

SENATE BILL 21

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R3

2002 Regular Session  
21r0294  
CF 21r0201

(PRE-FILED)

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By: ~~Senators Forehand and Ruben, Ruben, Lawlah, Ferguson, Green,~~  
Hoffman, Hooper, Jacobs, Jimeno, Kelley, Roesser, and Teitelbaum

Requested: July 26, 2001  
Introduced and read first time: January 9, 2002  
Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 20, 2002

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CHAPTER 108

1 AN ACT concerning

2 ~~Vehicle Laws~~ – **Alcoholic Beverage Consumption or Possession of Open or**  
3 **Unsealed Container**

4 FOR the purpose of expanding a prohibition against consumption of an alcoholic  
5 beverage while driving a motor vehicle on a highway to include the driver's  
6 consumption of an alcoholic beverage in a motor vehicle otherwise located on a  
7 highway; prohibiting a driver of a motor vehicle from possessing an open  
8 container that contains an alcoholic beverage under certain circumstances;  
9 prohibiting a passenger in a motor vehicle from possessing an open container  
10 that contains an alcoholic beverage or consuming an alcoholic beverage under  
11 certain circumstances; providing that certain violations are civil offenses;  
12 providing for the issuance of a certain citation; providing for certain procedures;  
13 providing for the jurisdiction of the District Court for certain violations under  
14 this Act; providing for a certain penalty a certain civil penalty; providing that a  
15 violation certain violations of this Act is are not a moving violation moving  
16 violations for certain purposes; defining certain terms; providing for the  
17 application and construction of this Act; providing for the effective date of this  
18 Act; and generally relating to prohibiting the possession of an open container  
19 containing an alcoholic beverage or consumption of an alcoholic beverage by  
20 certain occupants of a motor vehicle under certain circumstances.

21 BY repealing and reenacting, with amendments,  
22 Article - Courts and Judicial Proceedings  
23 Section 4-401(10)(x) and (xi)  
24 Annotated Code of Maryland

1 (1998 Replacement Volume and 2001 Supplement)

2 BY adding to

3 Article - Courts and Judicial Proceedings

4 Section 4-401(10)(xii)

5 Annotated Code of Maryland

6 (1998 Replacement Volume and 2001 Supplement)

7 BY repealing and reenacting, with amendments,

8 Article - Criminal Law

9 Section 10-101(a) to be under the new part "Part I. General Provisions"

10 Annotated Code of Maryland

11 (As enacted by Chapter \_\_\_\_\_ (H.B. 11) of the Acts of the General Assembly of  
12 2002)

13 BY adding to

14 Article - Criminal Law

15 Section 10-113 through 10-117 to be under the new part "Part II. Alcoholic

16 Beverage Consumption or Possession of Open Container in Passenger Area  
17 of Motor Vehicle"

18 Annotated Code of Maryland

19 (As enacted by Chapter \_\_\_\_\_ (H.B. 11) of the Acts of the General Assembly of  
20 2002)

21 BY repealing and reenacting, with amendments,

22 Article - Transportation

23 Section 21-903

24 Annotated Code of Maryland

25 (1999 Replacement Volume and 2001 Supplement)

26 BY repealing and reenacting, without amendments,

27 Article - Transportation

28 Section 27-101(a) and (b)

29 Annotated Code of Maryland

30 (1999 Replacement Volume and 2001 Supplement)

31 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

32 MARYLAND, That the Laws of Maryland read as follows:

1 Article - Courts and Judicial Proceedings

2 4-401.

3 Except as provided in § 4-402 of this subtitle, and subject to the venue  
4 provisions of Title 6 of this article, the District Court has exclusive original civil  
5 jurisdiction in:

6 (10) A proceeding for adjudication of:

7 (x) A civil infraction that is authorized by law to be prosecuted by a  
8 sanitary commission; [or]

9 (xi) A subdivision violation for which a civil penalty has been  
10 provided in accordance with Article 66B, § 14.07(f) of the Code; OR

11 (XII) A VIOLATION UNDER TITLE 10, PART II OF THE CRIMINAL LAW  
12 ARTICLE;

13 Article - Criminal Law

14 PART I. GENERAL PROVISIONS.

15 10-101.

