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HOUSE BILL NO. 922**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Senate Committee for Courts of Justice
on March 4, 2002)

(Patron Prior to Substitute—Delegate Joannou)

A BILL to amend and reenact § 8.01-44.5 of the Code of Virginia, relating to exemplary damages for persons injured by intoxicated drivers.

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

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

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

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

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

SENATE SUBSTITUTE

HB922S1