. *Babcock & Wilcox Co. v. Am. Nuclear Insurers*, 635 Pa. 1, 5-6 (2015); *Eckman v. Erie Ins. Exch.*, 21 A.3d 1203, 1208-1209 (Pa. Super. Ct. 2011) A Pennsylvania District Court stated that it is settled law that "where conflicts of interest between an insurer and its insured arise, such that a question as to the loyalty of the insurer's counsel to that insured is raised, the insured is entitled to select its counsel, whose reasonable fee is to be paid by the insurer." *Rector, Wardens & Vestrymen of Saint Peter's Church v. Am. Nat'l Fire Ins. Co.*, 2002 U.S. Dist. LEXIS 625 (E.D. Pa. Jan. 14, 2002) (internal

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STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
		quotation marks and citations omitted). The *Rector* court concluded that an actual conflict, and not merely a theoretical one, existed because the underlying liability could rest on either of two causes of action, one covered and one not. "In this situation, an insurer would be tempted to construct a defense which would place any damage award outside policy coverage." *Id*
RI	No	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** The Rhode Island Supreme Court held that in the event of a conflict of interest between an insurer and its insured, an insured is allowed to refuse appointed defense counsel and select its own defense attorney, with the insurer assuming the reasonable cost of attorney's fees. *Employers' Fire Ins. Co. v. Beals*, 103 R.I. 623, 635 (1968) (rev'd on other grounds by *Peerless Ins. Co. v. Viegas*, 667 A.2d 785 (R.I. 1995). The Court held that another possible solution would be to have the insured and the insurer represented by two different attorneys. *Id.* However, the insurer must approve the independent counsel selected by its insured, and such approval must not to be unreasonably withheld. *Id*
SC	Undecided	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** In *Twin City Fire Ins. Co. v. Ben Arnold-Sunbelt Beverage Co.*, the U.S. District Court discussed whether the Supreme Court of South Carolina would adopt a *per se* disqualification rule that would entitle an insured to select independent counsel at its insurer's expense any time the insurer attempts to defend a lawsuit under a reservation of rights. 336 F. Supp. 2d 610, 612-13 (D.S.C. 2004). The Court ultimately concluded that South Carolina would not adopt such a rule because it rests upon the presumption that whenever a lawyer is confronted with a potential conflict of interest, the lawyer will always compromise the interests of the client, and the South Carolina Supreme Court would not engage in such a presumption. *Id* The South Carolina Rules of Professional Conduct governs a lawyer's ethical obligation when paid by an insurance company to represent an insured: "A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services." 336 F. Supp. 2d 610, 615 (citing S.C. Rules of Professional Conduct, Rule 407; SCACR, Rule 5.4(c).)
SD	Undecided	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** While the South Dakota Supreme Court has not directly addressed the right to independent counsel, in *Engelmann*, the Court held that attorneys representing insureds on behalf of insurers owe an undeviating fealty to the insured, and thus, conflicts of interest that develop under a reservation of rights should not impact the defense provided by the insurer. *St. Paul Fire & Marine Ins. Co. v. Engelmann*, 639 N.W.2d 192, 200 (S.D. 2002) In *Connolly*, the South Dakota Supreme Court held that an insurer did not have the right, without consent of the insured, to retain control of the defense and at the same time reserve its right to disclaim liability. *Connolly v. Standard Casualty Co.*, 76 S.D. 95, 100 (1955). Thus, once an insurer issues a reservation of rights, it loses the right to control the litigation unless the insured consents (either directly or implicitly) to the insurer assuming control. *Id*

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STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
TN	No	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** Tennessee law does not provide insureds with a right to independent counsel. The Tennessee Supreme Court held that no such right exists because counsel retained by an insurer to defend its insured must "exercise professional judgment and devote complete loyalty to the insured regardless of the circumstances." *Petition of Youngblood,* 895 S.W.2d 322, 328 (Tenn. 1995). The Court discussed several specific situations which may give rise to conflicts of interest, including: "(1) where a defense is afforded under a reservation of rights, (2) where there is a defense of alternative claims, one with coverage and the other with no coverage, (3) where there is a defense of claims for damages in excess of the policy limits, and (4) where the defense involves multiple insureds." *Id* When an insurer offers the services of retained counsel to represent the insured, and the insured elects to defend through its own independent counsel, the insurer has no liability to the insured for attorney's fees. *Town of Bell Buckle, Tennessee v. Home Ins. Co.,* No. 85-256-II, 1986 WL 2583, at *3 (Tenn. Ct. App. Feb. 26, 1986) A Tennessee District Court concluded that the mere existence of a relationship between an insurer and defense counsel was not sufficient to create a conflict of interest. *Tyson v. Equity Title & Escrow Co. of Memphis*, LLC, 282 F. Supp. 2d 829, 832 (W.D. Tenn. 2003). The court seemed persuaded that the Tennessee Rules of Professional Conduct were sufficient to safeguard the insured, stating that "[t]ypically, the relationship between an insurance company and the attorney that it hires to defend an insured is that of principal and independent contractor. An insurance company clearly possesses no right to control the methods or means by which an attorney defends its insured. The employment of an attorney by an insurance company to represent its insured does not impose upon that attorney any duty or loyalty to the insurance company that could impair the attorney-client relationship between the attorney and the insured." *Id.* at 831–32
TX	Yes	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** In *Davalos*, the Supreme Court of Texas held that some conflicts of interest allow the insured to select independent counsel. *N. County Mut. Ins. Co. v. Davalos*, 140 S.W.3d 685, 688 (Tex. 2004). When discussing the types of conflicts that may vindicate an insured's right to independent counsel, the Court stated: "[w]hen the facts to be adjudicated in the liability lawsuit are the same facts upon which coverage depends, the conflict of interest will prevent the insurer from conducting the defense." *Id.* "On the other hand, when the disagreement concerns coverage but the insurer defends unconditionally, there is, because of the application of estoppel principles, no potential for a conflict of interest between the insurer and the insured." *Id* In *Cambridge Mut. Fire Ins. Co.*, the Court of Appeals held that when an insured hires counsel of his own choosing, the insured may look to the insurer for the payment of the attorney's fees. *Britt v. Cambridge Mut. Fire Ins. Co.*, 717 S.W.2d 476, 481 (Tex. Ct. App. 1986)
UT	Undecided	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** Utah courts have not addressed the right to independent counsel directly. However, the Eighth Circuit Court of Appeals, applying Utah law, held that where there is a conflict between the insurer's interest and that of the insured, the insurer must either provide an independent attorney to represent the insured or pay the costs

STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
UT cont.		incurred by the insured in hiring counsel of its own choice. *U.S. Fid. & Guar. Co. v. Louis A. Roser Co.*, 585 F.2d 932, 939 n. 6 (8th Cir. 1978) (Utah and Minnesota law). When discussing the risk for conflict an insurer undertakes to defend its insured under a reservation of rights, the Eighth Circuit stated: "We cannot escape the conclusion that it is impossible for one attorney to adequately and fairly represent two parties in litigation in the face of the real conflict of interest which existed here." *Id.* at 938. "Even the most optimistic view of human nature requires [the court] to realize that an attorney employed by an insurance company will slant his efforts, perhaps unconsciously, in the interests of his real client the one who is paying his fee and from whom he hopes to receive future business the insurance company." *Id.* In *Spratley*, the Supreme Court of Utah held that "where no actual conflict exists or is foreseeable, an attorney will ordinarily represent both the interests of the insured and the insurer. *Spratley v. State Farm Mut. Auto. Ins. Co.*, 78 P.3d 603, 607 (Utah 2003). "However, where actual conflict exists or is likely to arise, the attorney's allegiance is to the insured because of an insurer's duty to provide a defense in good faith." *Id*
VT	No	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** In *Pratt*, the court found that a conflict of interest may arise when an insurance company fails to seek consent of the policyholder for a defense under a reservation of rights. *N. Sec. Ins. Co. v. Pratt,* No. 838- 11-10 WNCV, 2011 WL 8472930 (Vt. Super. May 19, 2011). A conflict may also exist when an underlying complaint contains both covered and uncovered claims. *Id.* at 15-17. However, in addressing the right to independent counsel, the court also held that so long as the insurance company appoints "a truly independent counsel," the policyholder does not have the right to select its own counsel because the "conflict is remedied." *Id* In *Beatty*, the Supreme Court of Vermont held that "the insurer may, if it is in doubt as to its liability, refuse to assume the defense, and await the result, thus leaving the insured free to defend or compromise in his own way through his own counsel; or it may obtain some agreement with the insured, under which, by proceeding to defend, it shall not be considered to have enlarged its obligation under the policy, thus reserving its rights under that instrument." *Beatty v. Employers' Liab. Assurance Corp.*, Ltd., 106 Vt.25 923 (1933)
VA	Undecided	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** Virginia courts have not yet addressed an insured's right to independent counsel. However, in *Norman*, the Supreme Court of Virginia held that a possible conflict of interest on the part of counsel for the insurer could only occur if the attorney's actions fail to provide the insured with a full, fair and competent defense to the action. *Norman v. Insurance Co. of N. Am.*, 218 Va. 718, 727 (1978). Specifically, the Court held that "a client may presume that his attorney has no interest which will interfere with his devotion to the cause confided in him; and an insurer's attorney, employed to represent an insured, is bound by the same high standard which governs all attorneys and owes the insured the same duty as if he were privately retained by the insured." *Id*

STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
WA	No	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** Washington law does not follow the notion that a defense under a reservation of rights automatically creates a conflict of interest which requires the insurer pay for independent counsel chosen by the insured. *Johnson v. Cont'l Cas. Co.*, 57 Wash.App.359, 361 (1990) In *Tank*, the Washington Supreme Court ruled that an insurer defending under a reservation of rights has an "enhanced obligation of fairness towards its insured." *Tank v. State Farm Fire & Cas. Co.*, 105 Wash.2d 381, 387 (1986). The Court held that the enhanced obligation is fulfilled by meeting specific criteria: (1) the company must thoroughly investigate the claim; (2) it must retain competent defense counsel for the insured, and both retained defense counsel and the insurer must understand that only the insured is the client; (3) the company must fully inform the insured of the reservation of rights defense and all developments relevant to policy coverage and progress of the lawsuit; and (4) the insurance company must refrain from any activity that would show a greater concern for its monetary interest than for the insured's financial risk. *Id.* at 388-91
WI	Yes	**Statute**: The right to independent counsel is not provided for by statute. **Case Law**: The court in *Jacob* explained that an insurer has several options available when it wants to raise a coverage issue and retain its right to challenge coverage: One option requires the insurer to request a bifurcated trial on the issues of coverage and liability or a declaratory judgment on the coverage issue. Another option requires the insurer to give the insured notice of the insurer's intent to reserve its coverage rights. This allows the insured the opportunity to a defense not subject to the control of the insurer although the insurer remains liable for the legal fees incurred. *Jacob v. West Bend Mut. Ins. Co.*, 203 Wis.2d 524, 536 (1996); *Grube v. Daun*, 173 Wis.2d 30, 75 (1992) A Wisconsin District Court held that the Wisconsin Supreme Court would not conclude that a mere reservation of rights automatically creates a conflict of interest between insured and insurer, which divests the insurer of control of the defense. *HK Systems, Inc. v. Admiral Ins. Co.*, 2005 U.S. Dist. LEXIS 39939 (D. Wis. June 27, 2005). Rather, for the insurer to be required to relinquish control of the defense, a real conflict of interest based on opposing defenses of insured and insurer must exist. The HK Systems Court concluded that a real conflict of interest did exist because the insurer may benefit if HK Systems were found liable on certain claims, such as breach of contract or warranty, but not on others, such as negligence.
WV	Yes	**Statute**: The right to independent counsel is not provided for by statute. **Case Law:** In *Wilson*, the Supreme Court of Appeals of West Virginia specifically addressed the right to independent counsel. The court stated: [U]nder the terms of most liability insurance policies, the insured agrees to permit the insurer to choose counsel to defend the insured against claims by third parties. Generally, the insurer and insured have compatible interests and goals in responding to a tort claim. However, their interests may diverge at times, creating a potential or actual conflict of interest. . . [in this case the] evident conflict of interest made it necessary for [the insured] to retain independent counsel.

STATE	ANSWER	RIGHT TO INDEPENDENT COUNSEL: SUPPORTING AUTHORITY
WV cont.		*State ex rel. Universal Underwriters Ins. Co. v. Wilson*, 239 W.Va. 338, 345 (2017) In *Barefield*, the Supreme Court of Appeals of West Virginia held that a defense attorney employed to represent an insured in a liability matter is not an agent of the insurance company because the attorney is professionally obligated to represent only the interests of the client/insured, not the interests of the insurance company. *Barefield v. DPIC Companies, Inc.*, 215 W.Va. 544, 556 (2004). Because a defense attorney is ethically obligated to maintain an independence of professional judgment in the defense of a client/insured, an insurance company possesses no right to control the methods or means chosen by the attorney to defend the insured. *Id.* at 558
WY	Undecided	**Statute**: No instructive authority. **Case Law**: Wyoming courts have not yet addressed an insured's right to independent counsel. However, in *Insurance Co. of N. Am. v. Spangler*, a federal district court addressed the issue of whether the insured was barred from recovery from the insurer for a stipulated liability to which the insurer did not consent and the insured was not personally liable. The district court held that the "Wyoming Supreme Court would adopt the rationale of those cases holding that an insurer who reserves the right to deny coverage loses the right to control the litigation." *Insurance Co. of N. Am. v. Spangler*, 881 F. Supp. 539, 544 (D. Wyo. 1995) In *Shoshone First Bank v. Pacific Employers Insurance Co.*, the Supreme Court of Wyoming accepted the general premise that an insurer is not required to pay for an insured who decides to pursue a counterclaim against it. *Shosone First Bank v. Pacific Employers Ins. Co.*, 2 P.3d 510, 516 (2000)

50 State Legal Matrix – Right to Repair Laws for 2024

The following matrix provides insight into state statutory legislation that requires homeowners to notify builders of claimed defects and to provide builders with an opportunity to repair the defects before the homeowner files a formal lawsuit. These "right to repair" statutes function as an opportunity to avoid litigation whereby the builder can address the homeowner's claimed defects and attempt to repair the defects and allow homeowners to seek repairs without having to file a lawsuit. These laws vary from state to state, and one of the key differences is the amount of time a homeowner must wait after notifying the construction professional of the defect prior to proceeding with a lawsuit.