16 (a) In this [subtitle] PART the following words have the meanings indicated.

17 PART II. ALCOHOLIC BEVERAGE CONSUMPTION OR POSSESSION OF OPEN  
18 CONTAINER IN PASSENGER AREA OF MOTOR VEHICLE.

19 10-113.

20 (A) IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

21 (B) "ALCOHOLIC BEVERAGE" HAS THE MEANING STATED IN § 21-903 OF THE  
22 TRANSPORTATION ARTICLE.

23 (C) "BUS" HAS THE MEANING STATED IN § 11-105 OF THE TRANSPORTATION  
24 ARTICLE.

25 (D) "HIGHWAY" HAS THE MEANING STATED IN § 11-127 OF THE  
26 TRANSPORTATION ARTICLE.

27 (E) "LIMOUSINE" HAS THE MEANING STATED IN § 11-129.1 OF THE  
28 TRANSPORTATION ARTICLE.

29 (F) "MOTOR HOME" HAS THE MEANING STATED IN § 11-134.3 OF THE  
30 TRANSPORTATION ARTICLE.

1 (G) "MOTOR VEHICLE" HAS THE MEANING STATED IN § 11-135 OF THE  
2 TRANSPORTATION ARTICLE.

3 (H) "MOVING VIOLATION" HAS THE MEANING STATED IN § 11-136.1 OF THE  
4 TRANSPORTATION ARTICLE.

5 (I) "OPEN CONTAINER" MEANS A BOTTLE, CAN, OR OTHER RECEPTACLE:

6 (1) THAT IS OPEN;

7 (2) THAT HAS A BROKEN SEAL; OR

8 (3) FROM WHICH THE CONTENTS ARE PARTIALLY REMOVED.

9 (J) "PASSENGER AREA" HAS THE MEANING STATED IN § 21-903 OF THE  
10 TRANSPORTATION ARTICLE.

11 (K) "TAXICAB" HAS THE MEANING STATED IN § 11-165 OF THE  
12 TRANSPORTATION ARTICLE.

13 10-114.

14 (A) THIS PART APPLIES TO A MOTOR VEHICLE THAT IS DRIVEN, STOPPED,  
15 STANDING, OR OTHERWISE LOCATED ON A HIGHWAY.

16 (B) THIS PART DOES NOT AFFECT THE PROVISIONS OF § 21-903 OF THE  
17 TRANSPORTATION ARTICLE.

18 10-115.

19 (A) (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (C) OF THIS  
20 SECTION, AN OCCUPANT OF A MOTOR VEHICLE MAY NOT POSSESS AN OPEN  
21 CONTAINER THAT CONTAINS ANY AMOUNT OF AN ALCOHOLIC BEVERAGE IN A  
22 PASSENGER AREA OF A MOTOR VEHICLE ON A HIGHWAY.

23 (2) A DRIVER OF A MOTOR VEHICLE MAY NOT BE SUBJECT TO  
24 PROSECUTION FOR A VIOLATION OF THIS SUBSECTION BASED SOLELY ON  
25 POSSESSION OF AN OPEN CONTAINER THAT CONTAINS ANY AMOUNT OF AN  
26 ALCOHOLIC BEVERAGE BY ANOTHER OCCUPANT OF THE MOTOR VEHICLE.

27 (B) (1) THIS SUBSECTION DOES NOT APPLY TO THE DRIVER OF A MOTOR  
28 VEHICLE.

29 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (C) OF THIS  
30 SECTION, AN OCCUPANT OF A MOTOR VEHICLE MAY NOT CONSUME AN ALCOHOLIC  
31 BEVERAGE IN A PASSENGER AREA OF A MOTOR VEHICLE ON A HIGHWAY.

32 (C) SUBSECTIONS (A)(1) AND (B)(2) OF THIS SECTION DO NOT APPLY TO AN  
33 OCCUPANT, WHO IS NOT THE DRIVER, IN:

1           (1)    A MOTOR VEHICLE DESIGNED, MAINTAINED, AND USED PRIMARILY  
2 FOR THE TRANSPORTATION OF A PERSON FOR COMPENSATION, INCLUDING:

3                   (I)    A BUS;

4                   (II)   A TAXICAB; OR

5                   (III)   A LIMOUSINE; OR

6           (2)    THE LIVING QUARTERS OF A MOTOR HOME, MOTOR COACH, OR  
7 RECREATIONAL VEHICLE.

