

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

4 [S 125]

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. Punitive 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 punitive 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 or should have known that his ability to  
18 operate a motor vehicle, engine or train would be impaired, or when he was operating a motor vehicle  
19 he knew or should have known that his ability to operate a motor vehicle was impaired; and (iii) the  
20 defendant's intoxication was a proximate cause of the injury to or death of the plaintiff. For the purposes  
21 of clause (i), it shall be rebuttably presumed that the blood alcohol concentration at the time of the  
22 incident causing injury or death was at least as high as the test result as shown in a certificate issued  
23 pursuant to § 18.2-268.9 or in a certificate of analysis for a blood test administered pursuant to  
24 § 18.2-268.7, provided that the test was administered ~~within three hours of the incident causing injury or~~  
25 ~~death in accordance with the provisions of §§ 18.2-268.1 through 18.2-268.12.~~ In addition to any other  
26 forms of proof, a party may submit a copy of a certificate issued pursuant to § 18.2-268.9 or a  
27 certificate of analysis for a blood test administered pursuant to § 18.2-268.7, which shall be prima facie  
28 evidence of the facts contained therein *and compliance with the provisions of §§ 18.2-268.1 through*  
29 *18.2-268.12.*

30 However, when a defendant has unreasonably refused to submit to a test of his blood alcohol content  
31 as required by § 18.2-268.2, a defendant's conduct shall be deemed sufficiently willful or wanton as to  
32 show a conscious disregard for the rights of others when the evidence proves that (a) when the incident  
33 causing the injury or death occurred the defendant was intoxicated, which may be established by  
34 evidence concerning the conduct or condition of the defendant; (b) at the time the defendant began  
35 drinking alcohol, or during the time he was drinking alcohol, he knew or should have known that his  
36 ability to operate a motor vehicle was impaired; and (c) the defendant's intoxication was a proximate  
37 cause of the injury to the plaintiff or death of the plaintiff's decedent. In addition to any other forms of  
38 proof, a party may submit a certified copy of a court's determination of unreasonable refusal pursuant to  
39 § 18.2-268.3, which shall be prima facie evidence that the defendant unreasonably refused to submit to  
40 the test.

ENROLLED

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