

# HOUSE BILL 1120

D3, A1

11r1807

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By: **Delegates Dumais and Simmons**

Introduced and read first time: February 11, 2011

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Civil Action – Wrongfully Selling or Furnishing Alcoholic Beverages**

3 FOR the purpose of providing that a civil action for certain damages may be brought  
4 against an alcoholic beverages licensee or the licensee’s employee under certain  
5 circumstances for selling or furnishing alcoholic beverages to an individual who  
6 is under a certain age or visibly under the influence of alcoholic beverages and  
7 who negligently drives or attempts to drive a motor vehicle after consuming the  
8 alcoholic beverages; requiring a trier of fact to determine whether a wrongful  
9 sale or furnishing of alcoholic beverages was a proximate cause of certain  
10 damages; providing for a certain standard of proof; establishing that an action  
11 may not be brought under this Act by certain individuals; providing for the  
12 admissibility of certain evidence; providing for a certain period of limitations for  
13 bringing an action under this Act; defining certain terms; providing for the  
14 application of this Act; and generally relating to certain civil liability for  
15 wrongfully selling or furnishing alcoholic beverages under certain  
16 circumstances.

17 BY adding to

18 Article – Courts and Judicial Proceedings

19 Section 3–1801 through 3–1805 to be under the new subtitle “Subtitle 18.

20 Wrongful Sale or Furnishing of Alcoholic Beverages”

21 Annotated Code of Maryland

22 (2006 Replacement Volume and 2010 Supplement)

23 BY repealing and reenacting, with amendments,

24 Article – Courts and Judicial Proceedings

25 Section 5–105

26 Annotated Code of Maryland

27 (2006 Replacement Volume and 2010 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 **SUBTITLE 18. WRONGFUL SALE OR FURNISHING OF ALCOHOLIC BEVERAGES.**

5 **3–1801.**

6 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
7 INDICATED.

8 (B) “ALCOHOLIC BEVERAGES” HAS THE MEANING STATED IN ARTICLE  
9 2B, § 1–102 OF THE CODE.

10 (C) (1) “DAMAGES” INCLUDES DAMAGES FOR DEATH, PERSONAL  
11 INJURY, AND PROPERTY DAMAGE.

12 (2) “DAMAGES” DOES NOT INCLUDE PUNITIVE DAMAGES.

13 (D) “LICENSEE” HAS THE MEANING STATED IN ARTICLE 2B, § 1–102 OF  
14 THE CODE.

15 (E) “MOTOR VEHICLE” HAS THE MEANING STATED IN § 11–101 OF THE  
16 TRANSPORTATION ARTICLE.

17 **3–1802.**

18 (A) EXCEPT AS PROVIDED IN § 3–1803 OF THIS SUBTITLE, A PERSON  
19 MAY BRING AN ACTION UNDER THIS SUBTITLE AGAINST A LICENSEE OR A  
20 LICENSEE’S EMPLOYEE WHO SELLS OR FURNISHES ALCOHOLIC BEVERAGES TO  
21 AN INDIVIDUAL IF:

22 (1) THE LICENSEE OR THE LICENSEE’S EMPLOYEE KNOWS OR  
23 REASONABLY SHOULD KNOW THAT THE INDIVIDUAL TO WHOM THE ALCOHOLIC  
24 BEVERAGES ARE SOLD OR FURNISHED:

25 (I) IS UNDER THE AGE OF 21 YEARS; OR

26 (II) IS VISIBLY UNDER THE INFLUENCE OF ALCOHOLIC  
27 BEVERAGES, REGARDLESS OF THE AGE OF THE INDIVIDUAL;

1           **(2) THE LICENSEE OR THE LICENSEE'S EMPLOYEE CAN**  
2 **REASONABLY FORESEE THAT THE INDIVIDUAL MAY DRIVE OR ATTEMPT TO**  
3 **DRIVE A MOTOR VEHICLE AFTER CONSUMING THE ALCOHOLIC BEVERAGES;**

