

HOUSE BILL 102

D3, A1

5lr1390
CF 5lr0504

By: **Delegates Dumais and Smith**

Introduced and read first time: January 23, 2015

Assigned to: Judiciary

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

15 BY adding to

16 Article – Courts and Judicial Proceedings

17 Section 3–2101 through 3–2105 to be under the new subtitle “Subtitle 21. Wrongful
18 Sale or Furnishing of Alcoholic Beverages”

19 Annotated Code of Maryland

20 (2013 Replacement Volume and 2014 Supplement)

21 BY repealing and reenacting, with amendments,

22 Article – Courts and Judicial Proceedings

23 Section 5–105

24 Annotated Code of Maryland

25 (2013 Replacement Volume and 2014 Supplement)

26 Preamble

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, Maryland is one of only eight states where an alcoholic beverages
2 licensee has no liability for a plaintiff's damages when caused by the licensee's serving of
3 alcohol to a "visibly intoxicated" patron; and

4 WHEREAS, The Maryland Court of Appeals has declined to impose liability on an
5 alcoholic beverages licensee for damages caused by an intoxicated patron; and

6 WHEREAS, The Maryland Court of Appeals has opined that the determination of
7 whether to impose liability on an alcoholic beverages licensee for damages caused by an
8 intoxicated patron involves significant public policy considerations and is best left to the
9 General Assembly; now, therefore,

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

12 **Article – Courts and Judicial Proceedings**

13 **SUBTITLE 21. WRONGFUL SALE OR FURNISHING OF ALCOHOLIC BEVERAGES.**

14 **3-2101.**

15 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
16 INDICATED.

17 (B) "ALCOHOLIC BEVERAGES" HAS THE MEANING STATED IN ARTICLE 2B,
18 § 1-102 OF THE CODE.

19 (C) (1) "DAMAGES" INCLUDES DAMAGES FOR DEATH AND PERSONAL
20 INJURY AND PROPERTY DAMAGE.

21 (2) "DAMAGES" DOES NOT INCLUDE PUNITIVE DAMAGES.

22 (D) "LICENSEE" HAS THE MEANING STATED IN ARTICLE 2B, § 1-102 OF THE
23 CODE.

24 (E) "MOTOR VEHICLE" HAS THE MEANING STATED IN § 11-101 OF THE
25 TRANSPORTATION ARTICLE.

26 **3-2102.**

27 (A) EXCEPT AS PROVIDED IN § 3-2103 OF THIS SUBTITLE, A PERSON MAY
28 BRING AN ACTION UNDER THIS SUBTITLE AGAINST A LICENSEE OR A LICENSEE'S
29 EMPLOYEE WHO SOLD OR FURNISHED ALCOHOLIC BEVERAGES TO AN INDIVIDUAL
30 IF:

1 (1) THE LICENSEE OR THE LICENSEE'S EMPLOYEE KNEW OR
2 REASONABLY SHOULD HAVE KNOWN THAT THE INDIVIDUAL TO WHOM THE
3 ALCOHOLIC BEVERAGES WERE SOLD OR FURNISHED WAS VISIBLY UNDER THE
4 INFLUENCE OF ALCOHOLIC BEVERAGES;

5 (2) THE LICENSEE OR THE LICENSEE'S EMPLOYEE COULD HAVE
6 REASONABLY FORESEEN THAT THE INDIVIDUAL MIGHT DRIVE OR ATTEMPT TO
7 DRIVE A MOTOR VEHICLE AFTER CONSUMING THE ALCOHOLIC BEVERAGES;

8 (3) AFTER CONSUMING THE ALCOHOLIC BEVERAGES, THE
9 INDIVIDUAL NEGLIGENTLY DROVE OR ATTEMPTED TO DRIVE A MOTOR VEHICLE;
10 AND

11 (4) THE INDIVIDUAL'S NEGLIGENCE IN DRIVING OR ATTEMPTING TO
12 DRIVE THE MOTOR VEHICLE WAS A PROXIMATE CAUSE OF THE DAMAGES CLAIMED
13 IN THE ACTION.

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

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

21 **3-2103.**

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

26 **3-2104.**

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

31 (B) THIS SECTION DOES NOT LIMIT THE ADMISSIBILITY OF ANY OTHER
32 EVIDENCE OTHERWISE ADMISSIBLE UNDER LAW.

1 **3-2105.**

2 **NOTHING CONTAINED IN THIS SUBTITLE:**

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

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

7 **5-105.**

8 An action for assault, libel, or slander, **OR AN ACTION UNDER TITLE 3, SUBTITLE**
9 **21 OF THIS ARTICLE** shall be filed within one year from the date it accrues.

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

13 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2015.