

**SUBJECT:** Removing punitive damages restrictions for DWI-related injuries

**COMMITTEE:** Civil Practices — favorable, with amendment

**VOTE:** 5 ayes — Gray, Hilbert, Goodman, Nixon, Roman  
0 nays  
4 absent — Alvarado, Bosse, Dutton, Zbranek

**WITNESSES:** For — Bill Lewis and Sandy Crozier, Mothers Against Drunk Driving; Dan Lambe Texas Citizen Action  
Against — Robert Simpson, State Farm Insurance Company; Mark Toohey, Farmers Insurance Group  
On — None

**BACKGROUND :** Punitive damages in civil cases were capped by SB 28 by Sibley, enacted in 1995. SB 28 required the plaintiff, in order to receive exemplary (punitive) damages to prove, by clear and convincing evidence, fraud, malice, or gross neglect for wrongful death actions. The maximum punitive damages award against a defendant is the greater of \$200,000 or two times the economic damages award plus the amount of noneconomic damages awarded up to \$750,000.  
The punitive damages caps do not apply in cases where a felony was been committed, including intoxication assault and intoxication manslaughter.

**DIGEST:** HB 1265 would make Chapter 41, governing punitive damages, inapplicable to any civil cause of action arising from the operation of a motor vehicle while intoxicated.  
HB 1265 would also require that automobile liability insurance policies cover liability for punitive damages for operation of a motor vehicle while intoxicated, up to the policy limits.

HB 1265 would take effect September 1, 1997 and apply only to a cause of action that accrued on or after that date.

SUPPORTERS  
SAY:

When the 74th Legislature enacted limits on punitive damages, it capped the damages available and raised the standard required for a jury to award punitive damages. While the damage cap does not apply to a person who commits intoxication manslaughter or assault, in many cases punitive damages cannot be awarded because the driver's conduct does not rise to the level of malice or gross neglect needed to obtain punitive damages. If this state hopes to discourage drunk driving, it must not let drunk drivers escape punitive liability for their actions.

SB 28 rightly exempted from any caps on the amount of punitive damage awarded those persons who injure someone else while committing a felony. While the caps would not apply if a drunk driver committed intoxication manslaughter, assault or other felony, uncapping the limit on the amount of damages makes little difference because the new liability standard needed to award punitive damages is too high for many plaintiffs to prove.

By removing the statutory restrictions on punitive damages for all DWI related offenses, punitive damages awards will be based on common law principles regarding punitive damages that require a jury to determine that a defendant acted with gross negligence. In order to find gross negligence, a jury must find that the defendant acted in a way that was likely to produce serious harm and that the defendant was consciously indifferent to that risk.

Establishing that insurance coverage must pay for punitive damages arising from DWI injuries is necessary to resolve a conflict between two Texas courts of appeal that have ruled differently on the issue. One court found such damages should be covered under the policy and another court found that they should not. The purpose of allowing insurance to cover such damages is to allow the injured plaintiff to receive some amount of the damages awarded. In a vast majority of the cases, individual defendants do not have substantial assets to cover an actual damage award, much less a punitive damage award. This bill would not require an insurance company to pay more than the limits of the policy, but if a driver takes out \$50,000 in liability insurance coverage and the jury awards an amount greater than that, the injured plaintiff should be entitled to receive at least the \$50,000.

If this legislation were to side with the Court of Appeals that stated that insurance companies were not liable for punitive damages award, virtually no plaintiff would be able to collect punitive damages awarded by a jury because very few defendant's have assets to cover such awards. Therefore, very few defendants would ever be "punished" for their conduct.

OPPONENTS  
SAY:

In enacting restrictions on punitive damages, the 74th Legislature created a careful balance of interests that punish those who willfully commit acts with malice and should be punished for such acts. SB 28 recognized that the amount of punitive damages should not be limited against those who commit intoxication related offenses and specifically exempted persons who commit such acts from the damage caps. The only actions that were excluded from the application of all punitive damages standards, however, were actions that include their own method of calculating damages higher than actual damages, such as the Deceptive Trade Practices Act (DTPA) or workers' compensation laws. Carving out a special exception from the punitive damages standard of proof would set a bad precedent, opening the door to new exceptions that would undermine the law.

Insurance companies should not be required to pay the punitive damages of drunk drivers. When insurance companies cover the bad acts of some drivers, the cost of covering those acts is passed on to all insured drivers. If punitive damages are meant to punish the wrongdoer, they should come directly from that person and not from the pockets of all insured drivers. Additionally, by allowing insurance companies to pay punitive damages up to the limits of the policy, the punitive aspect of these damages is not as strongly felt by the drunk driver. Allowing punitive damages to be covered by insurance policies allows drunk drivers to insure against any bad acts they might commit and not suffer the consequences of those acts.

NOTES:

The committee amendment would require an insurance company to pay punitive damage claims up to the policy limit of the insurance coverage.

A related bill, HB 1970 by Garcia, would make defendants liable for injuries based on intoxication jointly and severally liable if their liability was greater than five percent.