

SENATE BILL 937

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7lr2518
CF HB 380

By: **Senator Smith**

Introduced and read first time: February 3, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Alcoholic Beverages – Civil Offenses – Public Consumption and Possession of**
3 **Open Container**

4 FOR the purpose of making it a civil rather than a criminal offense to consume an alcoholic
5 beverage in public under certain circumstances or to possess an alcoholic beverage
6 in an open container under certain circumstances; requiring certain offenders to be
7 issued a citation under certain circumstances; providing a certain maximum fine;
8 making certain conforming changes; and generally relating to the possession and
9 consumption of alcoholic beverages in public.

10 BY repealing and reenacting, with amendments,
11 Article – Alcoholic Beverages
12 Section 6–321 and 6–322
13 Annotated Code of Maryland
14 (2016 Volume and 2016 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article – Criminal Law
17 Section 10–119
18 Annotated Code of Maryland
19 (2012 Replacement Volume and 2016 Supplement)

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

22 **Article – Alcoholic Beverages**

23 6–321.

24 (a) In this section, “public property” includes property that is:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(1) a structure, road, parking area, or grounds; and

(2) located on land owned, leased, or operated by:

(i) the State;

(ii) a county;

(iii) a municipality;

(iv) the Washington Suburban Sanitary Commission;

(v) the Maryland–National Capital Park and Planning Commission;

(vi) the Montgomery County Revenue Authority; or

(vii) the Washington Metropolitan Area Transit Authority.

(b) (1) Except as provided in paragraphs (2) and (3) of this subsection, an individual may not consume an alcoholic beverage:

(i) on public property;

(ii) on the mall, adjacent parking area, or other outside area of a shopping center;

(iii) on an adjacent parking area or other outside area of any other retail establishment; and

(iv) in a parked vehicle located in an area described under item (i), (ii), or (iii) of this paragraph.

(2) An individual may consume an alcoholic beverage on:

(i) public property if authorized by the governmental entity that has authority over the property; or

(ii) private property described under paragraph (1)(ii) through (iv) of this subsection if authorized by the owner of the property.

(3) If the owner or operator of a motor home or chartered bus has consented to the consumption of the alcoholic beverages, paragraph (1) of this subsection does not apply to passengers:

(i) in the living quarters of a motor home equipped with a toilet and central heating; or

(ii) of a chartered bus in transit.

(c) **(1) A VIOLATION OF THIS SECTION IS A CODE VIOLATION AND A CIVIL OFFENSE.**

(2) A person who violates this section [is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100]:

(I) SHALL BE ISSUED A CITATION UNDER § 10–119 OF THE CRIMINAL LAW ARTICLE; AND

(II) IS SUBJECT TO A FINE NOT EXCEEDING \$100.

6–322.

(a) **(1)** Except as provided in paragraph (2) of this subsection, an individual may not possess an alcoholic beverage in an open container while:

(i) on the mall, adjacent parking area, or other outside area of a shopping center;

(ii) on an adjacent parking area or other outside area of any other retail establishment; or

(iii) in a parked vehicle located in an area described under item (i) or (ii) of this paragraph.

(2) An individual may possess an alcoholic beverage in an open container on private property described under paragraph (1) of this subsection if the individual is authorized by the owner of the establishment.

(b) **(1) A VIOLATION OF THIS SECTION IS A CODE VIOLATION AND A CIVIL OFFENSE.**

(2) A person who violates this section [is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100]:

(I) SHALL BE ISSUED A CITATION UNDER § 10–119 OF THE CRIMINAL LAW ARTICLE; AND

(II) IS SUBJECT TO A FINE NOT EXCEEDING \$100.

Article – Criminal Law

10–119.

(a) (1) A person [who violates §§ 10–113 through 10–115 or § 10–118 of this part] shall be issued a citation under this section **IF THE PERSON VIOLATES:**

(I) §§ 10–113 THROUGH 10–115 OR § 10–118 OF THIS PART; OR

(II) § 6–321 OR § 6–322 OF THE ALCOHOLIC BEVERAGES ARTICLE.

(2) A minor who violates § 10–116 or § 10–117(a) of this part shall be issued a citation under this section.

(b) (1) A citation for a violation of §§ 10–113 through 10–115 or a violation of § 10–118 of this part **OR § 6–321 OR § 6–322 OF THE ALCOHOLIC BEVERAGES ARTICLE** may be issued by:

(i) a police officer authorized to make arrests;

(ii) in State forestry reservations, State parks, historic monuments, and recreation areas, a forest or park warden under § 5–206(a) or (b) of the Natural Resources Article; and

(iii) subject to paragraphs (2) and (3) of this subsection, in Anne Arundel County, Frederick County, Harford County, Kent County, Montgomery County, Prince George’s County, and Talbot County, and only in the inspector’s jurisdiction, an alcoholic beverages inspector who investigates license violations under the Alcoholic Beverages Article.

(2) In Anne Arundel County, Frederick County, Harford County, Kent County, Montgomery County, Prince George’s County, and Talbot County, the inspector shall successfully complete an appropriate program of training in the proper use of arrest authority and pertinent police procedures as required by the board of license commissioners.

(3) In Anne Arundel County, Harford County, Kent County, Montgomery County, Prince George’s County, and Talbot County, the inspector may not carry a firearm in the performance of the inspector’s duties.

(c) A person authorized under this section to issue a citation shall issue it if the person has probable cause to believe that the person charged is committing or has committed a Code violation.

(d) (1) Subject to paragraph (2) of this subsection, the form of citation issued to an adult shall be as prescribed by the District Court and shall be uniform throughout the State.

