

HOUSE BILL No. 4684

May 1, 2007, Introduced by Reps. Accavitti, Farrah, Angerer, Gillard, Tobocman, Rocca, Gaffney, Wojno, Ward, Hopgood, Melton and Meadows and referred to the Committee on Regulatory Reform.

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
by amending sections 707, 801, 901, 906, 1015, and 1025 (MCL
436.1707, 436.1801, 436.1901, 436.1906, 436.2015, 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~~ **A VISIBLY** intoxicated
3 condition.

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

1 (3) A LICENSEE, OR THE CLERK, SERVANT, AGENT, OR EMPLOYEE OF A
2 LICENSEE, SHALL NOT BE IN A VISIBLY INTOXICATED CONDITION ON THE
3 LICENSED PREMISES.

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

13 (5) A LICENSEE SHALL NOT ALLOW A MINOR TO CONSUME ALCOHOLIC
14 LIQUOR OR TO POSSESS ALCOHOLIC LIQUOR FOR PERSONAL CONSUMPTION ON
15 THE LICENSED PREMISES.

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

18 (7) A LICENSEE SHALL NOT ALLOW ANY PERSON LESS THAN 18 YEARS
19 OF AGE TO WORK OR ENTERTAIN ON A PAID OR VOLUNTARY BASIS ON THE
20 LICENSED PREMISES UNLESS THE PERSON IS EMPLOYED IN COMPLIANCE WITH
21 THE YOUTH EMPLOYMENT STANDARDS ACT, 1978 PA 90, MCL 409.101 TO
22 409.124. THIS SUBSECTION DOES NOT APPLY TO AN ENTERTAINER UNDER THE
23 DIRECT SUPERVISION AND CONTROL OF HIS OR HER PARENT OR LEGAL
24 GUARDIAN.

25 Sec. 801. (1) Except as otherwise provided in this act, before
26 the approval and granting, or renewal, of a license, the following
27 licensees or applicants for that license shall make, execute, and

1 deliver to the commission a bond executed by a surety company
2 authorized to do business in the state or, in the discretion of the
3 commission, by approved personal surety running to the people of
4 the state, in the following amounts:

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

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

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

26 (3) Except as otherwise provided in this section, an
27 individual who suffers damage or who is personally injured by a

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

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

1 shall be prima facie evidence of the relation, and the amount
2 recovered by either the husband, wife, parent, or child shall be
3 his or her sole and separate property. The damages, together with
4 the costs of the action, shall be recovered in an action under this
5 section. If the parents of the individual who suffered damage or
6 who was personally injured are entitled to damages under this
7 section, the father and mother may sue separately, but recovery by
8 1 is a bar to action by the other.

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

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

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

27 (8) There shall be a rebuttable presumption that a retail

1 licensee, other than the retail licensee who last sold, gave, or
2 furnished alcoholic liquor to the minor or the visibly intoxicated
3 person, has not committed any act giving rise to a cause of action
4 under subsection (3).

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

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

15 (11) Except as otherwise provided for under this section and
16 section 815, a civil action under subsection (3) against a retail
17 licensee shall be subject to the revised judicature act of 1961,
18 1961 PA 236, MCL 600.101 to 600.9947.

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

25 (2) **A LICENSEE SHALL NOT ALLOW UNLAWFUL GAMBLING ON THE**
26 **LICENSED PREMISES AND SHALL NOT ALLOW ON THE LICENSED PREMISES ANY**
27 **GAMING DEVICES PROHIBITED BY LAW.**

1 (3) A LICENSEE SHALL NOT SELL, OFFER OR KEEP FOR SALE,
2 FURNISH, POSSESS, OR ALLOW A CUSTOMER TO CONSUME ALCOHOLIC LIQUOR
3 THAT IS NOT AUTHORIZED BY THE LICENSE ISSUED TO THE LICENSEE BY THE
4 COMMISSION.

5 (4) A LICENSEE SHALL NOT SELL OR FURNISH ALCOHOLIC LIQUOR TO A
6 PERSON WHO MAINTAINS, OPERATES, OR LEASES PREMISES THAT ARE NOT
7 LICENSED BY THE COMMISSION AND UPON WHICH OTHER PERSONS UNLAWFULLY
8 ENGAGE IN THE SALE OR CONSUMPTION OF ALCOHOLIC LIQUOR FOR
9 CONSIDERATION AS PROHIBITED BY SECTION 913.

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

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

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

26 (b) "Instructor" means an individual certified by an
27 administrator and approved by the commission to teach server

1 training programs. An instructor may be a licensee or an employee
2 of a licensee.

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

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

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

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

25 (3) The commission shall establish a program in which the
26 commission designates certain retail licensees, except special
27 licenses, as responsible vendors. The commission may adopt the

1 existing standards and programmatic framework of private entities
2 and may delegate nondiscretionary administrative functions to
3 outside private entities.

4 (4) The commission shall designate as a responsible vendor a
5 retail licensee who makes available to all full-time and part-time
6 retail employees, within 60 days after being hired, a server
7 training program and who is also free of convictions or
8 administrative determinations involving prohibited sales for not
9 less than 12 months before applying for the designation. The
10 designation continues until suspended by the commission.

