

SENATE BILL 351

D3, R3
SB 483/11 – JPR

2lr2205
CF 2lr2152

By: **Senators Forehand, Madaleno, and Rosapepe**

Introduced and read first time: January 30, 2012

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Punitive Damages – High-Risk Drunk Drivers**

3 FOR the purpose of authorizing a finder of fact to determine that a person with a
4 certain alcohol concentration in the blood or breath of the person who causes
5 personal injury or wrongful death while driving or attempting to drive a motor
6 vehicle was acting with malice and to award punitive damages under certain
7 circumstances; requiring a party who seeks to recover punitive damages under
8 this Act to plead certain facts with particularity; providing for a standard of
9 proof of clear and convincing evidence for a claim of punitive damages under
10 this Act; providing that punitive damages under this Act may not be awarded in
11 the absence of an award of compensatory damages; providing that evidence of a
12 defendant's financial means is not admissible until there has been a finding of
13 liability and that punitive damages under this Act are supportable under the
14 facts; authorizing a motor vehicle insurer to exclude coverage for an award of
15 punitive damages under this Act; providing that an exclusion of certain
16 coverage for punitive damages does not constitute a reduction in coverage by a
17 motor vehicle liability insurer; defining a certain term; providing for the
18 application of this Act; and generally relating to authorizing a finder of fact to
19 determine that a person who causes personal injury or wrongful death while
20 driving or attempting to drive with a certain alcohol concentration in the blood
21 or breath of the person was acting with malice and to award punitive damages
22 under certain circumstances.

23 BY adding to

24 Article – Courts and Judicial Proceedings

25 Section 10–913.1

26 Annotated Code of Maryland

27 (2006 Replacement Volume and 2011 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
29 MARYLAND, That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Courts and Judicial Proceedings**

2 **10-913.1.**

3 **(A) IN THIS SECTION, “MOTOR VEHICLE” HAS THE MEANING STATED IN**
4 **§ 11-135 OF THE TRANSPORTATION ARTICLE.**

5 **(B) THIS SECTION DOES NOT AFFECT THE PROVISIONS OF:**

6 **(1) THE LOCAL GOVERNMENT TORTS CLAIMS ACT UNDER TITLE**
7 **5, SUBTITLE 3 OF THIS ARTICLE; OR**

8 **(2) THE MARYLAND TORT CLAIMS ACT UNDER TITLE 12 OF THE**
9 **STATE GOVERNMENT ARTICLE.**

10 **(C) SUBJECT TO THE PROVISIONS OF THIS SECTION, A FINDER OF FACT**
11 **MAY DETERMINE THAT A PERSON WHO CAUSES PERSONAL INJURY OR**
12 **WRONGFUL DEATH WAS ACTING WITH MALICE AND AWARD PUNITIVE DAMAGES**
13 **IF THE PERSON CAUSES PERSONAL INJURY OR WRONGFUL DEATH WHILE**
14 **DRIVING OR ATTEMPTING TO DRIVE A MOTOR VEHICLE:**

15 **(1) WHILE HAVING AN ALCOHOL CONCENTRATION OF 0.15 OR**
16 **MORE AS MEASURED BY GRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD**
17 **OR GRAMS OF ALCOHOL PER 210 LITERS OF BREATH; OR**

18 **(2) WHILE HAVING AN ALCOHOL CONCENTRATION OF 0.08 OR**
19 **MORE AS MEASURED BY GRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD**
20 **OR GRAMS OF ALCOHOL PER 210 LITERS OF BREATH, AND THE PERSON:**

21 **(I) WAS DRIVING OR ATTEMPTING TO DRIVE WHILE THE**
22 **PERSON’S LICENSE TO DRIVE WAS SUSPENDED OR REVOKED UNDER § 16-205 OF**
23 **THE TRANSPORTATION ARTICLE OR A COMPARABLE FEDERAL OR OTHER STATE**
24 **STATUTE;**

25 **(II) WAS DRIVING OR ATTEMPTING TO DRIVE WHILE THE**
26 **PERSON’S LICENSE TO DRIVE WAS SUSPENDED UNDER § 16-205.1 OF THE**
27 **TRANSPORTATION ARTICLE OR A COMPARABLE FEDERAL OR OTHER STATE**
28 **STATUTE;**

29 **(III) WAS DRIVING OR ATTEMPTING TO DRIVE WHILE THE**
30 **PERSON’S LICENSE TO DRIVE WAS SUSPENDED OR REVOKED BASED ON AN**
31 **ACCUMULATION OF POINTS UNDER § 16-402(A)(25), (33), OR (34) OF THE**

1 TRANSPORTATION ARTICLE OR A COMPARABLE FEDERAL OR OTHER STATE
2 STATUTE; OR

3 (IV) WITHIN THE PAST 5 YEARS, WAS CONVICTED, ENTERED
4 A PLEA OF NOLO CONTENDERE, OR RECEIVED PROBATION BEFORE JUDGMENT
5 UNDER:

6 1. § 21-902 OF THE TRANSPORTATION ARTICLE;

7 2. § 2-503, § 2-504, § 2-505, § 2-506, OR § 3-211 OF
8 THE CRIMINAL LAW ARTICLE; OR

9 3. A COMPARABLE OFFENSE TO AN OFFENSE
10 SPECIFIED IN ITEM 1 OR 2 OF THIS ITEM UNDER A FEDERAL OR OTHER STATE
11 STATUTE.

12 (D) A CLAIM FOR PUNITIVE DAMAGES UNDER THIS SECTION:

13 (1) SHALL BE PLEADED, BY COMPLAINT OR AMENDMENT, WITH
14 FACTS SUPPORTING THE CLAIM WITH SUFFICIENT PARTICULARITY TO
15 ESTABLISH THAT THE PARTY MAY BE ENTITLED TO PUNITIVE DAMAGES UNDER
16 THIS SECTION;

17 (2) SHALL BE PROVED BY CLEAR AND CONVINCING EVIDENCE;

18 (3) MAY NOT BE AWARDED IN THE ABSENCE OF AN AWARD OF
19 COMPENSATORY DAMAGES; AND

20 (4) SHALL COMPLY WITH THE PROVISIONS OF § 10-913 OF THIS
21 SUBTITLE.

22 (E) (1) A MOTOR VEHICLE LIABILITY INSURER MAY EXCLUDE
23 COVERAGE FOR PUNITIVE DAMAGES AWARDED UNDER THIS SECTION.

24 (2) AN EXCLUSION OF COVERAGE FOR PUNITIVE DAMAGES
25 UNDER PARAGRAPH (1) OF THIS SUBSECTION DOES NOT CONSTITUTE A
26 REDUCTION IN COVERAGE BY THE MOTOR VEHICLE LIABILITY INSURER.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
28 construed to apply only prospectively and may not be applied or interpreted to have
29 any effect on or application to any cause of action arising before the effective date of
30 this Act.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2012.