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SENATE BILL NO. 728

Offered January 22, 2016

A BILL to amend and reenact § 8.01-44.5 of the Code of Virginia, relating to punitive damages; injury by intoxicated drivers; admission of evidence.

Patrons—McDougle and Surovell

Referred to Committee for Courts of Justice

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. Punitive 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 punitive 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 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. For the purposes of clause (i), it shall be rebuttably presumed that the blood alcohol concentration at the time of the incident causing injury or death was at least as high as the test result as shown in a certificate issued pursuant to § 18.2-268.9 or in a certificate of analysis for a blood test administered pursuant to § 18.2-268.7, provided that the test was administered within three hours of the incident causing injury or death. In addition to any other forms of proof, a party may submit a copy of a certificate issued pursuant to § 18.2-268.9 or a certificate of analysis for a blood test administered pursuant to § 18.2-268.7, which shall be prima facie evidence of the facts contained therein.

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 (a) 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; (b) at the time the defendant began drinking alcohol, or during the time he was drinking alcohol, he knew or should have known that his ability to operate a motor vehicle was impaired; and (c) the defendant's intoxication was a proximate cause of the injury to the plaintiff or death of the plaintiff's decedent. In addition to any other forms of proof, a party may submit a certified copy of a court's determination of unreasonable refusal pursuant to § 18.2-268.3, which shall be prima facie evidence that the defendant unreasonably refused to submit to the test.

When sufficient evidence is presented for the jury or other finder of fact to conclude that the defendant acted with malice toward the plaintiff or that the defendant's conduct was so willful and wanton as to show a conscious disregard for the rights of others according to the criteria described herein, evidence of similar conduct by the same defendant subsequent to the date of the personal injury or death arising from the operation of a motor vehicle, engine, or train shall be admissible at trial for consideration by the jury or other finder of fact in determining whether to award punitive damages and in determining what amount of punitive damages may be appropriate to deter the defendant and others from similar future action.

INTRODUCED

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