

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 8.01-44.5 of the Code of Virginia, relating to exemplary damages for*  
3 *persons injured by intoxicated drivers.*

4 [H 922]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 8.01-44.5 of the Code of Virginia is amended and reenacted as follows:**

8 § 8.01-44.5. Exemplary damages for persons injured by intoxicated drivers.

9 In any action for personal injury or death arising from the operation of a motor vehicle, engine or  
10 train, the finder of fact may, in its discretion, award exemplary damages to the plaintiff if the evidence  
11 proves that the defendant acted with malice toward the plaintiff or the defendant's conduct was so  
12 willful or wanton as to show a conscious disregard for the rights of others.

13 A defendant's conduct shall be deemed sufficiently willful or wanton as to show a conscious  
14 disregard for the rights of others when the evidence proves that (i) when the incident causing the injury  
15 or death occurred, the defendant had a blood alcohol concentration of 0.15 percent or more by weight  
16 by volume or 0.15 grams or more per 210 liters of breath; (ii) at the time the defendant began *drinking*  
17 *alcohol*, or during the time he was, drinking alcohol, he knew ~~that he was going or should have known~~  
18 *that his ability* to operate a motor vehicle, engine or train *would be impaired, or when he was operating*  
19 *a motor vehicle he knew or should have known that his ability to operate a motor vehicle was impaired;*  
20 and (iii) the defendant's intoxication was a proximate cause of the injury to or death of the plaintiff.

21 However, when a defendant has unreasonably refused to submit to a test of his blood alcohol content  
22 as required by § 18.2-268.2, a defendant's conduct shall be deemed sufficiently willful or wanton as to  
23 show a conscious disregard for the rights of others when the evidence proves that (i) when the incident  
24 causing the injury or death occurred the defendant was intoxicated, which may be established by  
25 evidence concerning the conduct or condition of the defendant; (ii) at the time the defendant began, or  
26 during the time he was, drinking alcohol, he knew that he was going to operate a motor vehicle; and  
27 (iii) the defendant's intoxication was a proximate cause of the injury to the plaintiff or death of the  
28 plaintiff's decedent. A certified copy of a court's determination of unreasonable refusal pursuant to  
29 § 18.2-268.3 shall be prima facie evidence that the defendant unreasonably refused to submit to the test.

ENROLLED

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