

HOUSE BILL 3

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R3

2002 Regular Session
2lr0201
CF 2lr0294

(PRE-FILED)

By: Delegates Petzold, Goldwater, Bronrott, Taylor, Arnick, Busch, Conway, Dewberry, Doory, Harrison, Hixson, Howard, Hurson, Kopp, McIntosh, Menes, Owings, Rawlings, Rosenberg, and Vallario Vallario, W. Baker, Barkley, Barve, Bobo, Bohanan, Boutin, Burns, Cane, Carlson, Conroy, Crouse, Cryor, D'Amato, C. Davis, DeCarlo, Dobson, Donoghue, Dypski, Eckardt, Elliott, Finifter, Franchot, Frush, Fulton, Grosfeld, Hecht, Heller, Hubers, Hutchins, James, A. Jones, V. Jones, Kagan, Kirk, Lee, Leopold, Love, Mandel, Marriott, Minnick, Moe, Morhaim, Nathan-Pulliam, Parrott, Pendergrass, Pitkin, Rosso, Rudolph, Shank, Sher, Shriver, Stern, Stocksdale, Valderrama, and Walkup

Requested: June 25, 2001
Introduced and read first time: January 9, 2002
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted with floor amendments
Read second time: March 12, 2002

CHAPTER _____

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

1 containing an alcoholic beverage or consumption of an alcoholic beverage by
2 certain occupants of a motor vehicle under certain circumstances.

3 BY repealing and reenacting, with amendments,

4 Article - Courts and Judicial Proceedings
5 Section 4-401(10)(x) and (xi)
6 Annotated Code of Maryland
7 (1998 Replacement Volume and 2001 Supplement)

8 BY adding to

9 Article - Courts and Judicial Proceedings
10 Section 4-401(10)(xii)
11 Annotated Code of Maryland
12 (1998 Replacement Volume and 2001 Supplement)

13 BY repealing and reenacting, with amendments,

14 Article - Criminal Law
15 Section 10-101(a) to be under the new part "Part I. General Provisions"
16 Annotated Code of Maryland
17 (As enacted by Chapter _____ (H.B. 11) of the Acts of the General Assembly of
18 2002)

19 BY adding to

20 Article - Criminal Law
21 Section 10-113 through 10-117 to be under the new part "Part II. Alcoholic
22 Beverage Consumption or Possession of Open Container in Passenger Area
23 of Motor Vehicle"
24 Annotated Code of Maryland
25 (As enacted by Chapter _____ (H.B. 11) of the Acts of the General Assembly of
26 2002)

27 BY repealing and reenacting, with amendments,

28 Article - Transportation
29 Section 21-903
30 Annotated Code of Maryland
31 (1999 Replacement Volume and 2001 Supplement)

32 BY repealing and reenacting, without amendments,

33 Article - Transportation
34 Section 27-101(a) and (b)
35 Annotated Code of Maryland
36 (1999 Replacement Volume and 2001 Supplement)

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 4-401.

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

8 (10) A proceeding for adjudication of:

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

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

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

15 **Article - Criminal Law**

16 **PART I. GENERAL PROVISIONS.**

17 10-101.

18 (a) In this [subtitle] PART the following words have the meaning indicated.

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

21 10-113.

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

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

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

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

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

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

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

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

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

8 (1) THAT IS OPEN;

9 (2) THAT HAS A BROKEN SEAL; OR

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

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

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

15 10-114.

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

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

20 10-115.

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

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

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

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

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

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

5 (I) A BUS;

6 (II) A TAXICAB; OR

7 (III) A LIMOUSINE; OR

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

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

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

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

16 (2) A TRAFFIC VIOLATION FOR THE PURPOSES OF THE MARYLAND
17 VEHICLE LAW.

18 10-116.

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

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

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

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

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

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

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

30 (2) THE STATUTE ALLEGEDLY VIOLATED;

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

1 (4) THE FINE THAT MAY BE IMPOSED;

2 (5) A NOTICE STATING THAT PREPAYMENT OF THE FINE IS ALLOWED;
3 AND

4 (6) A NOTICE THAT STATES THAT THE DISTRICT COURT SHALL
5 PROMPTLY SEND THE PERSON A SUMMONS TO APPEAR FOR TRIAL.

6 (D) THE FORM OF THE CITATION SHALL BE UNIFORM THROUGHOUT THE
7 STATE AND SHALL BE PRESCRIBED BY THE DISTRICT COURT.

8 (E) THE CHIEF JUDGE OF THE DISTRICT COURT SHALL ESTABLISH A
9 SCHEDULE FOR THE PREPAYMENT OF A FINE.

10 (F) (1) THE LAW ENFORCEMENT AGENCY OF THE POLICE OFFICER WHO
11 ISSUED THE CITATION SHALL FORWARD TO THE DISTRICT COURT HAVING VENUE A
12 COPY OF THE CITATION AND A REQUEST FOR TRIAL.

13 (2) THE DISTRICT COURT SHALL PROMPTLY SCHEDULE THE CASE FOR
14 TRIAL AND SUMMON THE DEFENDANT TO APPEAR.

15 (G) IF A PERSON IS FOUND TO HAVE COMMITTED A VIOLATION UNDER THIS
16 PART, THE PERSON IS SUBJECT TO A FINE NOT EXCEEDING \$25.

17 (H) THE COURT COSTS FOR A VIOLATION UNDER THIS PART ARE \$5.

18 10-117.

19 (A) IN A PROCEEDING FOR A VIOLATION UNDER THIS PART:

20 (1) THE STATE HAS THE BURDEN TO PROVE THE GUILT OF THE
21 DEFENDANT TO THE SAME EXTENT AS IS REQUIRED BY LAW IN THE TRIAL OF A
22 CRIMINAL CASE;

23 (2) THE COURT SHALL APPLY THE EVIDENTIARY STANDARDS AS
24 PRESCRIBED BY LAW FOR THE TRIAL OF A CRIMINAL CASE;

25 (3) THE COURT SHALL ENSURE THAT THE DEFENDANT HAS RECEIVED A
26 COPY OF THE CHARGES AGAINST THE DEFENDANT AND THAT THE DEFENDANT
27 UNDERSTANDS THOSE CHARGES;

28 (4) THE DEFENDANT IS ENTITLED TO:

29 (I) CROSS-EXAMINE EACH WITNESS WHO APPEARS AGAINST THE
30 DEFENDANT;

31 (II) PRODUCE EVIDENCE AND WITNESSES ON THE DEFENDANT'S
32 OWN BEHALF;

33 (III) TESTIFY ON THE DEFENDANT'S OWN BEHALF IF THE
34 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 (HI) A TAXICAB; OR

2 (HII) 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.