(2) The citation issued to an adult shall contain:

- (i) the name and address of the person charged;
- (ii) the statute allegedly violated;
- (iii) the location, date, and time that the violation occurred;
- (iv) the fine that may be imposed;
- (v) a notice stating that prepayment of the fine is not allowed;
- (vi) a notice that the District Court shall promptly send the person charged a summons to appear for trial;
- (vii) the signature of the person issuing the citation; and
- (viii) a space for the person charged to sign the citation.

(3) The form of citation issued to a minor shall:

- (i) be prescribed by the State Court Administrator;
- (ii) be uniform throughout the State; and
- (iii) contain the information listed in § 3–8A–33(b) of the Courts

Article.

(e) (1) Except for a citation subject to the jurisdiction of a circuit court, the issuing jurisdiction shall forward a copy of the citation and a request for trial to the District Court in the district having venue.

(2) (i) The District Court shall promptly schedule the case for trial and summon the defendant to appear.

(ii) Willful failure of the defendant to respond to the summons is contempt of court.

(f) (1) For purposes of this section, a violation of §§ 10–113 through 10–115 or a violation of § 10–118 of this part **OR § 6–321 OR § 6–322 OF THE ALCOHOLIC BEVERAGES ARTICLE** is a Code violation and is a civil offense.

(2) A person charged who is under the age of 18 years shall be subject to the procedures and dispositions provided in Title 3, Subtitle 8A of the Courts Article.

(3) A person charged who is at least 18 years old shall be subject to the provisions of this section.

(4) Adjudication of a Code violation is not a criminal conviction for any purpose, and it does not impose any of the civil disabilities ordinarily imposed by a criminal conviction.

(g) In any proceeding for a Code violation:

(1) the State has the burden to prove the guilt of the defendant to the same extent as is required by law in the trial of criminal causes, and in any such proceeding, the court shall apply the evidentiary standards as prescribed by law or rule for the trial of criminal causes;

(2) the court shall ensure that the defendant has received a copy of the charges against the defendant and that the defendant understands those charges;

(3) the defendant is entitled to cross-examine all witnesses who appear against the defendant, to produce evidence or witnesses on behalf of the defendant, or to testify on the defendant's own behalf, if the defendant chooses to do so;

(4) the defendant is entitled to be represented by counsel of the defendant's choice and at the expense of the defendant;

(5) the defendant may enter a plea of guilty or not guilty, and the verdict of the court in the case shall be:

(i) guilty of a Code violation; or

(ii) not guilty of a Code violation; and

(6) before rendering judgment, the court may place the defendant on probation in the same manner and to the same extent as is allowed by law in the trial of a criminal case.

(h) **(1) THIS SUBSECTION DOES NOT APPLY TO A PERSON WHO COMMITS A CODE VIOLATION UNDER § 6-321 OR § 6-322 OF THE ALCOHOLIC BEVERAGES ARTICLE.**

[(1)] (2) Except as provided in paragraph **[(2)](3)** of this subsection, if the District Court finds that a person has committed a Code violation, the court shall require the person to pay:

(i) a fine not exceeding \$500; or

(ii) if the violation is a subsequent violation, a fine not exceeding \$1,000.

1 ~~[(2)]~~ **(3)** If the District Court finds that a person has committed a Code
2 violation under § 10–117 of this subtitle, the court shall require the person to pay:

3 (i) a fine not exceeding \$2,500; or

4 (ii) if the violation is a subsequent violation, a fine not exceeding
5 \$5,000.

6 ~~[(3)]~~ **(4)** The Chief Judge of the District Court may not establish a
7 schedule for the prepayment of fines for a Code violation under this part.

8 (i) When a defendant has been found guilty of a Code violation and a fine has
9 been imposed by the court:

10 (1) the court may direct that the payment of the fine be suspended or
11 deferred under conditions that the court may establish; and

12 (2) if the defendant willfully fails to pay the fine imposed by the court, that
13 willful failure may be treated as a criminal contempt of court, for which the defendant may
14 be punished by the court as provided by law.

15 (j) (1) The defendant is liable for the costs of the proceedings in the District
16 Court and for payment to the Criminal Injuries Compensation Fund.

17 (2) The court costs in a Code violation case in which costs are imposed are
18 \$5.

19 (k) (1) In this subsection, “driver’s license” means a license or permit to drive
20 a motor vehicle that is issued under the laws of this State or any other jurisdiction.

21 (2) This subsection applies only to:

22 (i) a person who is at least 18 but under 21 years of age; or

23 (ii) a minor if the minor is subject to the jurisdiction of the court.

24 (3) If a person is found guilty of a Code violation under § 10–113 of this
25 part that involved the use of a driver’s license or a document purporting to be a driver’s
26 license, the court shall notify the Motor Vehicle Administration of the violation.

27 (4) The Chief Judge of the District Court, in conjunction with the Motor
28 Vehicle Administrator, shall establish uniform procedures for reporting Code violations
29 described in this subsection.

30 (l) (1) A defendant who has been found guilty of a Code violation has the right
31 to appeal or to file a motion for a new trial or a motion for a revision of a judgment provided
32 by law in the trial of a criminal case.

1 (2) A motion shall be made in the same manner as provided in the trial of
2 criminal cases, and the court, in ruling on the motion has the same authority provided in
3 the trial of criminal cases.

4 (m) (1) The State's Attorney for any county may prosecute a Code violation in
5 the same manner as prosecution of a violation of the criminal laws of this State.

6 (2) In a Code violation case the State's Attorney may:

7 (i) enter a nolle prosequi in or place the case on the stet docket; and

8 (ii) exercise authority in the same manner as prescribed by law for
9 violation of the criminal laws of this State.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
11 1, 2017.