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SENATE BILL NO. 1498

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 20, 2017)

(Patron Prior to Substitute—Senator Surovell)

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

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 in accordance with the provisions of §§ 18.2-268.1 through 18.2-268.12, *or in a certificate of analysis for a test performed by the Department of Forensic Science on whole blood drawn pursuant to a search warrant, provided that the test was administered in accordance with the provisions of §§ 18.2-268.5, 18.2-268.6, and 18.2-268.7.* 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, *or a certificate of analysis for a test performed by the Department of Forensic Science on whole blood drawn pursuant to a search warrant,* which shall be prima facie evidence of the facts contained therein and compliance with the applicable provisions of §§ 18.2-268.1 through 18.2-268.12. *For the purposes of clause (ii), it shall be rebuttably presumed that the defendant who has consumed alcohol knew or should have known that his ability to operate a motor vehicle, engine, or train was or would be impaired by such consumption of alcohol.*

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, 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 (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. *For the purposes of clause (b), it shall be rebuttably presumed that the defendant who has consumed alcohol knew or should have known that his ability to operate a motor vehicle, engine, or train was or would be impaired by such consumption of alcohol.*

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 for the limited purpose of determining what amount of punitive damages may be appropriate to deter the defendant and others from similar future action.

HOUSE SUBSTITUTE

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