

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 605

(Senator Raskin, *et al.*)

Judicial Proceedings

Judiciary

Aggressive Drunk Driving - Punitive Damages

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 was acting with malice while driving or attempting to drive a motor vehicle with an alcohol concentration of 0.15 or more.

The bill applies prospectively only and may not be applied to any cause of action arising before October 1, 2015.

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: 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.

Liability is limited solely to the person driving or attempting to drive the motor vehicle.

The bill authorizes a motor vehicle liability insurer to exclude coverage for punitive damages awarded under 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.

If, at the time of testing, an individual's results show an alcohol concentration of 0.05 or less, as determined by analysis of blood or breath, the presumption is that the individual was *not* under the influence of alcohol and the individual was not driving while impaired by alcohol.

“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.

Exhibit 1 shows traffic crash data from the Maryland Highway Safety Office for drivers with alcohol concentrations ranging from 0.15 to 0.50 for the 2010 through 2014 five-year period.

Exhibit 1
Crash Summary
Driver Involved/Alcohol Concentrations 0.15 to 0.50
2010-2014

<u>Crash Type</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014*</u>	<u>5-year Avg.</u>	<u>%</u>
Fatal	67	61	70	59	50	61	4.2
Injury	329	312	327	273	249	298	20.7
Property Damage	1,142	1,068	973	1,122	1,101	1,081	75.0
Total Crashes	1,538	1,441	1,370	1,454	1,400	1,441	100.0
Total # of Fatalities	73	68	82	64	54	68	
Total # of Injuries	504	489	524	422	372	462	

*2014 data is preliminary
Source: Maryland Department of Transportation

Additional Information

Prior Introductions: Similar legislation has been considered in prior legislative sessions. SB 351 of 2012 received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 469 of 2012, received an unfavorable report from the House Judiciary Committee. 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. Additionally, legislation was considered in 2003 and in the 1999 through 2001 legislative sessions.

Cross File: None.

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

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