

# HOUSE BILL 469

D3, R3  
HB 574/11 – JUD

2lr2152  
CF SB 351

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By: **Delegates Waldstreicher, Anderson, Barkley, Dumais, Glenn, Lee, Malone, McDermott, Simmons, and Smigiel**

Introduced and read first time: February 2, 2012

Assigned to: Judiciary

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## 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)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Courts and Judicial Proceedings**

4 **10–913.1.**

5 (A) IN THIS SECTION, “MOTOR VEHICLE” HAS THE MEANING STATED IN  
6 § 11–135 OF THE TRANSPORTATION ARTICLE.

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

8 (1) THE LOCAL GOVERNMENT TORTS CLAIMS ACT UNDER TITLE  
9 5, SUBTITLE 3 OF THIS ARTICLE; OR

10 (2) THE MARYLAND TORT CLAIMS ACT UNDER TITLE 12 OF THE  
11 STATE GOVERNMENT ARTICLE.

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

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

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

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

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

31 (III) WAS DRIVING OR ATTEMPTING TO DRIVE WHILE THE  
32 PERSON’S LICENSE TO DRIVE WAS SUSPENDED OR REVOKED BASED ON AN

1 ACCUMULATION OF POINTS UNDER § 16-402(A)(25), (33), OR (34) OF THE  
2 TRANSPORTATION ARTICLE OR A COMPARABLE FEDERAL OR OTHER STATE  
3 STATUTE; OR

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

7 1. § 21-902 OF THE TRANSPORTATION ARTICLE;

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

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

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

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

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

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

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

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

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

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

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