8    (D)    NOTWITHSTANDING ARTICLE 2B, TITLE 19 OF THE CODE OR ANY OTHER  
9 PROVISION OF LAW, THE PROHIBITIONS CONTAINED IN THIS SECTION APPLY  
10 THROUGHOUT THE STATE.

11   (E)    A VIOLATION OF THIS SECTION IS NOT:

12           (1)    A MOVING VIOLATION FOR THE PURPOSES OF § 16-402 OF THE  
13 TRANSPORTATION ARTICLE; OR

14           (2)    A TRAFFIC VIOLATION FOR THE PURPOSES OF THE MARYLAND  
15 VEHICLE LAW.

16 10-116.

17   (A)    A POLICE OFFICER MAY ISSUE A CITATION TO A PERSON WHO THE POLICE  
18 OFFICER HAS PROBABLE CAUSE TO BELIEVE HAS COMMITTED A VIOLATION UNDER  
19 THIS PART.

20   (B)    (1)    A VIOLATION UNDER THIS PART IS A CIVIL OFFENSE.

21           (2)    ADJUDICATION OF A VIOLATION UNDER THIS PART:

22                   (I)    IS NOT A CRIMINAL CONVICTION FOR ANY PURPOSE; AND

23                   (II)   DOES NOT IMPOSE ANY OF THE CIVIL DISABILITIES THAT MAY  
24 RESULT FROM A CRIMINAL CONVICTION.

25   (C)    A CITATION ISSUED UNDER THIS PART SHALL BE SIGNED BY THE POLICE  
26 OFFICER WHO ISSUES THE CITATION AND SHALL CONTAIN:

27           (1)    THE NAME AND ADDRESS OF THE PERSON CHARGED;

28           (2)    THE STATUTE ALLEGEDLY VIOLATED;

29           (3)    THE DATE, LOCATION, AND TIME THAT THE VIOLATION OCCURRED;

30           (4)    THE FINE THAT MAY BE IMPOSED;

- 1           (5)     A NOTICE STATING THAT PREPAYMENT OF THE FINE IS ALLOWED;  
2 AND
- 3           (6)     A NOTICE THAT STATES THAT THE DISTRICT COURT SHALL  
4 PROMPTLY SEND THE PERSON A SUMMONS TO APPEAR FOR TRIAL.
- 5           (D)     THE FORM OF THE CITATION SHALL BE UNIFORM THROUGHOUT THE  
6 STATE AND SHALL BE PRESCRIBED BY THE DISTRICT COURT.
- 7           (E)     THE CHIEF JUDGE OF THE DISTRICT COURT SHALL ESTABLISH A  
8 SCHEDULE FOR THE PREPAYMENT OF A FINE.
- 9           (F)     (1)     THE LAW ENFORCEMENT AGENCY OF THE POLICE OFFICER WHO  
10 ISSUED THE CITATION SHALL FORWARD TO THE DISTRICT COURT HAVING VENUE A  
11 COPY OF THE CITATION AND A REQUEST FOR TRIAL.
- 12           (2)     THE DISTRICT COURT SHALL PROMPTLY SCHEDULE THE CASE FOR  
13 TRIAL AND SUMMON THE DEFENDANT TO APPEAR.
- 14           (G)     IF A PERSON IS FOUND TO HAVE COMMITTED A VIOLATION UNDER THIS  
15 PART, THE PERSON IS SUBJECT TO A FINE NOT EXCEEDING \$25.
- 16           (H)     THE COURT COSTS FOR A VIOLATION UNDER THIS PART ARE \$5.  
17 10-117.
- 18           (A)     IN A PROCEEDING FOR A VIOLATION UNDER THIS PART:
- 19           (1)     THE STATE HAS THE BURDEN TO PROVE THE GUILT OF THE  
20 DEFENDANT TO THE SAME EXTENT AS IS REQUIRED BY LAW IN THE TRIAL OF A  
21 CRIMINAL CASE;
- 22           (2)     THE COURT SHALL APPLY THE EVIDENTIARY STANDARDS AS  
23 PRESCRIBED BY LAW FOR THE TRIAL OF A CRIMINAL CASE;
- 24           (3)     THE COURT SHALL ENSURE THAT THE DEFENDANT HAS RECEIVED A  
25 COPY OF THE CHARGES AGAINST THE DEFENDANT AND THAT THE DEFENDANT  
26 UNDERSTANDS THOSE CHARGES;
- 27           (4)     THE DEFENDANT IS ENTITLED TO:
- 28                   (I)     CROSS-EXAMINE EACH WITNESS WHO APPEARS AGAINST THE  
29 DEFENDANT;
- 30                   (II)    PRODUCE EVIDENCE AND WITNESSES ON THE DEFENDANT'S  
31 OWN BEHALF;
- 32                   (III)   TESTIFY ON THE DEFENDANT'S OWN BEHALF IF THE  
33 DEFENDANT CHOOSES TO DO SO; AND

