

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4684

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
by amending sections 707, 801, 901, 906, and 1025 (MCL 436.1707,
436.1801, 436.1901, 436.1906, and 436.2025), section 906 as amended
by 2000 PA 431 and section 1025 as amended by 2002 PA 725.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 707. (1) A vendor shall not sell, **SERVE, OR FURNISH** any
2 alcoholic liquor to any person in an intoxicated condition.

3 (2) A LICENSEE SHALL NOT ALLOW A PERSON WHO IS IN AN
4 INTOXICATED CONDITION TO CONSUME ALCOHOLIC LIQUOR ON THE LICENSED
5 PREMISES.

6 (3) A LICENSEE, OR THE CLERK, SERVANT, AGENT, OR EMPLOYEE OF A
7 LICENSEE, SHALL NOT BE IN AN INTOXICATED CONDITION ON THE LICENSED
8 PREMISES.

1 (4) A LICENSEE SHALL NOT ALLOW AN INTOXICATED PERSON TO
2 FREQUENT OR LOITER ON THE LICENSED PREMISES EXCEPT WHERE THE
3 INTOXICATED PERSON HAS BEEN REFUSED SERVICE OF FURTHER ALCOHOLIC
4 LIQUOR AND CONTINUES TO REMAIN ON THE PREMISES FOR THE PURPOSE OF
5 EATING FOOD, SEEKING MEDICAL ATTENTION, ARRANGING TRANSPORTATION
6 THAT DOES NOT INVOLVE DRIVING HIMSELF OR HERSELF, OR ANY OTHER
7 CIRCUMSTANCES WHERE REQUIRING THE PERSON TO VACATE THE PREMISES
8 IMMEDIATELY WOULD BE CONSIDERED DANGEROUS TO THAT PERSON OR TO THE
9 PUBLIC.

10 (5) A LICENSEE SHALL NOT ALLOW A MINOR TO CONSUME ALCOHOLIC
11 LIQUOR OR TO POSSESS ALCOHOLIC LIQUOR FOR PERSONAL CONSUMPTION ON
12 THE LICENSED PREMISES.

13 (6) A LICENSEE SHALL NOT ALLOW ANY PERSON LESS THAN 18 YEARS
14 OF AGE TO SELL OR SERVE ALCOHOLIC LIQUOR.

15 (7) A LICENSEE SHALL NOT ALLOW ANY PERSON LESS THAN 18 YEARS
16 OF AGE TO WORK OR ENTERTAIN ON A PAID OR VOLUNTARY BASIS ON THE
17 LICENSED PREMISES UNLESS THE PERSON IS EMPLOYED IN COMPLIANCE WITH
18 THE YOUTH EMPLOYMENT STANDARDS ACT, 1978 PA 90, MCL 409.101 TO
19 409.124. THIS SUBSECTION DOES NOT APPLY TO AN ENTERTAINER UNDER THE
20 DIRECT SUPERVISION AND CONTROL OF HIS OR HER PARENT OR LEGAL
21 GUARDIAN.

22 Sec. 801. (1) Except as otherwise provided in this act, before
23 the approval and granting, or renewal, of a license, the following
24 licensees or applicants for that license shall make, execute, and
25 deliver to the commission a bond executed by a surety company
26 authorized to do business in the state or, in the discretion of the
27 commission, by approved personal surety running to the people of

1 the state, in the following amounts:

2 (a) A manufacturer of beer, a manufacturer of wine, a mixed
3 spirit drink manufacturer, an outstate seller of beer, an outstate
4 seller of mixed spirit drink, and an outstate seller of wine, a
5 bond in an amount equal to 1/12 of the total beer, mixed spirit
6 drink, or wine excise taxes paid to the state in the last calendar
7 year or a bond in the sum of \$1,000.00, whichever is greater, for
8 the faithful performance of the conditions of the license issued
9 and for compliance with this act. A surety shall not cancel a bond
10 issued under this subdivision except upon 30 days' written notice
11 to the commission.

12 (b) A special license authorizing the sale of beer, mixed
13 spirit drink, wine, or spirits for consumption on the premises, a
14 bond in the sum of \$1,000.00. A bond issued under this subdivision
15 shall remain in effect for 60 days after the expiration of the
16 special license. A bond is not required for a church or school.