Please be advised that hyperlinks were added to the statutory and regulatory citations. By clicking on the citation hyperlinks, you will be brought to the regulatory webpage containing the statutes and rules that will provide the relevant information.

STATE	RIGHT TO REPAIR	STATUTE
Alabama	No	No Right to Repair Statute
Alaska	Yes	Alaska Stat. §§ 09.10.054, 09.45.881 - 09.45.899
Arizona	Yes	Ariz. Rev. Stat. §§ 12-552, 12-1361 - 12-1366
Arkansas	No	No Right to Repair Statute
California	Yes	Cal. Civ. Code §§ 895 - 945.5
Colorado	Yes	Colo. Rev. Stat. § 13-20-803.5; Colo. Rev. Stat. §§ 13-20-801 - 13-20-808
Connecticut	No	No Right to Repair Statute
Delaware	No	No Right to Repair Statute
District of Columbia	No	No Right to Repair Statute
Florida	Yes	Fla. Stat. §§ 558.001 - 558.005; Fla. Stat. § 558.004
Georgia	Yes	Ga. Code § 8-2-38; Ga. Code §§ 8-2-35 - 8-2-43
Hawaii	Yes	Haw. Rev. Stat. § 672E-4; Haw. Rev. Stat. §§ 672E-1 - 672E-13
Idaho	Yes	Idaho Code § 6-2503; Idaho Code §§ 6-2501 - 6-2504
Illinois	No	No Right to Repair Statute
Indiana	Yes	Ind. Code §§ 32-27-3-1 -3-27-3-14
Iowa	Yes	Iowa Code § 686.3; Iowa Code §§ 686.1 – 686.7
Kansas	Yes	Kan. Stat. § 60-4706; Kan. Stat. §§ 60-4701 - 60-4710

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Kentucky	Yes	Ky. Rev. Stat. § 411.258; Ky. Rev. Stat. §§ 411.250 - 411.266
Maine	No	No Right to Repair Statute
Maryland	No	No Right to Repair Statute
Massachusetts	No	No Right to Repair Statute
Michigan	No	No Right to Repair Statute
Minnesota	Yes	Minn. Stat. § 327A.02; Minn. Stat. §§ 327A.01 - 327A.08
Mississippi	Yes	Miss. Code. §§ 83-58-1 - 83-58-17
Missouri	Yes	Mo. Rev. Stat. § 436.353; Mo. Rev. Stat. §§ 436.350 - 436.365
Montana	Yes	Mont. Code §§ 70-19-426 - 70-19-428
Nebraska	No	No Right to Repair Statute
Nevada	Yes	Nev. Stat. §§ 40.600 - 40.695
New Hampshire	Yes	N.H. Rev. Stat. § 359-G:4; N.H. Rev. Stat. §§ 359-G:1 - 359-G:8
New Jersey	No	No Right to Repair Statute
New Mexico	No	No Right to Repair Statute
New York	Limited	N.Y. Gen. Bus. Law §777-A
North Carolina	No	No Right to Repair Statute
North Dakota	Yes	N.D. Cent. Code § 43-07-26
Ohio	Yes	Ohio Rev. Code § 1312.03; Ohio Rev. Code § 1312.04
Oklahoma	Limited	Okla. Stat. tit. 15 § 765.6, construction contracts may include a right to repair provision
Oregon	Yes	ORS § 701.565; Or. Rev. Stat. §§ 701.560 - 701.600
Pennsylvania	No	No Right to Repair Statute
Rhode Island	No	No Right to Repair Statute
South Carolina	Yes	S.C. Code § 40-59-850; S.C. Code §§ 40-59-810 - 40-59-860
South Dakota	Yes	S.D. Codified Laws §§ 21-1-15 - 21-1-16

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STATE	RIGHT TO REPAIR	STATUTE
Tennessee	Yes	Tenn. Code § 66-36-103; Tenn. Code §§ 66-36-101 - 66-36-103
Texas	Yes	Tex. Prop. Code § 27.004; Tex. Prop. Code Ann. §§ 27.001 - 27.007
Utah	No	No Right to Repair Statute
Vermont	Limited	Vt. Stat. tit. 27A § 3-124
Virginia	No	No Right to Repair Statute
Washington	Yes	Wash. Rev. Code § 64.50.050; Wash. Rev. Code §§ 64.50.005 - 64.50.060
West Virginia	Yes	W. Va. Code § 21-11A-5; W. Va. Code §§ 21-11A-1 - 21-11A-17
Wisconsin	Yes	Wis. Stat. § 895.07
Wyoming	No	No Right to Repair Statute

