

SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 5668

A bill to amend 1998 PA 58, entitled "An act to create a commission for the control of the alcoholic beverage traffic within this state, and to prescribe its powers, duties, and limitations; to provide for powers and duties for certain state departments and agencies; to impose certain taxes for certain purposes; to provide for the control of the alcoholic liquor traffic within this state and to provide for the power to establish state liquor stores; to provide for the care and treatment of alcoholics; to provide for the incorporation of farmer cooperative wineries and the granting of certain rights and privileges to those cooperatives; to provide for the licensing and taxation of activities regulated under this act and the disposition of the money received under this act; to prescribe liability for retail licensees under certain circumstances and to require security for that liability; to provide procedures, defenses, and remedies regarding violations of this act; to provide for the enforcement and to prescribe penalties for violations of this act; to provide for allocation of certain funds for certain purposes; to provide for the confiscation and disposition of property seized under this act; to provide referenda under certain circumstances; and to repeal acts and parts of acts," by amending sections 501, 903, and 906 (MCL 436.1501, 436.1903, and 436.1906), sections 501 and 903 as amended by 1998 PA 416 and section 906 as added by 1998 PA 391.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 501. (1) The commission may issue licenses as provided  
2 in this act upon the payment of the fees provided in section 525  
3 and the filing of the bonds required in section 801 or liability  
4 insurance as provided in section 803. BEGINNING NOT LATER THAN  
5 JULY 1, 2002 AND SUBJECT TO SECTION 906(2) AND (3), THE COMMIS-  
6 SION SHALL NOT ISSUE A NEW ON PREMISES LICENSE OR TRANSFER MORE  
7 THAN 50% INTEREST IN AN EXISTING ON PREMISES LICENSE UNLESS THE  
8 APPLICANT OR TRANSFEREE OFFERS PROOF ACCEPTABLE TO THE COMMISSION  
9 THAT HE OR SHE HAS EMPLOYED OR HAS PRESENT ON THE LICENSED

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1 PREMISES, AT A MINIMUM, SUPERVISORY PERSONNEL ON EACH SHIFT AND  
2 DURING ALL HOURS IN WHICH ALCOHOLIC LIQUOR IS SERVED WHO HAVE  
3 SUCCESSFULLY COMPLETED A SERVER TRAINING PROGRAM AS FURTHER  
4 DESCRIBED IN SECTION 906. THE COMMISSION MAY CONSIDER AN INDI-  
5 VIDUAL ENROLLED AND ACTIVELY PARTICIPATING IN A SERVER TRAINING  
6 PROGRAM AS HAVING SUCCESSFULLY COMPLETED THE PROGRAM FOR SUCH  
7 TIME AS THE INDIVIDUAL IS PARTICIPATING. THE COMMISSION MAY  
8 ALLOW AN APPLICANT OR A CONDITIONALLY APPROVED LICENSEE AT LEAST  
9 180 DAYS, OR MORE UPON A SHOWING OF GOOD CAUSE, TO MEET THE MINI-  
10 MUM PERSONNEL TRAINING REQUIREMENTS OF THIS SUBSECTION. THE COM-  
11 MISSION MAY SUSPEND THE LICENSE OF A CONDITIONALLY APPROVED  
12 LICENSEE FOR FAILURE TO COMPLY WITH THIS SUBSECTION. THE COMMIS-  
13 SION MAY WAIVE THE SERVER TRAINING REQUIREMENTS OF THIS SUBSEC-  
14 TION ON THE BASIS OF EITHER OF THE FOLLOWING CIRCUMSTANCES:

15 (A) THE LICENSEE'S RESPONSIBLE OPERATING EXPERIENCE OR  
16 TRAINING.

17 (B) THE PERSON'S DEMONSTRATION OF AN ACCEPTABLE LEVEL OF  
18 RESPONSIBLE OPERATION EITHER AS A LICENSEE DURING THE PRECEDING 3  
19 YEARS OR AS A MANAGER WITH SUBSTANTIAL EXPERIENCE IN SERVING  
20 ALCOHOLIC LIQUOR.

21 (2) A full-year license issued by the commission shall  
22 expire on April 30 following the date of issuance or the date  
23 fixed by the commission. A license issued under this act shall  
24 be construed as a contract between the commission and the  
25 licensee and shall be signed by both parties. If a licensee  
26 dies, the commission may approve the operation of the  
27 establishment by a personal representative or independent

