

# SENATE BILL 209

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By: **Senators Kelley, Forehand, Montgomery, and Robey**

Introduced and read first time: January 16, 2014

Assigned to: Judicial Proceedings

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

16 BY adding to

17 Article – Courts and Judicial Proceedings

18 Section 3–1901 through 3–1905 to be under the new subtitle “Subtitle 19.

19 Wrongful Sale or Furnishing of Alcoholic Beverages”

20 Annotated Code of Maryland

21 (2013 Replacement Volume and 2013 Supplement)

22 BY repealing and reenacting, with amendments,

23 Article – Courts and Judicial Proceedings

24 Section 5–105

25 Annotated Code of Maryland

26 (2013 Replacement Volume and 2013 Supplement)

27 Preamble

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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  
3 of alcohol to a "visibly intoxicated" patron; and

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

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

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

12 **Article – Courts and Judicial Proceedings**

13 **SUBTITLE 19. WRONGFUL SALE OR FURNISHING OF ALCOHOLIC BEVERAGES.**

14 **3–1901.**

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

17 (B) "ALCOHOLIC BEVERAGES" HAS THE MEANING STATED IN ARTICLE  
18 2B, § 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  
23 THE CODE.

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

26 **3–1902.**

27 (A) EXCEPT AS PROVIDED IN § 3–1903 OF THIS SUBTITLE, A PERSON  
28 MAY BRING AN ACTION UNDER THIS SUBTITLE AGAINST A LICENSEE OR A  
29 LICENSEE'S EMPLOYEE WHO SOLD OR FURNISHED ALCOHOLIC BEVERAGES TO  
30 AN INDIVIDUAL 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  
12 TO DRIVE THE MOTOR VEHICLE WAS A PROXIMATE CAUSE OF THE DAMAGES  
13 CLAIMED 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  
17 THIS SECTION, WAS A PROXIMATE CAUSE OF THE DAMAGES CLAIMED IN THE  
18 ACTION.

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

22   **3-1903.**

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

27   **3-1904.**

28           (A) 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           (B) THIS SECTION DOES NOT LIMIT THE ADMISSIBILITY OF ANY OTHER  
33 EVIDENCE OTHERWISE ADMISSIBLE UNDER LAW.

1 **3-1905.**

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 PROVISION**  
7 **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 19 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, 2014.