50 State Legal Matrix – Statutes of Limitations for 2024

STATE	STATUTE	WRITTEN CONTRACT	ORAL CONTRACT	PERSONAL INJURY	PROPERTY DAMAGE
Alabama	Ala. Code § 6-2-30 et seq	6 Ala. Code § 6-2-34	6 Ala. Code § 6-2-34	2 Ala. Code § 6-2-38	6 Ala. Code § 6-2-34
Alaska	Alaska Stat. § 09.10.010 et seq	3 Alaska Stat. § 09.10.053	3 Alaska Stat. § 09.10.053	2 Alaska Stat. § 09.10.070	6 (real property) Alaska Stat. § 09.10.050 2 (personal property) Alaska Stat. § 09.10.070
Arizona	Ariz. Rev. Stat. Ann. § 12-541 et seq	6 (generally) Ariz. Rev. Stat. § 12-548 4 (for contracts executed without the state) Ariz. Rev. Stat. § 12-544	3 Ariz. Rev. Stat. § 12-543	2 (Bodily Injury) Ariz. Rev. Stat. § 12-542 1 (Libel/Slander) Ariz. Rev. Stat. § 12-541	2 Ariz. Rev. Stat. § 12-542
Arkansas	Ark. Code Ann. § 16-56-101 et seq	5 Ark. Code Ann. § 16-56-111	3 Ark. Code Ann. §. 16-56-105	3 Ark. Code Ann. § 16-56-105	3 Ark. Code Ann. § 16-56-105
California	Cal. Civ. Proc. Code § 312 et seq	4 Cal. Civ. Proc. Code § 337	2 Cal. Civ. Proc. Code § 339	2 (Bodily Injury) Cal. Civ. Proc. Code § 335.1 1 (Libel/Slander) Cal. Civ. Proc. Code § 340	3 Cal. Civ. Proc. Code § 338
Colorado*	Colo. Rev. Stat. § 13-80-101 et seq	3 (generally) Colo. Rev. Stat. § 13-80-101 2 (for construction defect cases) Colo. Rev. Stat. § 13-80-104	3 (generally) Colo. Rev. Stat. § 13-80-101 2 (for construction defect cases) Colo. Rev. Stat. § 13-80-104	2 (Bodily Injury) Colo. Rev. Stat. § 13-80-102 1 (Libel/Slander) Colo. Rev. Stat. § 13-80-103	2 Colo. Rev. Stat. § 13-80-104
Connecticut	Conn. Gen. Stat. Ann. § 52-575 et seq	6 Conn. Gen. Stat. § 52-576	3 Conn. Gen. Stat. § 52-581	2 Conn. Gen. Stat. § 52-584; § 52-597	2 Conn. Gen. Stat. § 52-584

* Colorado: for third-party and/or contribution claims the statute of limitations can be extended to 90 days after settlement or judgment of the underlying action pursuant to *Goodman v. Heritage Builders, Inc., 390 P.3d 398 (Colo., 2017)*.

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STATE	STATUTE	WRITTEN CONTRACT	ORAL CONTRACT	PERSONAL INJURY	PROPERTY DAMAGE
Delaware	Del. Code Ann. tit. 10, § 8101 et seq	3 Del. Code Ann. tit. 10, § 8106	3 Del. Code Ann. tit. 10, § 8106	2 Del. Code Ann. tit. 10, § 8119	3 (real property) Del. Code Ann. tit. 10, § 8106 2 (personal property) Del. Code Ann. tit. 10, § 8107
District of Columbia	D.C. Code § 12-301 et seq	3 D.C. Code § 12-301	3 D.C. Code § 12-301	3 (Bodily Injury) D.C. Code § 12-301 1 (Libel/Slander) D.C. Code § 12-301	3 D.C. Code § 12-301
Florida	Fla. Stat. Ann. § 95.11 et seq	5 Fla. Stat. Ann. § 95.11	4 Fla. Stat. Ann. § 95.11	4 (Bodily Injury) Fla. Stat. Ann. § 95.11 2 (Libel/Slander) Fla. Stat. Ann. § 95.11	4 Fla. Stat. Ann. § 95.11
Georgia	Ga. Code Ann. § 9-3-20 et seq	6 Ga. Code Ann. § 9-3-24	4 Ga. Code Ann. § 9-3-26	2 (Bodily Injury) Ga. Code Ann. § 9-3-33 1 (Libel/Slander) Ga. Code Ann. § 9-3-33	4 Ga. Code Ann. (real property) § 9-3-30; (personal property) § 9-3-32
Hawaii	Haw. Rev. Stat. § 657-1 et seq	6 Haw. Rev. Stat. § 657-1	6 Haw. Rev. Stat. § 657-1	2 Haw. Rev. Stat. § 657-7; § 657-4	2 Haw. Rev. Stat. § 657-7
Idaho	Idaho Code § 5-201 et seq	5 Idaho Code § 5-216	4 Idaho Code § 5-217	2 Idaho Code § 5-219	3 Idaho Code § 5-218
Illinois	735 Ill. Comp. Stat. 5/13- 201 et seq	10 735 Ill. Comp. Stat. Ann. 5/13-206	5 735 Ill. Comp. Stat. Ann. 5/13-205	2 (Bodily Injury) 735 Ill. Comp. Stat. Ann. 5/13-202 1 (Libel/Slander) 735 Ill. Comp. Stat. Ann. 5/13-201	5 735 Ill. Comp. Stat. Ann. 5/13-205

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STATE	STATUTE	WRITTEN CONTRACT	ORAL CONTRACT	PERSONAL INJURY	PROPERTY DAMAGE
Indiana	Ind. Code Ann. § 34-11-2-1 et seq	10 (generally) Ind. Code Ann. § 34-11-2-11 6 (contracts for payment of money) Ind. Code Ann. § 34-11-2-9	6 Ind. Code Ann. § 34-11-2-7	2 Ind. Code Ann. § 34-11-2-4	6 (real property) Ind. Code Ann. § 34-11-2-7 2 (personal property) Ind. Code Ann. § 34-11-2-4
Iowa	Iowa Code Ann. § 614.1 et seq	10 Iowa Code Ann. § 614.1	5 Iowa Code Ann. § 614.1	2 Iowa Code Ann. § 614.1	5 Iowa Code Ann. § 614.1
Kansas	Kan. Stat. Ann. § 60-501 et seq	5 Kan. Stat. Ann. § 60-511	3 Kan. Stat. Ann. § 60-512	2 (Bodily Injury) Kan. Stat. Ann. § 60-513 1 (Libel/Slander) Kan. Stat. Ann. § 60-514	2 Kan. Stat. Ann. § 60-513
Kentucky	Ky. Rev. Stat. Ann. § 413.080 et seq	15 (contracts executed before July 15, 2014) Ky. Rev. Stat. § 413.090 10 (contracts executed after July 15, 2014) Ky. Rev. Stat. § 413.160	5 Ky. Rev. Stat. § 413.120	1 Ky. Rev. Stat. Ann. § 413.140	5 (real property) Ky. Rev. Stat. § 413.120 2 (personal property) Ky. Rev. Stat. § 413.125
Louisiana	La. civil code art. § 3492 et seq	10 La. Civ. Code Ann. Art. § 3499	10 La. Civ. Code Ann. Art. § 3499	1 La. Civ. Code Ann. Art. § 3492	1 La. Civ. Code Ann. Art. §§ 3492; 3493
Maine	Me. Rev. Stat. Ann. tit. 14, § 751 et seq	6 Me. Rev. Stat. tit. 14, § 752	6 Me. Rev. Stat. tit. 14, § 752	6 (Bodily Injury) Me. Rev. Stat. tit. 14, § 752 2 (Libel/Slander) Me. Rev. Stat. tit. 14, § 753	6 Me. Rev. Stat. tit. 14, § 752