17 (2) A retail licensee shall not directly, individually, or by
18 a clerk, agent, or servant sell, furnish, or give alcoholic liquor
19 to a minor except as otherwise provided in this act. A retail
20 licensee shall not directly or indirectly, individually or by a
21 clerk, agent, or servant sell, furnish, or give alcoholic liquor to
22 a person who is visibly intoxicated.

23 (3) Except as otherwise provided in this section, an
24 individual who suffers damage or who is personally injured by a
25 minor or visibly intoxicated person by reason of the unlawful
26 selling, giving, or furnishing of alcoholic liquor to the minor or
27 visibly intoxicated person, if the unlawful sale is proven to be a

1 proximate cause of the damage, injury, or death, or the spouse,
2 child, parent, or guardian of that individual, shall have a right
3 of action in his or her name against the person who by selling,
4 giving, or furnishing the alcoholic liquor has caused or
5 contributed to the intoxication of the person or who has caused or
6 contributed to the damage, injury, or death. In an action pursuant
7 to this section, the plaintiff shall have the right to recover
8 actual damages in a sum of not less than \$50.00 in each case in
9 which the court or jury determines that intoxication was a
10 proximate cause of the damage, injury, or death.

11 (4) An action under this section shall be instituted within 2
12 years after the injury or death. A plaintiff seeking damages under
13 this section shall give written notice to all defendants within 120
14 days after entering an attorney-client relationship for the purpose
15 of pursuing a claim under this section. Failure to give written
16 notice within the time specified shall be grounds for dismissal of
17 a claim as to any defendants that did not receive that notice
18 unless sufficient information for determining that a retail
19 licensee might be liable under this section was not known and could
20 not reasonably have been known within the 120 days. In the event of
21 the death of either party, the right of action under this section
22 shall survive to or against his or her personal representative. In
23 each action by a husband, wife, child, or parent, the general
24 reputation of the relation of husband and wife or parent and child
25 shall be prima facie evidence of the relation, and the amount
26 recovered by either the husband, wife, parent, or child shall be
27 his or her sole and separate property. The damages, together with

1 the costs of the action, shall be recovered in an action under this
2 section. If the parents of the individual who suffered damage or
3 who was personally injured are entitled to damages under this
4 section, the father and mother may sue separately, but recovery by
5 1 is a bar to action by the other.

6 (5) An action under this section against a retail licensee
7 shall not be commenced unless the minor or the alleged intoxicated
8 person is a named defendant in the action and is retained in the
9 action until the litigation is concluded by trial or settlement.

10 (6) Any licensee subject to the provisions of subsection (3)
11 regarding the unlawful selling, furnishing, or giving of alcoholic
12 liquor to a visibly intoxicated person shall have the right to full
13 indemnification from the alleged visibly intoxicated person for all
14 damages awarded against the licensee.

15 (7) All defenses of the alleged visibly intoxicated person or
16 the minor shall be available to the licensee. In an action alleging
17 the unlawful sale of alcoholic liquor to a minor, proof that the
18 defendant retail licensee or the defendant's agent or employee
19 demanded and was shown a Michigan driver license or official state
20 personal identification card, appearing to be genuine and showing
21 that the minor was at least 21 years of age, shall be a defense to
22 the action.

23 (8) There shall be a rebuttable presumption that a retail
24 licensee, other than the retail licensee who last sold, gave, or
25 furnished alcoholic liquor to the minor or the visibly intoxicated
26 person, has not committed any act giving rise to a cause of action
27 under subsection (3).

1 (9) The alleged visibly intoxicated person shall not have a
2 cause of action pursuant to this section and a person shall not
3 have a cause of action pursuant to this section for the loss of
4 financial support, services, gifts, parental training, guidance,
5 love, society, or companionship of the alleged visibly intoxicated
6 person.

7 (10) This section provides the exclusive remedy for money
8 damages against a licensee arising out of the selling, giving, or
9 furnishing of alcoholic liquor **TO A MINOR OR INTOXICATED PERSON.**

10 (11) Except as otherwise provided for under this section and
11 section 815, a civil action under subsection (3) against a retail
12 licensee shall be subject to the revised judicature act of 1961,
13 1961 PA 236, MCL 600.101 to 600.9947.

