HB 469

Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 469 (Delegate Waldstreicher, *et al.*)
Judiciary

Punitive Damages - High-Risk Drunk Drivers

This bill authorizes a finder of fact to award punitive damages under specified circumstances if it is determined that a person who causes personal injury or wrongful death while driving or attempting to drive a motor vehicle, with specified alcohol concentrations, was acting with malice.

The bill applies prospectively only and may not be applied to any cause of action arising before October 1, 2012.

Fiscal Summary

State Effect: The bill does not directly affect State finances; however, insurers may file amended forms with the Maryland Insurance Administration to clearly exclude coverage for punitive damages. Any revenue and workload associated with such filings is assumed to be negligible. Moreover, the State is not liable for punitive damages under the State Tort Claims Act.

Local Effect: The bill does not directly affect local government finances. Local governments are not liable for punitive damages under the Local Government Tort Claims Act.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill specifies that a finder of fact may determine that a person who caused personal injury or wrongful death was acting with malice and may award punitive

damages if the personal injury or wrongful death was caused by the person while driving or attempting to drive a motor vehicle while having:

- an alcohol concentration of 0.15 or more; or
- an alcohol concentration of 0.08 or more and the person:
  - was driving or attempting to drive with a license that was suspended or revoked as the result of a conviction under Maryland law, or a comparable state or federal law, for driving while under the influence of alcohol or under the influence of alcohol *per se*, while impaired by alcohol, while impaired by drugs or drugs and alcohol, or while impaired by a controlled dangerous substance;
  - was driving or attempting to drive with a license that was suspended as the result of a refusal to submit to a test for alcohol or drugs under Maryland law or a comparable state or federal law;
  - was driving or attempting to drive with a license that was suspended or revoked for an accumulation of points due to homicide, life-threatening injury, or assault by means of motor vehicle while under the influence of alcohol and related crimes; driving while under the influence of alcohol or while under the influence of alcohol *per se*, while impaired by alcohol, while impaired by drugs or drugs and alcohol, or while impaired by a controlled dangerous substance, or within 12 hours after arrest for such an offense; or
  - within the past five years, was convicted, entered a plea of *nolo contendere*, or received probation before judgment under State criminal laws or similar federal or other state laws related to:
    - driving or attempting to drive while under the influence of alcohol or under the influence of alcohol *per se*, while impaired by alcohol, while impaired by drugs or drugs and alcohol, or while impaired by a controlled dangerous substance;
    - homicide by motor vehicle or vessel while under the influence of alcohol, under the influence of alcohol *per se*, while impaired by alcohol, while impaired by drugs, or while impaired by a controlled dangerous substance; or
    - life-threatening injury by motor vehicle while under the influence of alcohol and related crimes.

A claim for punitive damages:

- must be pleaded, by complaint or amendment, with facts supporting the claim with sufficient particularity to establish that the party may be entitled to punitive damages;
- must be proved by clear and convincing evidence;
- may not be awarded in the absence of an award of compensatory damages; and
- must comply with the provisions that govern the admissibility of evidence relating to the defendant's financial means.

The bill authorizes a motor vehicle liability insurer to exclude coverage for punitive damages awarded under provisions of the bill and specifies that the exclusion does not constitute a reduction in coverage by the motor vehicle liability insurer. Additionally, the bill does not affect the punitive damages provisions of the Local Government Tort Claims Act or the Maryland Tort Claims Act.

Current Law: Driving while under the influence of alcohol "*per se*" is defined as having an alcohol concentration, at the time of testing, of 0.08 or more as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. Driving with an alcohol concentration of at least 0.07 but less than 0.08 as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath is *prima facie* evidence of driving while impaired by alcohol.

There is no evidentiary presumption that a defendant was or was not driving while under the influence of alcohol or while impaired by alcohol with an alcohol concentration of more than 0.05 but less than 0.07 as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

"Motor vehicle" is defined under current law as a vehicle that is self-propelled or propelled by electric power obtained from overhead electrical wires and is not operated on rails. Mopeds and motor scooters are excluded from this definition.

Background: The bill addresses an issue raised in several Court of Appeals cases from 1988 through 1993. The bill would revive the holding in *Nast v. Lockett*, 312 Md. 343 (1988). That holding was overturned in *Owens-Illinois v. Zenobia*, 325 Md. 420 (1992) and *Komornik v. Sparks*, 331 Md. 720 (1993).

In *Nast*, the Court of Appeals held that evidence that the defendant was driving while intoxicated would support the conclusion that the defendant had wanton or reckless disregard for human life, and therefore such evidence could be weighed by the jury on the issue of punitive damages.

However, in *Zenobia*, the Court of Appeals, overruling *Nast*, held that, in a nonintentional tort action, the trier of fact may not award punitive damages unless the plaintiff has established that the defendant's conduct was characterized by evil motive, intent to injure, ill will, or fraud, that is, "actual malice."

In *Komornik v. Sparks*, the Court of Appeals held that evidence of the defendant's driving while intoxicated was insufficient to support a finding of actual malice, as required by *Zenobia*. In the 1998 case *Bowden v. Caldor*, 350 Md. 4 (1998), the Court of Appeals again confirmed that an award of punitive damages must be based upon actual malice, in the sense of conscious and deliberate wrongdoing, evil or wrongful motive, intent to injure, ill will, or fraud.

Additional Information

Prior Introductions: SB 483 of 2011 received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 574 of 2011, was withdrawn after a hearing in the House Judiciary Committee. HB 928 of 2010 was withdrawn after a hearing in the House Judiciary Committee. Similar legislation was considered in 2003 and in the 1999 through 2001 legislative sessions.

Cross File: SB 351 (Senator Forehand, *et al.*) - Judicial Proceedings.

Information Source(s): Montgomery County, Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), Maryland Automobile Insurance Fund, Department of State Police, Maryland Department of Transportation, Department of Legislative Services

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