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STATE	STATUTE	WRITTEN CONTRACT	ORAL CONTRACT	PERSONAL INJURY	PROPERTY DAMAGE
Maryland	Md. Courts & Jud. Proc. Code Ann. § 5-101 et seq	3 Md. Code Ann., Cts. & Jud. Proc. § 5-101	3 Md. Code Ann., Cts. & Jud. Proc. § 5-101	3 (Bodily Injury) Md. Code Ann., Cts. & Jud. Proc. § 5-101	3 Md. Code Ann., Cts. & Jud. Proc. § 5-101
Massachusetts	Mass. Ann. Laws ch. 260, § 1 et seq	6 Mass. Ann. Laws ch. 260, § 2	6 Mass. Ann. Laws ch. 260, § 2	3 Mass. Ann. Laws ch. 260, § 4	3 Mass. Ann. Laws ch. 260, § 2A
Michigan	Mich. Comp. Laws § 600.5801 et seq	6 Mich. Comp. Laws Serv. § 600.5807	6 Mich. Comp. Laws Serv. § 600.5807	3 (Bodily Injury) Mich. Comp. Laws Serv. § 600.5805 1 (Libel/Slander) Mich. Comp. Laws Serv. § 600.5805	3 Mich. Comp. Laws Serv. § 600.5805
Minnesota	Minn. Stat. Ann. § 541.01 et seq	6 Minn. Stat. Ann. § 541.05	6 Minn. Stat. Ann. § 541.05	2 Minn. Stat. Ann. § 541.07	6 Minn. Stat. Ann. § 541.05
Mississippi	Miss. Code. Ann. § 15-1-1 et seq	3 Miss. Code Ann. § 15-1-49	3 Miss. Code Ann. § 15-1-29	3 (Bodily Injury) Miss. Code Ann. § 15-1-49 1 (Libel/Slander) Miss. Code Ann. § 15-1-35	3 Miss. Code Ann. § 15-1-49
Missouri	Mo. Rev. Stat. § 516.010 et seq	5 (contracts other than for payment of money) Mo. Rev. Stat. § 516.120 10 (contracts for payment of money) Mo. Rev. Stat. § 516.110	5 Mo. Rev. Stat. § 516.120	5 (Bodily Injury) Mo. Rev. Stat. § 516.120 2 (Libel/Slander) Mo. Rev. Stat. § 516.140	5 Mo. Rev. Stat. § 516.120

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STATE	STATUTE	WRITTEN CONTRACT	ORAL CONTRACT	PERSONAL INJURY	PROPERTY DAMAGE
Montana	Mont. Code Ann. § 27-2-201 et seq	8 Mont. Code Ann. § 27-2-202	5 Mont. Code Ann. § 27-2-202	3 (Bodily Injury) Mont. Code Ann. § 27-2-204 2 (Libel/Slander) Mont. Code Ann. § 27-2-204	2 Mont. Code Ann. § 27-2-207
Nebraska	Neb. Rev. Stat. § 25-201 et seq	5 Neb. Rev. Stat. Ann § 25-205	4 Neb. Rev. Stat. Ann § 25-206	4 (Bodily Injury) Neb. Rev. Stat. Ann § 25-207 1 (Libel/Slander) Neb. Rev. Stat. Ann § 25-208	4 Neb. Rev. Stat. Ann § 25-207
Nevada	Nev. Rev. Stat. Ann. § 11.010 et seq	6 Nev. Rev. Stat. Ann. § 11.190	4 Nev. Rev. Stat. Ann. § 11.190	2 Nev. Rev. Stat. Ann. § 11.190	3 Nev. Rev. Stat. Ann. § 11.190
New Hampshire	N.H. Rev. Stat. Ann. § 508:1 et seq	3 N.H. Rev. Stat. Ann. § 508:4	3 N.H. Rev. Stat. Ann. § 508:4	3 N.H. Rev. Stat. Ann. § 508:4	3 N.H. Rev. Stat. Ann. § 508:4
New Jersey	N.J. Stat. Ann. § 2A:14-1 et seq	6 N.J. Stat. § 2A:14-1	6 N.J. Stat. § 2A:14-1	2 (Bodily Injury) N.J. Stat. § 2A:14-2 1 (Libel/Slander) N.J. Stat. § 2A:14-3	6 N.J. Stat. § 2A:14-1
New Mexico	N.M. Stat. Ann. § 37-1-1 et seq	6 N.M. Stat. Ann. § 37-1-3	4 N.M. Stat. Ann. § 37-1-4	3 N.M. Stat. Ann. § 37-1-8	4 N.M. Stat. Ann. § 37-1-4
New York	N.Y. Civ. Prac. Laws & Rules § 201 et seq	6 N.Y. Civ. Prac. Laws & Rules § 213	6 N.Y. Civ. Prac. Laws & Rules § 213	3 (Bodily Injury) N.Y. Civ. Prac. Laws & Rules § 214 1 (Libel/Slander) N.Y. Civ. Prac. Laws & Rules § 215	3 N.Y. Civ. Prac. Laws & Rules § 214

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STATE	STATUTE	WRITTEN CONTRACT	ORAL CONTRACT	PERSONAL INJURY	PROPERTY DAMAGE
North Carolina	N.C. Gen. Stat. § 1-46 et seq	3 (in general) N.C. Gen. Stat. § 1-52 2 (government K) N.C. Gen Stat. § 1-53	3 (in general) N.C. Gen. Stat. § 1-52 2 (government K) N.C. Gen Stat. § 1-53	3 (Bodily Injury) N.C. Gen. Stat. § 1-52 2 (Wrongful death) N.C. Gen. Stat. § 1-53 1 (Libel/Slander) N.C. Gen. Stat. § 1-54	3 N.C. Gen. Stat. § 1-52
North Dakota	N.D. Cent. Code § 28-01-01 et seq	6 N.D. Cent. Code § 28-01-16	6 N.D. Cent. Code § 28-01-16	6 (Bodily Injury) N.D. Cent. Code § 28-01-16 2 (Libel/Slander) N.D. Cent. Code § 28-01-18	6 N.D. Cent. Code § 28-01-16
Ohio	Ohio Rev. Code Ann. § 2305.03 et seq	6 Ohio Rev. Code Ann. § 2305.06	4 Ohio Rev. Code Ann. § 2305.07	2 (bodily injury) Ohio Rev. Code Ann. § 2305.10; 1 (Libel/Slander) § 2305.11	4 Ohio Rev. Code Ann. § 2305.09
Oklahoma	Okla. Stat. Ann. tit. 12, § 91 et seq	5 Okla. Stat. tit. 12, § 95	3 Okla. Stat. tit. 12, § 95	2 (Bodily Injury) Okla. Stat. tit. 12, § 95 1 (Libel/Slander) Okla. Stat. tit. 12, § 95	2 Okla. Stat. tit. 12, § 95