14 Sec. 901. **(1)** A person, directly or indirectly, himself or
15 herself or by his or her clerk, agent, or employee, shall not
16 manufacture, manufacture for sale, sell, offer or keep for sale,
17 barter, furnish, import, import for sale, transport for hire,
18 transport, or possess any alcoholic liquor unless the person
19 complies with this act.

20 **(2) A LICENSEE SHALL NOT ALLOW UNLAWFUL GAMBLING ON THE**
21 **LICENSED PREMISES AND SHALL NOT ALLOW ON THE LICENSED PREMISES ANY**
22 **GAMING DEVICES PROHIBITED BY LAW.**

23 **(3) A LICENSEE SHALL NOT SELL, OFFER OR KEEP FOR SALE,**
24 **FURNISH, POSSESS, OR ALLOW A CUSTOMER TO CONSUME ALCOHOLIC LIQUOR**
25 **THAT IS NOT AUTHORIZED BY THE LICENSE ISSUED TO THE LICENSEE BY THE**
26 **COMMISSION.**

27 **(4) A LICENSEE SHALL NOT SELL OR FURNISH ALCOHOLIC LIQUOR TO A**

1 PERSON WHO MAINTAINS, OPERATES, OR LEASES PREMISES THAT ARE NOT
2 LICENSED BY THE COMMISSION AND UPON WHICH OTHER PERSONS UNLAWFULLY
3 ENGAGE IN THE SALE OR CONSUMPTION OF ALCOHOLIC LIQUOR FOR
4 CONSIDERATION AS PROHIBITED BY SECTION 913.

5 (5) A RETAIL LICENSEE SHALL NOT, ON HIS OR HER LICENSED
6 PREMISES, SELL, OFFER FOR SALE, ACCEPT, FURNISH, POSSESS, OR ALLOW
7 THE CONSUMPTION OF ALCOHOLIC LIQUOR THAT HAS NOT BEEN PURCHASED BY
8 THE RETAIL LICENSEE FROM THE COMMISSION OR FROM A LICENSEE OF THE
9 COMMISSION AUTHORIZED TO SELL THAT ALCOHOLIC LIQUOR TO A RETAIL
10 LICENSEE. THIS SUBSECTION DOES NOT APPLY TO THE CONSUMPTION OF
11 ALCOHOLIC LIQUOR IN THE BEDROOMS OR SUITES OF REGISTERED GUESTS OF
12 LICENSED HOTELS OR IN THE BEDROOMS OR SUITES OF BONA FIDE MEMBERS
13 OF LICENSED CLUBS.

14 Sec. 906. (1) As used in this section:

15 (a) "Administrator" means a qualifying company, postsecondary
16 educational institution, or trade association authorized by the
17 commission to offer server training programs and instructor
18 certification classes in compliance with this section and to
19 certify to the commission that those persons meet the requirements
20 of this section.

21 (b) "Instructor" means an individual certified by an
22 administrator and approved by the commission to teach server
23 training programs. An instructor may be a licensee or an employee
24 of a licensee.

25 (c) "Prohibited sale" means the sale of alcoholic liquor by an
26 employee of a licensee to a visibly intoxicated person or to a
27 minor, or both.

1 (d) "Responsible vendor" means a designation by the commission
2 of a retail licensee meeting the standards of this section.

3 (e) "Server training program" means an educational program
4 whose curriculum has been approved by the commission under the
5 standards described in this section and is offered by an
6 administrator or instructor to a retail licensee for its employees.

7 (2) The commission shall approve the establishing of a server
8 training program designed for all new on premises licensees or
9 transferees of more than a 50% interest in an on premises license
10 on or after the commencement of the mandatory server training
11 program, and for any existing retail licensees the commission
12 determines to be in need of training due to the frequency or types
13 of violations of this act involving the serving of alcoholic
14 liquor. This subsection does not apply to special licenses except
15 that the commission may require server training for certain special
16 licensees based upon the size and nature of the licensed event. The
17 commission may adopt the existing standards and programmatic
18 framework of private entities and may delegate nondiscretionary
19 administrative functions to outside private entities.

20 (3) The commission shall establish a program in which the
21 commission designates certain retail licensees, except special
22 licenses, as responsible vendors. The commission may adopt the
23 existing standards and programmatic framework of private entities
24 and may delegate nondiscretionary administrative functions to
25 outside private entities.