1 (IV) BE REPRESENTED BY COUNSEL OF THE DEFENDANT'S OWN  
2 SELECTION AND EXPENSE;

3 (5) THE DEFENDANT MAY ENTER A PLEA OF GUILTY OR NOT GUILTY;

4 (6) THE VERDICT SHALL BE:

5 (I) GUILTY OF A CIVIL VIOLATION; OR

6 (II) NOT GUILTY OF A CIVIL VIOLATION; AND

7 (7) BEFORE ENTERING A JUDGMENT, A COURT MAY PLACE THE  
8 DEFENDANT ON PROBATION IN THE SAME MANNER AND TO THE SAME EXTENT AS IS  
9 PERMITTED BY LAW IN A CRIMINAL CASE.

10 (B) IF A DEFENDANT IS FOUND GUILTY OF A VIOLATION UNDER THIS PART  
11 AND A FINE IS IMPOSED, A COURT MAY DIRECT THAT THE PAYMENT OF THE FINE BE  
12 SUSPENDED OR DEFERRED UNDER CONDITIONS DETERMINED BY THE COURT.

13 (C) A DEFENDANT'S WILLFUL FAILURE TO PAY A FINE IMPOSED UNDER THIS  
14 PART MAY BE TREATED AS A CRIMINAL CONTEMPT PUNISHABLE AS PROVIDED BY  
15 LAW.

16 (D) A DEFENDANT WHO IS FOUND GUILTY OF A VIOLATION UNDER THIS PART,  
17 AS PROVIDED BY LAW FOR A CRIMINAL CASE, MAY FILE:

18 (1) AN APPEAL;

19 (2) A MOTION FOR A NEW TRIAL; OR

20 (3) A MOTION FOR A REVISION OF A JUDGMENT.

21 (E) THE STATE'S ATTORNEY FOR EACH COUNTY MAY:

22 (1) PROSECUTE A VIOLATION UNDER THIS PART IN THE SAME MANNER  
23 AS A PROSECUTION OF A CRIMINAL CASE, INCLUDING ENTERING A NOLLE PROSEQUI  
24 OR PLACING THE CASE ON VIOLATION ON A STET DOCKET; AND

25 (2) EXERCISE AUTHORITY IN THE SAME MANNER PRESCRIBED BY LAW  
26 FOR A VIOLATION OF THE CRIMINAL LAWS OF THE STATE.

27 **Article - Transportation**

28 21-903.

29 [A person may not consume an alcoholic beverage while driving a motor vehicle  
30 on a highway of this State.]

31 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
32 INDICATED.

1 (2) "ALCOHOLIC BEVERAGE" MEANS A SPIRITUOUS, VINOUS, MALT, OR  
 2 FERMENTED LIQUOR, LIQUID, OR COMPOUND THAT CONTAINS AT LEAST 0.5%  
 3 ALCOHOL BY VOLUME AND IS FIT FOR BEVERAGE PURPOSES.