4           **(3) AFTER CONSUMING THE ALCOHOLIC BEVERAGES, THE**  
5 **INDIVIDUAL NEGLIGENTLY DRIVES OR ATTEMPTS TO DRIVE A MOTOR VEHICLE;**  
6 **AND**

7           **(4) THE INDIVIDUAL'S NEGLIGENCE IN DRIVING OR ATTEMPTING**  
8 **TO DRIVE THE MOTOR VEHICLE IS A PROXIMATE CAUSE OF THE DAMAGES**  
9 **CLAIMED IN THE ACTION.**

10           **(B) IN AN ACTION UNDER THIS SUBTITLE, THE TRIER OF FACT SHALL**  
11 **DETERMINE BASED ON THE EVIDENCE WHETHER WRONGFULLY SELLING OR**  
12 **FURNISHING ALCOHOLIC BEVERAGES, AS DESCRIBED IN SUBSECTION (A) OF**  
13 **THIS SECTION, WAS A PROXIMATE CAUSE OF THE DAMAGES CLAIMED IN THE**  
14 **ACTION.**

15           **(C) A PERSON WHO BRINGS AN ACTION UNDER THIS SUBTITLE SHALL**  
16 **HAVE THE BURDEN OF PROVING LIABILITY AS DESCRIBED IN THIS SECTION BY**  
17 **CLEAR AND CONVINCING EVIDENCE.**

18 **3-1803.**

19           **AN ACTION UNDER THIS SUBTITLE MAY NOT BE BROUGHT BY THE**  
20 **INDIVIDUAL TO WHOM THE ALCOHOLIC BEVERAGES WERE SOLD OR FURNISHED**  
21 **OR THE PERSONAL REPRESENTATIVE, PARENT, LEGAL GUARDIAN, SPOUSE,**  
22 **CHILD, DEPENDENT, OR BENEFICIARY OF THE INDIVIDUAL.**

23 **3-1804.**

24           **(A) IN AN ACTION UNDER THIS SUBTITLE, PROOF OF WHETHER THE**  
25 **LICENSEE OR THE LICENSEE'S EMPLOYEE REQUESTED AND EXAMINED A**  
26 **DRIVER'S LICENSE OR OTHER WRITTEN FORM OF IDENTIFICATION AND AGE OF**  
27 **THE INDIVIDUAL IS ADMISSIBLE AS EVIDENCE.**

28           **(B) IN AN ACTION UNDER THIS SUBTITLE, PROOF OF WHETHER**  
29 **RESPONSIBLE SERVING PRACTICES FOR ALCOHOLIC BEVERAGES WERE**  
30 **FOLLOWED OR NOT FOLLOWED BY THE LICENSEE OR THE LICENSEE'S**  
31 **EMPLOYEE IS ADMISSIBLE AS EVIDENCE.**

32           **(C) THIS SECTION DOES NOT LIMIT THE ADMISSIBILITY OF ANY OTHER**  
33 **EVIDENCE OTHERWISE ADMISSIBLE UNDER LAW.**

1 **13-805.**

2 **NOTHING CONTAINED IN THIS SUBTITLE:**

3 **(1) LIMITS A DEFENDANT IN AN ACTION UNDER THIS SUBTITLE**  
4 **FROM RAISING ASSUMPTION OF RISK OR CONTRIBUTORY NEGLIGENCE AS A**  
5 **DEFENSE; OR**

6 **(2) AFFECTS ANY LIMITATION ON DAMAGES UNDER ANY**  
7 **PROVISION OF LAW THAT IS NOT IN THIS SUBTITLE.**

8 **5-105.**

9 An action for assault, libel, or slander **OR AN ACTION UNDER TITLE 3,**  
10 **SUBTITLE 18 OF THIS ARTICLE** shall be filed within one year from the date it  
11 accrues.

12 **SECTION 2. AND BE IT FURTHER ENACTED,** That this Act shall be  
13 construed to apply only prospectively and may not be applied or interpreted to have  
14 any effect on or application to any act or omission occurring before the effective date of  
15 this Act.

16 **SECTION 3. AND BE IT FURTHER ENACTED,** That this Act shall take effect  
17 October 1, 2011.