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STATE	STATUTE	WRITTEN CONTRACT	ORAL CONTRACT	PERSONAL INJURY	PROPERTY DAMAGE
Oregon	Or. Rev. Stat. § 12.010 et seq	6 Or. Rev. Stat. Ann. § 12.080	6 Or. Rev. Stat. Ann. § 12.080	2 (Bodily Injury) Or. Rev. Stat. Ann. § 12.110 1 (Libel/Slander) Or. Rev. Stat. Ann. § 12.120	6 Or. Rev. Stat. Ann. § 12.080
Pennsylvania	42 Pa. Cons. Stat. Ann. § 5501 et seq	4 42 Pa. Cons. Stat. Ann. § 5525	4 42 Pa. Cons. Stat. Ann. § 5525	2 (Bodily Injury) 42 Pa. Cons. Stat. Ann. § 5524 1 (Libel/Slander) 42 Pa. Cons. Stat. Ann. § 5523	2 42 Pa. Cons. Stat. Ann. § 5524
Rhode Island	R. I. Gen. Laws § 9-1-12 et seq	10 9 R.I. Gen. Laws § 1-13	10 9 R.I. Gen. Laws § 1-13	3 (Bodily Injury) 9 R.I. Gen. Laws § 1-14 1 (Libel/Slander) 9 R.I. Gen. Laws § 1-14	10 9 R.I. Gen. Laws § 1-13
South Carolina	S.C. Code Ann. § 15-3-510 et seq	3 S.C. Code Ann. § 15-3-530	3 S.C. Code Ann. § 15-3-530	3 (Bodily Injury) S.C. Code Ann. § 15-3-530 2 (Libel/Slander) S.C. Code Ann. § 15-3-550	3 S.C. Code Ann. § 15-3-530
South Dakota	S.D. Codified Laws Ann. § 15-2-1 et seq	6 S.D. Codified Laws § 15-2-13	6 S.D. Codified Laws § 15-2-13	3 (Bodily Injury) S.D. Codified Laws § 15-2-14 2 (Libel/Slander) S.D. Codified Laws § 15-2-15	6 S.D. Codified Laws § 15-2-13
Tennessee	Tenn. Code Ann. § 28-3-101 et seq	6 Tenn. Code Ann. § 28-3-109	6 Tenn. Code Ann. § 28-3-109	1 Tenn. Code Ann. § 28-3-104	3[1] Tenn. Code Ann. § 28-3-105

[1] The 3 year statute of limitations for injury to real property and the 6 year statute of limitations for breach of contract could apply in a single construction defect action. *See* *Simpkins v. John Maher Builders, Inc.*, No, M2021-00487-COA-R3-CV, 2022 WL 1404357 (Tenn. Ct. App. May 4, 2022).

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STATE	STATUTE	WRITTEN CONTRACT	ORAL CONTRACT	PERSONAL INJURY	PROPERTY DAMAGE
Texas	Tex. Civ. Prac. & Rem. Code § 16.001 et seq	4 Tex. Civ. Prac. & Rem. Code § 16.004	4 Tex. Civ. Prac. & Rem. Code § 16.004	2 (Bodily Injury) Tex. Civ. Prac. & Rem. Code § 16.003 1 (Libel/Slander) Tex. Civ. Prac. & Rem. Code § 16.002	2 Tex. Civ. Prac. & Rem. Code § 16.003
Utah	Utah Code Ann. § 78B-2-101 et seq-	6 Utah Code Ann. § 78B-2-309	4 Utah Code Ann. § 78B-2-307	4 (Bodily Injury) Utah Code Ann. § 78B-2-307 1 (Libel/Slander) Utah Code Ann. § 78B-2-302	3 Utah Code Ann. § 78B-2-305
Vermont	Vt. Stat. Ann. tit. 12, § 461 et seq-	6 Vt. Stat. Ann. tit. 12, § 511	6 Vt. Stat. Ann. tit. 12, § 511	3 Vt. Stat. Ann. tit. 12, § 512	3 (personal property) Vt. Stat. Ann. tit. 12, § 512 6 (real property) Vt. Stat. Ann. tit. 12, § 511
Virginia	Va. Code Ann. § 8.01-228 et seq-	5 Va. Code Ann. § 8.01-246	3 Va. Code Ann. § 8.01-246	2 (Bodily Injury) Va. Code Ann. § 8.01-243 1 (Libel/Slander) Va. Code Ann. § 8.01-247.1	5 Va. Code Ann. § 8.01-243
Washington	Wash. Rev. Code Ann. § 4.16.005 et seq-	6 Wash. Rev. Code Ann. § 4.16.040	3 Wash. Rev. Code Ann. § 4.16.080	3 (Bodily Injury) Wash. Rev. Code Ann. § 4.16.080 2 (Libel/Slander) Wash. Rev. Code Ann. § 4.16.100	2* (negligent injury or damage to real property) Wash. Rev. Code Ann. § 4.16.130 3 (personal property) Wash. Rev. Code Ann. § 4.16.080 3 (waste or trespass of real property) Wash. Rev. Code Ann. § 4.16.080
West Virginia	W. Va. Code § 55-2-1 et seq-	10 W. Va. Code § 55-2-6	5 W. Va. Code § 55-2-6	2 W. Va. Code § 55-2-12	2 W. Va. Code § 55-2-12

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STATE	STATUTE	WRITTEN CONTRACT	ORAL CONTRACT	PERSONAL INJURY	PROPERTY DAMAGE
Wisconsin	Wis. Stat. Ann. § 893.01 et seq-	6 Wis. Stat. Ann. § 893.43	6 Wis. Stat. Ann. § 893.43	3 Wis. Stat. Ann. § 893.54; Wis. Stat. Ann. § 893.57	6 Wis. Stat. Ann. § 893.52
Wyoming	Wyo. Stat. § 1-3-102 et seq-	10 Wyo. Stat. Ann. § 1-3-105	8 Wyo. Stat. Ann. § 1-3-105	4 (bodily Injury) Wyo. Stat. Ann. § 1-3-105 1 (Libel/Slander) Wyo. Stat. Ann. § 1-3-105	4 Wyo. Stat. Ann.§ 1-3-105

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50 State Legal Matrix – Statutes of Repose for 2024

This matrix identifies which states have enacted statutes of repose and the statutes' respective terms. A statute of repose is a law establishing a deadline for filing a claim or lawsuit when a construction defect or consumer product causes injury to a person or property. Each statute of repose deadline is calculated from the date when the cause of action materialized or "accrued." This matrix notes the period of repose, whether the period can be extended, and other considerations included in state repose statutes.

Please be advised that hyperlinks were added to the statutory and regulatory citations. By clicking on the citation hyperlink, you will be brought to the regulatory webpage containing the statutes and rules that will provide the relevant information.