26 (4) The commission shall designate as a responsible vendor a
27 retail licensee who makes available to all full-time and part-time

1 retail employees, within 60 days after being hired, a server
2 training program and who is also free of convictions or
3 administrative determinations involving prohibited sales for not
4 less than 12 months before applying for the designation. The
5 designation continues until suspended by the commission.

6 (5) A person may apply to the commission for qualification as
7 an administrator for the offering of server training programs and
8 instructor certification classes.

9 (6) The commission shall approve a curriculum for a server
10 training program presented by a certified instructor in a manner
11 considered by the commission to be adequate that includes, but is
12 not limited to, all of the following topics:

13 (a) The identification of progressive stages of intoxication
14 and the visible signs associated with each stage.

15 (b) The identification of the time delay between consumption
16 and visibility of signs of progressive intoxication.

17 (c) Basic alcohol content among different types of measured
18 drinks containing alcoholic liquor.

19 (d) Variables associated with visible intoxication, including
20 the rate of drinking, experience, weight, food consumption, sex,
21 and use of other drugs.

22 (e) Personal skills to handle slow-down of service and
23 intervention procedures.

24 (f) Procedures for monitoring consumption and maintaining
25 incident reports.

26 (g) The understanding of acceptable forms of personal
27 identification, techniques for determining the validity of

1 identification, and procedures for dealing with fraudulent
2 identification.

3 (h) Assessment of the need to ask for identification based on
4 appearance or company policy.

5 (i) The identification of potential second-party sales and
6 furnishing ~~alcohol~~ **OF ALCOHOLIC LIQUOR** to minors by persons 21
7 years of age or over.

8 (j) The understanding of possible legal, civil, and
9 administrative consequences of violations of this act, the rules of
10 the commission, and other pertinent state laws.

11 (k) The understanding of Michigan laws pertaining to minors
12 attempting to purchase, minors in possession, and second-party
13 sales or furnishing of ~~alcohol~~ **ALCOHOLIC LIQUOR** from adults to
14 minors.

15 (l) Knowledge of the legal hours of ~~alcohol~~ **ALCOHOLIC LIQUOR**
16 service and occupancy.

17 (m) The identification of signs of prohibited activities, such
18 as gambling, solicitation for prostitution, and drug sales.

19 (n) Any other pertinent laws as determined by the commission.

20 (7) The commission shall issue an instructor certification to
21 an individual presenting evidence acceptable to the commission of
22 having successfully completed instructor certification classes and
23 shall issue an identification card indicating that certification by
24 the commission.

25 (8) Upon approval by the commission of a server training
26 program, the commission shall appoint the person sponsoring the
27 server training program as an administrator of that program. The

1 administrator shall provide a certification to the commission that
2 a retail licensee has successfully completed the server training
3 program offered by a certified instructor and approved by the
4 commission and shall recommend that the commission designate the
5 licensee as a responsible vendor.

6 (9) A certified instructor who is a licensee or an employee of
7 a licensee may offer server training programs approved by the
8 commission to the employees of the licensee and certify to the
9 commission those persons who successfully completed the program.

10 (10) An on premises licensee whose license was issued or who
11 was the transferee of more than a 50% interest in an on premises
12 license on or after the commencement of the mandatory server
13 training program or an on premises licensee determined by the
14 commission to be in need of training due to the frequency or types
15 of violations of this act involving the serving of alcoholic liquor
16 must have employed or present on the licensed premises, at a
17 minimum, supervisory personnel who have successfully completed a
18 server training program on each shift and during all hours in which
19 alcoholic liquor is served. An on premises licensee must keep a
20 copy of the responsible vendor designation or proof of completion
21 of server training on the licensed premises to facilitate the
22 verification of such designation by the commission, agent of the
23 commission, or law enforcement officer. An on premises licensee
24 determined by the commission to have violated this subsection is
25 subject to revocation, suspension, or other sanction as provided
26 for in section 903. A violation of this subsection is not a
27 violation of section 909.