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

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

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

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

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

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

27 (e) Personal skills to handle slow-down of service and

1 intervention procedures.

2 (f) Procedures for monitoring consumption and maintaining
3 incident reports.

4 (g) The understanding of acceptable forms of personal
5 identification, techniques for determining the validity of
6 identification, and procedures for dealing with fraudulent
7 identification.

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

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

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

16 (k) The understanding of Michigan laws pertaining to minors
17 attempting to purchase, minors in possession, and second-party
18 sales or furnishing of ~~alcohol~~ **ALCOHOLIC LIQUOR** from adults to
19 minors.

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

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

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

25 (7) The commission shall issue an instructor certification to
26 an individual presenting evidence acceptable to the commission of
27 having successfully completed instructor certification classes and

1 shall issue an identification card indicating that certification by
2 the commission.

3 (8) Upon approval by the commission of a server training
4 program, the commission shall appoint the person sponsoring the
5 server training program as an administrator of that program. The
6 administrator shall provide a certification to the commission that
7 a retail licensee has successfully completed the server training
8 program offered by a certified instructor and approved by the
9 commission and shall recommend that the commission designate the
10 licensee as a responsible vendor.

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

15 (10) An on premises licensee whose license was issued or who
16 was the transferee of more than a 50% interest in an on premises
17 license on or after the commencement of the mandatory server
18 training program or an on premises licensee determined by the
19 commission to be in need of training due to the frequency or types
20 of violations of this act involving the serving of alcoholic liquor
21 must have employed or present on the licensed premises, at a
22 minimum, supervisory personnel who have successfully completed a
23 server training program on each shift and during all hours in which
24 alcoholic liquor is served. An on premises licensee must keep a
25 copy of the responsible vendor designation or proof of completion
26 of server training on the licensed premises to facilitate the
27 verification of such designation by the commission, agent of the

1 commission, or law enforcement officer. An on premises licensee
2 determined by the commission to have violated this subsection is
3 subject to revocation, suspension, or other sanction as provided
4 for in section 903. A violation of this subsection is not a
5 violation of section 909.

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

21 (12) The commission may suspend the designation of a retail
22 licensee as a responsible vendor upon a conviction or
23 administrative determination of a prohibited sale on the licensee's
24 licensed premises. The retail licensee losing such a designation
25 may reapply for designation as a responsible vendor upon the
26 passage of 12 months from the date of the conviction or
27 administrative determination of a prohibited sale if the licensee

1 is not convicted or administratively determined to have engaged in
2 a prohibited sale on the licensed premises. After the first
3 instance of a retail licensee losing its designation as a
4 responsible vendor, that retail licensee is not eligible to reapply
5 for such a designation until an additional 3 months for each
6 subsequent conviction or determination. The 3-month time periods
7 are to be in addition to the 12-month period described in this
8 subsection.

9 (13) A responsible vendor is not considered to be in violation
10 of the prohibition contained in R 436.1005(4) of the Michigan
11 administrative code regarding allowing ~~an~~ **A VISIBLY** intoxicated
12 person to frequent or loiter on the licensed premises unless the
13 facts demonstrate otherwise.

14 Sec. 1015. (1) A nonlicensee, or a person who holds either a
15 special license or a club license under this act, may offer and
16 award unopened alcoholic liquor having a value of less than \$200.00
17 to a person 21 years of age or older in a drawing or raffle or as a
18 door prize, pursuant to a lawful fund raising activity. The
19 alcoholic liquor awarded shall not be consumed on the premises at
20 which it is awarded.

21 (2) A person who holds either a special license or a club
22 license under this act and who has purchased alcoholic ~~liquors~~
23 **LIQUOR** to be awarded as provided for in subsection (1) shall be
24 exempt from sections 1021(2) and 1025 for those purchases.

25 (3) A person who holds either a special license or a club
26 license under this act shall not sell or award alcoholic liquor to
27 a person who is in ~~an~~ **A VISIBLY** intoxicated condition.

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

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

6 (a) A vendor of spirits, brewer, mixed spirit drink
7 manufacturer, wine maker, small wine maker, outstate seller of
8 beer, outstate seller of wine, or outstate seller of mixed spirit
9 drink, or a bona fide market research organization retained by 1 of
10 the persons named in this subsection, from conducting samplings or
11 tastings of an alcoholic liquor product before it is approved for
12 sale in this state, if the sampling or tasting is conducted
13 pursuant to prior written approval of the commission.

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

16 (c) A class A or B hotel designed to attract and accommodate
17 tourists and visitors in a resort area from giving away alcoholic
18 liquor to an invitee or guest in connection with a business event
19 or as a part of a room special or promotion for overnight
20 accommodations.

21 (3) A vendor shall not sell an alcoholic liquor to a person in
22 ~~an~~ **A VISIBLY** intoxicated condition.

23 Enacting section 1. The following rules are rescinded:

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

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

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

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

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