STATE	STATUTE	NOTES	EXTENSION YEARS	REPOSE YEARS
Alabama	Ala. Code § 6-5-221	Action shall be commenced within 2 years after the cause of action accrues/arises; no relief can be granted on any cause of action accruing more than 7 years after substantial completion of construction	N/A	7
Alaska	Alaska Stat. §§ 09.10.054, 09.10.055(c)	Claim must be brought in 10 years from substantial completion of construction or from the last act that allegedly caused injury, death, or property damage but does not apply to certain claims; notice must be given within 1 year of claimant discovering defect	Tolled during any period in which there exists the undiscovered presence of a foregoing body (09.10.055(c))	10
Arizona	Ariz. Rev. Stat. Ann. § 12-552	If injury occurred during, or latent defect not discovered, until 8th year after substantial completion, action may be brought within 1 year of discovered defect but not more than 9 years after substantial completion	1	8
Arkansas	Ark. Code § 16-56-112	If personal injury occurred during the 3rd year after substantial completion, the action may be brought within 1 year after injury occurred, but no more than 5 years after substantial completion. If a person furnishes, designs or plans which are not used within 3 years from the date they are furnished, no action shall lie against that person for deficiency in the designs or plans	1	5 (real property) 4 (personal injury)
California	Cal. Civ. Proc. Code §§ 337.1, 337.15	For injury to property/person, or death arising out of patent defects, if injury occurs during 4th year, action may be brought in 1 year but no more than 5 years after substantial completion	0/1	10 (latent) 4 (patent)

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STATE	STATUTE	NOTES	EXTENSION YEARS	REPOSE YEARS
Colorado	Colo. Rev. Stat. § 13-80-104; *In re Goodman v. Heritage*	For direct claims from a plaintiff, an action may not be brought more than 6 years after substantial completion; if cause arises during 5th/6th year, it shall be brought within 2 years after discovery. For third-party and/or contribution claims the statute of repose can be extended to 90 days after settlement or judgment of the underlying action pursuant to *In re Goodman v. Heritage Builders*	2 (direct claims)	6 (direct claims)
Connecticut	Conn. Gen. Stat. § 52-584a	Action may be brought up to 7 years after substantial completion; if injury occurs during 7th year, action may be brought within 1 year of date of injury but no more than 8 years after substantial completion. Statute applies only to architects, professional engineers, and land surveyors	1	7
Delaware	Del. Code tit. 10, § 8127(b)	Action may be brought 6 years from the date of substantial completion	N/A	6
District of Columbia	D.C. Code § 12-310	Actions for personal injury, property damage, or wrongful death must be brought within 10 years after substantial completion	N/A	10
Florida	Fla. Stat. § 95.11(3)(b)	In the case of latent defects, 4 year period begins to run from time defect is/should have been discovered; in any case action must be commenced within 7 years of various listed dates	1	7
Georgia	Ga. Code § 9-3-51	If injury occurs in the 7th or 8th year, an action in tort for personal injury/wrongful death may be brought within 2 years but not more than 10 years after substantial completion	2	8
Hawaii	Haw. Rev. Stat. § 657-8	An action must be brought 2 years after accrual; but not more than 10 years after date of substantial completion of the improvement or the improvement has been abandoned	N/A	10
Idaho	Idaho Code § 5-241	Tort actions not previously accrued shall accrue and begin to run 6 years after final completion of improvement; contract actions shall accrue and begin to run at time of final completion of construction	N/A	6
Illinois	735 ILCS 5/13-214	An action based in tort/contract may be brought within 4 years from time plaintiff knew/should have known of the act/omission complained of; no action can be brought after 10 years from the time of such act; but if act/omission is discovered prior to 10 year expiration, plaintiff shall have 4 years to bring action	4	10

STATE	STATUTE	NOTES	EXTENSION YEARS	REPOSE YEARS
Indiana	Ind. Code §§ 32-30-1-5, 32-30-1-6	Action may be brought within earlier of 10 years after substantial completion or 12 years after the completion and submission of plans to owner if action is for a design defect; if personal injury/ death occurs in 9th or 10th years after substantial completion, then action may be brought within 2 years after date of injury; action may not be brought more than 12 years after completion or 14 years after the completion/submission of plans to the owner if action is for design defect.	2/2	10 (personal Injury before 9th year) 12 (personal Injury in 9th/10th year)
Iowa	Iowa Code § 614.1(11)	For an action arising from or related to residential construction, 10 years from date of act/omission. For an action arising from or related to any other kind of improvement to real property, 8 years from date of act/omission. Action out of intentional misconduct or fraudulent concealment of an unsafe/defective condition of improvement based on tort/implied warranty/contribution/indemnity may be brought up to 15 years from date of act/omission. If the unsafe or defective condition is discovered within one year prior to the expiration of the applicable period of repose, the period of repose shall be extended one year	0/0/1	10 (residential constructio n) 8 (improvem ents to real property) 15 (fraud)
Kansas	Kan. Stat. § 60-513	Action for injury to the rights of another, not arising on contract and not enumerated by statute, is subject to 2 year statute of limitations; action must be commenced within 10 years of the act giving rise to cause of action	N/A	10
Kentucky	Ky. Rev. Stat. § 413.135 et seq.	Action for injury to person/property arising out of deficiency in construction must be brought within 7 years of substantial completion; if damage to property occurs in 7th year then action may be brought within 1 year from date injury occurred, but no more than 8 years following completion	1	7
Louisiana	La. Stat. § 9:2772; La. Civ. Code. § 3500	Action must be brought within 5 years after date of registry of acceptance of work by owner/5 years after improvement is occupied; if injury during 5th year, action may be brought within 1 year after injury but no more than 6 years; action against contractor/architect on design defect subject to 10 year limitation	1/0	5 (personal Injury) 10 (design defect)
Maine	Me. Stat. tit. 14 § 752-A	Action for professional negligence against architects/engineers must be brought within 4 years of discovery of negligence but no more than 10 years from substantial completion of construction contract/services	N/A	10

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STATE	STATUTE	NOTES	EXTENSION YEARS	REPOSE YEARS
Maryland	Md. Code, Cts. & Jud. Proc. § 5-108	Action must be brought within 10 years of injury; if defendant is an architect, professional engineer, or contractor; in all other cases, action may not be brought more than 20 years after improvement becomes available	N/A	10 (professional defendant) 20 (non-professional defendant)
Massachusetts	Mass. Gen. Laws ch. 260, § 2B	Action must be brought 3 years from action accruing but no more than 6 years after the earlier of opening the improvement for use, or substantial completion of improvement. For claims of defects in the common areas of condominium, statute not tolled until entire project is completed. *D'Allessandro v. Lennar Hingham Holdings, LLC*, 486 Mass. 150, 156 N.E.3d 197, 202 (2020)	N/A	6
Michigan	Mich. Comp. Laws § 600.5839	No action may be brought against architect/ engineer/contractor more than 6 years after occupancy/use/acceptance of improvement; or 1 year after defect is/should have been discovered. If defect results from gross negligence of architect or engineer, action must be brought within 1 year after defect discovered. No such action may be brought more than 10 years after time of occupancy/use/ acceptance of improvement	N/A	6 (property) 10 (gross negligence)
Minnesota	Minn. Stat. § 541.051	For breach of warranties, action must be brought 2 years from discovery of injury. An action must be brought no later than 10 years after substantial completion; if action accrues during 9th/10th year, action may be brought up to 2 years after accrual but not more than 12 years after substantial completion	2	10
Mississippi	Miss. Code. § 15-1-41	No action may be brought more than 6 years after the earliest of owner's written acceptance, actual occupancy, or use of improvement; does not apply to wrongful death	N/A	6
Missouri	Mo. Rev. Stat. § 516.097	Action may be brought up to 10 years from completion of improvement; only applicable to persons whose connection with improvement is performing in whole/part, the design/planning/ construction of the improvement	N/A	10
Montana	Mont. Code § 27-2-208	Action may be brought up to 10 years from when the owner can utilize the improvement for the purpose for which it was intended or when a completion certificate is executed, whichever is earlier; if injury occurs during 10th year, action may be brought within 1 year of injury	1	10