1 (11) As a condition of the designation of a licensee as a
2 responsible vendor, the licensee shall make available to the
3 administrator in not less than 60-day time increments records
4 sufficient to verify the names and social security numbers of his
5 or her employees. The administrator shall provide to the commission
6 a list of names and social security numbers of individuals who have
7 successfully completed the server training program and shall
8 monitor the licensee in a manner approved by the commission in
9 order to verify continued compliance of the licensee's status as a
10 responsible vendor. The administrator shall notify the commission
11 in writing as soon as it determines that the licensee has failed to
12 maintain the standards for server training or has failed to
13 cooperate with the administrator's verification procedure. Upon
14 receipt of such a notice from the administrator, the commission
15 shall suspend the licensee's designation as a responsible vendor.

16 (12) The commission may suspend the designation of a retail
17 licensee as a responsible vendor upon a conviction or
18 administrative determination of a prohibited sale on the licensee's
19 licensed premises. The retail licensee losing such a designation
20 may reapply for designation as a responsible vendor upon the
21 passage of 12 months from the date of the conviction or
22 administrative determination of a prohibited sale if the licensee
23 is not convicted or administratively determined to have engaged in
24 a prohibited sale on the licensed premises. After the first
25 instance of a retail licensee losing its designation as a
26 responsible vendor, that retail licensee is not eligible to reapply
27 for such a designation until an additional 3 months for each

1 subsequent conviction or determination. The 3-month time periods
2 are to be in addition to the 12-month period described in this
3 subsection.

4 (13) A responsible vendor is not considered to be in violation
5 of the prohibition contained in ~~R 436.1005(4) of the Michigan~~
6 ~~administrative code~~ **SECTION 707(4)** regarding allowing an
7 intoxicated person to frequent or loiter on the licensed premises
8 unless the facts demonstrate otherwise.

9 Sec. 1025. (1) A vendor shall not give away any alcoholic
10 liquor of any kind or description at any time in connection with
11 his or her business, except manufacturers for consumption on the
12 premises only.

13 (2) Subsection (1) does not prevent any of the following:

14 (a) A vendor of spirits, brewer, mixed spirit drink
15 manufacturer, wine maker, small wine maker, outstate seller of
16 beer, outstate seller of wine, or outstate seller of mixed spirit
17 drink, or a bona fide market research organization retained by 1 of
18 the persons named in this subsection, from conducting samplings or
19 tastings of an alcoholic liquor product before it is approved for
20 sale in this state, if the sampling or tasting is conducted
21 pursuant to prior written approval of the commission.

22 (b) A person from conducting of any sampling or tasting
23 authorized by rule of the commission.

24 (c) A class A or B hotel designed to attract and accommodate
25 tourists and visitors in a resort area from giving away alcoholic
26 liquor to an invitee or guest in connection with a business event
27 or as a part of a room special or promotion for overnight

1 accommodations.

2 (3) A vendor shall not sell an alcoholic liquor to a person in
3 an intoxicated condition.

4 (4) EVIDENCE OF ANY BREATHALYZER OR BLOOD ALCOHOL TEST RESULTS
5 OBTAINED IN A LICENSED ESTABLISHMENT, OR ON PROPERTY ADJACENT TO
6 THE LICENSED PREMISES AND UNDER THE CONTROL OR OWNERSHIP OF THE
7 LICENSEE, SHALL NOT BE ADMISSIBLE TO PROVE A VIOLATION OF THIS
8 SECTION, SECTION 707(1), (2), (3), OR (4), OR SECTION 801(2). TO
9 ESTABLISH A VIOLATION OF THIS SECTION, SECTION 707(1), (2), (3), OR
10 (4), OR SECTION 801(2), THE PERSON'S INTOXICATED CONDITION AT THE
11 TIME OF THE SALE OR CONSUMPTION OF ALCOHOL MUST BE PROVEN BY DIRECT
12 OBSERVATION BY LAW ENFORCEMENT OR COMMISSION ENFORCEMENT PERSONNEL
13 OR THROUGH OTHER ADMISSIBLE WITNESS STATEMENTS OR CORROBORATING
14 EVIDENCE OBTAINED AS PART OF THE STANDARD INVESTIGATION OTHER THAN
15 BREATHALYZER OR BLOOD ALCOHOL TEST RESULTS.

16 Enacting section 1. The following rules are rescinded:

17 (a) R 436.1005 of the Michigan administrative code.

18 (b) R 436.1009 of the Michigan administrative code.

19 (c) R 436.1013 of the Michigan administrative code.

20 (d) R 436.1017 of the Michigan administrative code.

21 (e) R 436.1033 of the Michigan administrative code.