4 ~~(3) "OPEN CONTAINER" MEANS A BOTTLE, CAN, OR OTHER RECEPTACLE;~~

5 ~~(I) THAT IS OPEN;~~

6 ~~(II) THAT HAS A BROKEN SEAL; OR~~

7 ~~(III) FROM WHICH THE CONTENTS ARE PARTIALLY REMOVED.~~

8 ~~(4)~~ (3) (I) "PASSENGER AREA" MEANS AN AREA THAT:

9 1. IS DESIGNED TO SEAT THE DRIVER AND ANY PASSENGER  
 10 OF A MOTOR VEHICLE WHILE THE MOTOR VEHICLE IS IN OPERATION; OR

11 2. IS READILY ACCESSIBLE TO THE DRIVER OR A PASSENGER  
 12 OF A MOTOR VEHICLE WHILE IN THEIR SEATING POSITIONS.

13 (II) "PASSENGER AREA" DOES NOT INCLUDE:

14 1. A LOCKED GLOVE COMPARTMENT;

15 2. THE TRUNK OF A MOTOR VEHICLE; OR

16 3. IF A MOTOR VEHICLE IS NOT EQUIPPED WITH A TRUNK,  
 17 THE AREA BEHIND THE REARMOST UPRIGHT SEAT OR AN AREA THAT IS NOT  
 18 NORMALLY OCCUPIED BY THE DRIVER OR A PASSENGER OF THE MOTOR VEHICLE.

19 (B) THIS SECTION APPLIES TO A MOTOR VEHICLE THAT IS DRIVEN, STOPPED,  
 20 STANDING, OR OTHERWISE LOCATED ON A HIGHWAY.

21 ~~(C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, AN~~  
 22 ~~OCCUPANT OF A MOTOR VEHICLE MAY NOT POSSESS AN OPEN CONTAINER THAT~~  
 23 ~~CONTAINS AN ALCOHOLIC BEVERAGE OR CONSUME AN ALCOHOLIC BEVERAGE IN A~~  
 24 ~~PASSENGER AREA OF A MOTOR VEHICLE ON A HIGHWAY.~~

25 (C) A DRIVER OF A MOTOR VEHICLE MAY NOT CONSUME AN ALCOHOLIC  
 26 BEVERAGE IN A PASSENGER AREA OF A MOTOR VEHICLE ON A HIGHWAY.

27 ~~(D) SUBSECTION (C) OF THIS SECTION DOES NOT APPLY TO THE POSSESSION~~  
 28 ~~OF AN OPEN CONTAINER THAT CONTAINS AN ALCOHOLIC BEVERAGE OR THE~~  
 29 ~~CONSUMPTION OF AN ALCOHOLIC BEVERAGE BY AN OCCUPANT, OTHER THAN THE~~  
 30 ~~DRIVER, IN:~~

31 ~~(1) A MOTOR VEHICLE DESIGNED, MAINTAINED, AND USED PRIMARILY~~  
 32 ~~FOR THE TRANSPORTATION OF A PERSON FOR COMPENSATION, INCLUDING:~~

33 ~~(I) A BUS;~~

1                    (H)     A TAXICAB; OR

2                    (HH)    A LIMOUSINE; OR

3                    (2)     ~~THE LIVING QUARTERS OF A MOTOR HOME, MOTOR COACH, OR~~  
4 ~~RECREATIONAL VEHICLE.~~

5                    (E)     ~~A VIOLATION OF THIS SECTION IS NOT A MOVING VIOLATION FOR THE~~  
6 ~~PURPOSES OF § 16-402 OF THIS ARTICLE.~~

7                    (D)     NOTWITHSTANDING ARTICLE 2B, TITLE 19 OF THE CODE OR ANY OTHER  
8 PROVISION OF LAW, THE PROHIBITION CONTAINED IN THIS SECTION APPLIES  
9 THROUGHOUT THE STATE.

10 27-101.

11           (a)     It is a misdemeanor for any person to violate any of the provisions of the  
12 Maryland Vehicle Law unless the violation:

13                   (1)     Is declared to be a felony by the Maryland Vehicle Law or by any  
14 other law of this State; or

15                   (2)     Is punishable by a civil penalty under the applicable provision of the  
16 Maryland Vehicle Law.

17           (b)     Except as otherwise provided in this section, any person convicted of a  
18 misdemeanor for the violation of any of the provisions of the Maryland Vehicle Law is  
19 subject to a fine of not more than \$500.

20     SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
21 construed to conform to the provisions of 23 U.S.C. § 154.

22     SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
23 September 30, 2002.