Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1058 (Senators Brochin and Zirkin)
Judicial Proceedings

Aggressive Drunk Driving - Punitive Damages

This bill authorizes an award of punitive damages under specified circumstances if it is determined that a person caused personal injury or wrongful death while driving or attempting to drive a motor vehicle while committing an alcohol-related driving offense, as specified.

The bill takes effect July 1, 2017; it applies prospectively only and may not be applied to any cause of action arising before its effective date.

Fiscal Summary

State Effect: The bill does not directly affect State finances. The State is not liable for punitive damages under the Maryland 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, in addition to any liability for actual damages, a person who causes personal injury or wrongful death is liable for punitive damages if the injury or death was caused by a person who is a repeat offender (within 10 years) and the person meets one of two other sets of criteria:

- the person was operating or attempting to operate a noncommercial motor vehicle with an alcohol concentration of 0.15 or more; or

- the person (1) is detained by a police officer who has reasonable grounds to believe the person has been operating or attempting to operate *either* a noncommercial motor vehicle while under the influence of alcohol or impaired by alcohol *or* a commercial motor vehicle with any alcohol concentration in the person's blood or breath and (2) refuses to submit to a chemical test to determine alcohol concentration.

To qualify for repeat offender status, the person must have, within the past 10 years, been 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 a drug, any combination of drugs, or a combination of drugs and alcohol; or while impaired by a controlled dangerous substance (CDS);

- homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*; while impaired by alcohol; while impaired by a drug, any combination of drugs, or a combination of drugs and alcohol; or while impaired by a CDS; or

- causing life-threatening injury by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*; while impaired by alcohol; while impaired by a drug, any combination of drugs, or a combination of drugs and alcohol; or while impaired by a CDS.

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 proven 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 for punitive damages is limited solely to the person operating or attempting to operate the motor vehicle.

The bill does not affect the punitive damages provisions of the Local Government Tort Claims Act or the Maryland Tort Claims Act.

Current Law:

Drivers of Noncommercial Motor Vehicles: "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.

A person may not drive or attempt to drive any vehicle while:

- under the influence of alcohol or under the influence of alcohol *per se*; or

- impaired by alcohol.

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.

Drivers of Commercial Motor Vehicles: The operators of commercial motor vehicles are subject to more stringent laws regarding the use of alcohol while operating a commercial vehicle. A person may not drive, operate, or be in physical control of a commercial motor vehicle while the individual has *any* alcohol concentration in the person's blood or breath. However, for the purpose of applying the sanction of disqualification, a person may not drive, operate, or be in physical control of a commercial motor vehicle with an alcohol

concentration greater than 0.04 in the person's blood or breath. A person who violates this prohibition is subject to disqualification from driving a commercial motor vehicle for one year.

A person who drives, operates, or is in physical control of a commercial motor vehicle and refuses to take a requested test of blood or breath after being detained by a police officer, must be placed out of service for the 24-hour period immediately following the time a police officer or employer detects alcohol in the person's blood or breath. Additional sanctions apply if the operator of a commercial motor vehicle is subsequently convicted of an alcohol-related driving offense.

A "commercial motor vehicle" means a motor vehicle or a combination of motor vehicles used to transport passengers or property that (1) has a gross combination weight rating of 26,001 or more pounds, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; (2) has a gross vehicle weight rating of 26,001 or more pounds; (3) is designed to transport 16 or more passengers, including the driver; or (4) is of any size and is used in the transportation of hazardous materials and which requires the motor vehicle to be placarded under federal regulations. It does not include farming equipment or machinery, military, recreational, or emergency vehicles.

Background:

Application of Punitive Damages: 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.

Drunk Driving Enforcement: The Judiciary advises that, over the past 10 fiscal years, there were approximately 663,717 violations of driving under the influence of alcohol or under the influence of alcohol *per se*. There were 156 violations for homicide by motor vehicle or vessel while under the influence of alcohol or impaired by drugs and/or alcohol, and 139 violations of life-threatening injury by motor vehicle or vessel while under the influence of alcohol or impaired by drugs and/or alcohol (the Judiciary advises that this data does not include fiscal 2013 data).

Exhibit 1 shows traffic crash data from the Maryland Highway Safety Office for drivers with alcohol concentrations ranging from 0.08 to 0.50 for the five-year period of 2011 through 2015, the latest verified information available.

Exhibit 1
Crash Summary
Driver or Pedestrian Involved/Alcohol Concentrations 0.08 to 0.50
2011-2015

Crash Type	2011	2012	2013	2014	2015	5-year Average	%
Fatal	122	111	101	95	115	109	4.8%
Injury	523	530	437	418	351	452	20.1%
Property Damage	1,665	1,566	1,716	1,788	1,707	1,688	75.1%
Total Crashes	2,310	2,207	2,254	2,301	2,173	2,249	100.0%
Total Fatalities	132	130	110	99	130	120	
Total Injuries	822	826	658	629	579	703	

Source: Maryland Department of Transportation

Additional Information

Prior Introductions: As amended, SB 302 of 2016 passed the Senate and received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, HB 864, received a hearing in the House Judiciary Committee, but no further action was taken. Similar legislation has also been considered in prior legislative sessions. SB 605 of 2015 passed the Senate as amended but received an unfavorable report from the House

Judiciary Committee. HB 987 of 2013 was withdrawn after a hearing in the House Judiciary Committee. SB 351 of 2012 received an unfavorable report from the Senate Judicial Proceedings Committee; its cross file, HB 469, 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 576, was withdrawn after being heard in the House Judiciary Committee. Additionally, similar legislation was considered in 2010, 2003, and in the 1999 through 2001 legislative sessions.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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