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STATE	STATUTE	NOTES	EXTENSION YEARS	REPOSE YEARS
Nebraska	Neb. Rev. Stat. § 25-223	Action for breach of warranty/deficiency in design/construction must be brought within 4 years of act/omission contributing to the warranty/defect; if cause could not be discovered within 4 years, or within 1 year before end of 4 year period, action may be commenced within 2 years of discovery but no more than 10 years from the act giving rise to the action	2	4/10
Nevada	Nev. Rev. Stat. § 11.202	An action for property damage/personal injury/ wrongful death shall be commenced within 10 years following substantial completion	N/A	10
New Hampshire	N.H. Rev. Stat. § 508:4-b	Action shall be brought within 8 years of substantial completion; if project is divided in phases, then action must be brought within 8 years of all phases being substantially completed	N/A	8
New Jersey	N.J. Stat. § 2A:14-1.1	No action for damages/personal injury/wrongful death shall be brought more than 10 years after performance/furnishing of construction services	N/A	10
New Mexico	N.M. Stat. § 37-1-27	Action for damage/injury/wrongful death arising out of deficiency may be brought 10 years after substantial completion	N/A	10
New York	N.Y. Civ. Prac. Laws & Rules §§ 214(3), 214-d	No statute of repose. Action based on simple negligence/malpractice against a design professional/contractor is governed by 3 year statute of limitations; add'l notice requirements for claims against design professionals that occur more than 10 years after construction complete; contractors/professionals remain answerable to negligence claims commenced indefinitely after project completion	N/A	N/A
North Carolina	N.C. Gen. Stat. § 1-50(a)(5)(a.)	No action to recover damages shall be brought more than 6 years after the later of the specific last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement	N/A	6
North Dakota	N.D. Cent. Code § 28-01-44	No action may be brought more than 10 years after substantial completion; if injury occurs in 10th year then action may be brought in 2 years but not more than 12 years after substantial completion	2	10
Ohio	Ohio Rev. Code § 2305.131	No action shall accrue later than 10 years from substantial completion; if defect is discovered during 10 year period but less than 2 years prior to expiration of that period, action may be brought within 2 years from date of discovery	2	10

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STATE	STATUTE	NOTES	EXTENSION YEARS	REPOSE YEARS
Oklahoma	Okla. Stat. tit. 12 §§ 109, 110	Action may be brought up to 10 years after substantial completion; if injury occurs during 5th year, tort action may be brought within 2 years of date of injury, but no more than 7 years after substantial completion	N/A	10
Oregon	ORS § 12.135	Action by plaintiff (non-public body) for small commercial structures/residences shall be brought within 10 years of substantial completion; large structures within 6 years; action by plaintiff (public body) for any of the above is 10 years; action against an architect/engineer shall be brought within 2 years of injury but no later than 10 years	N/A	10 (small structures) 6 (large structures)
Pennsylvania	42 Pa. C.S. § 5536	Action arising out of deficiencies in an improvement must be brought within 12 years of completion; if injury occurs between 10th and 12th years, action may be brought within time otherwise limited by statute, but not later than 14 years after construction completed	2	12
Rhode Island	R. I. Gen. Laws § 9-1-29	Action in tort against architect/engineer/contractor may be brought within 10 years of substantial completion	N/A	10
South Carolina	S.C. Code § 15-3-640	No action to recover damages may be brought more than 8 years after substantial completion	N/A	8
South Dakota	S.D. Codified Laws Ann. §§ 15-2A-3, 15-2A-5.	No action may be brought to recover more than 10 years after substantial completion; if injury occurs in 10th year, action may be brought within 1 year after injury, but not more than 11 years after substantial completion	1	10
Tennessee	Tenn. Code §§ 28-3-202, 28-3-203	Action for any deficiency shall be brought within 4 years of substantial completion; if injury occurred during 4th year action shall be brought within 1 year after injury but within 5 years of substantial completion	1	4
Texas	Tex. Civ. Prac. & Rem. Code § 16.009	A claimant must bring suit within 10 years of substantial completion, but a governmental entity must bring suit not later than 8 years after substantial completion. Except, the governmental entity exception does not apply to contracts entered into by TXDOT or a claims arising out of a project that receives money from the state highway fund or a federal fund designation for highway and mass transit spending or a claim arising out of a civil works project as defined by Sec. 2269.351 Tx. Gov't Code.	2	8 (govern-mental entities) 10 (non-govern-mental) 6 (builder/contractor warranty)

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STATE	STATUTE	NOTES	EXTENSION YEARS	REPOSE YEARS
Utah	Utah Code § 78B-2-225	Action in contract/warranty shall be brought within 6 years of completion; other actions shall be brought within 2 years from earlier of discovery/reasonable discovery date but no more than 9 years after completion; if cause is discovered/discoverable during 8th/9th year then 2 more years to bring suit	2	9
Vermont	Vt. Stat. tit. 12, § 511	No statute of repose; civil actions must be commenced within 6 years of cause of action	N/A	6
Virginia	Va. Code § 8.01-250	No action can be brought more than 5 years after performance; does not apply to manufacturer or supplier of equipment/machinery supplied in structure	N/A	5
Washington	Wash. Rev. Code §§ 4.16.300, 4.16.310	All claims shall accrue within 6 years after the later of substantial completion or termination of services	N/A	6
West Virginia	W. Va. Code § 55-2-6a	No action may be brought more than 10 years after performance of services; period does not run until improvement has been occupied or accepted by owner, whichever comes first	N/A	10
Wisconsin	Wis. Stat. § 893.89	No action to recover damages after 7 years from date of substantial completion; if injury occurs between the 5th and 7th years, time for action is extended 3 years from date of injury	3	7
Wyoming	Wyo. Stat. § 1-3-111	Action may be brought up to 10 years after substantial completion; if injury occurs in 9th year after substantial completion, action may be brought within 1 year after injury	1	10