

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 864  
Judiciary

(Delegate Smith, *et al.*)

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Aggressive Drunk Driving - Punitive Damages

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This bill authorizes an award of punitive damages under specified circumstances if it is determined that a person caused personal injury or wrongful death while driving or attempting to drive a motor vehicle, with an alcohol concentration of 0.08 or more.

The bill takes effect July 1, 2016; it applies prospectively only and may not be applied to any cause of action arising before its effective date.

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Fiscal Summary

**State Effect:** The bill does not directly affect State finances. The State is not liable for punitive damages under the State Tort Claims Act.

**Local Effect:** The bill does not directly affect local government finances. Local governments are not liable for punitive damages under the Local Government Tort Claims Act.

**Small Business Effect:** Potential minimal.

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Analysis

**Bill Summary:** The bill specifies that, in addition to any liability for actual damages, a person who causes personal injury or wrongful death is liable for punitive damages if:

- the personal injury or wrongful death was caused by the person while driving or attempting to drive a motor vehicle with an alcohol concentration of 0.08 or more; and

- within the past five years, the person was convicted, entered a plea of *nolo contendere*, or received probation before judgment under State criminal laws or similar federal or other state laws related to:
  - driving or attempting to drive while under the influence of alcohol or under the influence of alcohol *per se*; while impaired by alcohol; while impaired by a drug, any combination of drugs, or a combination of drugs and alcohol; or while impaired by a controlled dangerous substance (CDS);
  - homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*; while impaired by alcohol; while impaired by a drug, any combination of drugs, or a combination of drugs and alcohol; or while impaired by a CDS; or
  - causing life-threatening injury by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol *per se*; while impaired by alcohol; while impaired by a drug, any combination of drugs, or a combination of drugs and alcohol; or while impaired by a CDS.

A claim for punitive damages:

- must be pleaded, by complaint or amendment, with facts supporting the claim with sufficient particularity to establish that the party may be entitled to punitive damages;
- must be proved by clear and convincing evidence;
- may not be awarded in the absence of an award of compensatory damages; and
- must comply with the provisions that govern the admissibility of evidence relating to the defendant's financial means.

A court may review a punitive damage award on its own motion and must review an award on a motion made by a party to litigation to determine if punitive damages should be remitted in cases where the award is disproportionate to the compensatory damages awarded or in relation to the defendant's conduct.

The bill does not affect the punitive damages provisions of the Local Government Tort Claims Act or the Maryland Tort Claims Act.

**Current Law:** Driving while under the influence of alcohol "*per se*" is defined as having an alcohol concentration, at the time of testing, of 0.08 or more as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. Driving with an alcohol concentration of at least 0.07 but less than 0.08 as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath is *prima facie* evidence of driving while impaired by alcohol.

There is no evidentiary presumption that a defendant was or was not driving while under the influence of alcohol or while impaired by alcohol with an alcohol concentration of more than 0.05 but less than 0.07 as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

If, at the time of testing, an individual's results show an alcohol concentration of 0.05 or less, as determined by analysis of blood or breath, the presumption is that the individual was *not* under the influence of alcohol and the individual was not driving while impaired by alcohol.

“Motor vehicle” is defined under current law as a vehicle that is self-propelled or propelled by electric power obtained from overhead electrical wires and is not operated on rails. Mopeds and motor scooters are excluded from this definition.

### **Background:**

*Application of Punitive Damages:* The bill addresses an issue raised in several Court of Appeals cases from 1988 through 1993. The bill would revive the holding in *Nast v. Lockett*, 312 Md. 343 (1988). That holding was overturned in *Owens-Illinois v. Zenobia*, 325 Md. 420 (1992) and *Komornik v. Sparks*, 331 Md. 720 (1993).

In *Nast*, the Court of Appeals held that evidence that the defendant was driving while intoxicated would support the conclusion that the defendant had wanton or reckless disregard for human life and, therefore, such evidence could be weighed by the jury on the issue of punitive damages.

However, in *Zenobia*, the Court of Appeals, overruling *Nast*, held that, in a nonintentional tort action, the trier of fact may not award punitive damages unless the plaintiff has established that the defendant's conduct was characterized by evil motive, intent to injure, ill will, or fraud, that is, “actual malice.”

In *Komornik v. Sparks*, the Court of Appeals held that evidence of the defendant's driving while intoxicated was insufficient to support a finding of actual malice, as required by *Zenobia*. In the 1998 case *Bowden v. Caldor*, 350 Md. 4 (1998), the Court of Appeals again confirmed that an award of punitive damages must be based upon actual malice, in the sense of conscious and deliberate wrongdoing, evil or wrongful motive, intent to injure, ill will, or fraud.

*Drunk Driving Enforcement:* The Judiciary advises that, over the past five fiscal years, there were approximately 325,000 violations of driving under the influence of alcohol or under the influence of alcohol *per se*. There were 59 violations for homicide by motor vehicle or vessel while under the influence of alcohol or impaired by drugs and/or alcohol,

and 61 violations of life-threatening injury by motor vehicle or vessel while under the influence of alcohol or impaired by drugs and/or alcohol.

**Exhibit 1** shows traffic crash data from the Maryland Highway Safety Office for drivers with alcohol concentrations ranging from 0.08 to 0.50 for the five-year period of 2009 through 2013, the latest verified information available.

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**Exhibit 1**  
**Crash Summary**  
**Driver or Pedestrian Involved/Alcohol Concentrations 0.08 to 0.50**  
**2009-2013**

<u>Crash Type</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>5-year Average</u>	<u>%</u>
Fatal	133	113	122	111	101	116	5.0%
Injury	582	548	523	530	436	524	22.4%
Property Damage	1,842	1,695	1,665	1,566	1,715	1,697	72.6%
<b>Total Crashes</b>	<b>2,557</b>	<b>2,356</b>	<b>2,310</b>	<b>2,207</b>	<b>2,252</b>	<b>2,336</b>	<b>100.0%</b>
Total # of Fatalities	139	123	132	130	110	127	
Total # of Injuries	910	850	822	826	657	813	

Source: Maryland Department of Transportation

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**Additional Information**

**Prior Introductions:** Similar legislation has been considered in prior legislative sessions. SB 605 of 2015 passed the Senate with amendments but received an unfavorable report from the House Judiciary Committee. HB 987 of 2013 was withdrawn after a hearing in the House Judiciary Committee. SB 351 of 2012 received an unfavorable report from the Senate Judicial Proceedings Committee; its cross file, HB 469, received an unfavorable report from the House Judiciary Committee. SB 483 of 2011 received an unfavorable report from the Senate Judicial Proceedings Committee; its cross file, HB 574, was withdrawn after a hearing in the House Judiciary Committee. Likewise, HB 928 of 2010 was withdrawn after a hearing in the House Judiciary Committee. Additionally, legislation was considered in 2003 and in the 1999 through 2001 legislative sessions.

**Cross File:** SB 302 (Senator Raskin, *et al.*) - Judicial Proceedings.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, Department of Legislative Services

**Fiscal Note History:** First Reader - February 22, 2016  
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