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1 personal representative duly appointed by a court of competent  
2 jurisdiction, pending the settlement of the estate of the  
3 deceased licensee. The commission may approve a receiver or  
4 trustee appointed by a court of competent jurisdiction to operate  
5 the licensed establishment of a licensee. The commission may  
6 grant a part-year license for a proportionate part of the license  
7 fee specified in section 525. In a resort area the commission  
8 shall grant a license for a period of time as short as 3 months.  
9 A license may be transferred with the consent of the commission.  
10 A class C or specially designated distributor license obtained in  
11 a manner other than by transfer shall not be transferred within  
12 3 years after its issuance except under circumstances where the  
13 licensee clearly and convincingly demonstrates that unusual hard-  
14 ship will result if the transfer does not receive the consent of  
15 the commission. An application for a license to sell alcoholic  
16 liquor for consumption on the premises, except in a city having a  
17 population of 750,000 or more, shall be approved by the local  
18 legislative body in which the applicant's place of business is  
19 located before the license is granted by the commission, except  
20 that in the case of an application for renewal of an existing  
21 license, if an objection to a renewal has not been filed with the  
22 commission by the local legislative body not less than 30 days  
23 before the date of expiration of the license, the approval of the  
24 local legislative body shall not be required. The commission  
25 shall provide the local legislative body and the local chief of  
26 police with the name, home and business addresses, and home and  
27 business phone numbers to accomplish the local legislative

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1 reviews of new and transferred license applications required by  
2 this subsection. Upon request of the local legislative body  
3 after due notice and proper hearing by the local legislative body  
4 and the commission, the commission shall revoke the license of a  
5 licensee granted a license to sell alcoholic liquor for consump-  
6 tion on the premises or any permit held in conjunction with that  
7 license.

8       (3) A local legislative body, by resolution, may request  
9 that the commission revoke the license of a licensee granted a  
10 license to sell alcoholic liquor for consumption off the premises  
11 whose place of business is located within the local legislative  
12 body's jurisdiction and who has been determined pursuant to com-  
13 mission violation hearings to have sold or furnished alcoholic  
14 liquor, on at least 3 separate occasions in a single calendar  
15 year, to a person who is less than 21 years of age if those vio-  
16 lations did not involve the use of falsified or fraudulent iden-  
17 tification by the person who is less than 21 years of age. If  
18 the commission verifies that the licensee who is the subject of  
19 the resolution has been found to have committed the violations as  
20 prescribed in this subsection, the commission may suspend or  
21 revoke the licensee's license and any permit held in conjunction  
22 with that license.

23       (4) This act does not prohibit a hotel which is or was the  
24 holder of a license authorizing the retail sale of alcoholic  
25 liquor for consumption on the premises from applying for and  
26 receiving under this act any other and different type of license  
27 authorizing the retail sale of alcoholic liquor for consumption

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1 on the premises, and the application for the license shall not be  
2 considered a new application for a license so long as the total  
3 number of public licenses for consumption on the premises does  
4 not exceed the authorized total established in this act and the  
5 sale of alcoholic liquor is approved by the electors. The com-  
6 mission may divide the state into 3 zones and establish for each  
7 zone an anniversary date for renewal of full-year retail licenses  
8 in the licensing year. The commission shall promulgate rules  
9 pursuant to the administrative procedures act of 1969, 1969  
10 PA 306, MCL 24.201 to 24.328, for the effective administration of  
11 the renewal of licenses.

12 (5) The commission, with the written approval of the depart-  
13 ment of agriculture in the case of the Michigan state fairgrounds  
14 and the Upper Peninsula state fairgrounds, may issue without  
15 regard to the quota provision of section 531 a tavern license to  
16 a person as concessionaire leasing or renting a portion of either  
17 the Upper Peninsula state fairgrounds or the state fairgrounds,  
18 or both, to service the licensed area in use for recreational or  
19 exhibition purposes other than at the time of the annual Upper  
20 Peninsula state fair under section 2 of 1927 PA 89, MCL 285.142.

21 A license issued under this subsection is not transferable.

Sec. 903. (1) The commission or any commissioner or duly  
authorized agent of the commission designated by the chairperson of  
the commission, upon due notice and proper hearing, may suspend or  
revoke any license upon a violation of this act or any of the rules  
promulgated by the commission under this act. The commission or any  
commissioner or duly authorized agent of the commission designated  
by the chairperson of the commission, may assess a penalty of not  
more than \$300.00 for each violation of this act or rules  
promulgated under this act, or not more than \$1,000.00 for each  
violation of section 801(2), in addition to or in lieu of revocation  
or suspension of the license, which penalty shall be paid to the  
commission and deposited with the state treasurer and shall be  
credited to the general fund of the state. The commission shall  
hold a hearing and order the suspension or revocation of a license  
if the licensee has been found liable for 3 or more separate  
violations of section 801(2) which violations occurred on different  
occasions within a 24-month period UNLESS SUCH VIOLATIONS FOR THE  
SALE, FURNISHING, OR GIVING ALCOHOLIC LIQUOR TO A MINOR WERE  
DISCOVERED BY THE LICENSEE AND DISCLOSED TO AN APPROPRIATE LAW  
ENFORCEMENT AGENCY IMMEDIATELY UPON DISCOVERY.

(2) The commission shall provide a procedure by which a  
licensee who is aggrieved by any penalty imposed under subsection  
(1) and any suspension or revocation of a license ordered by the  
commission, a commissioner, or a duly authorized agent of the

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commission may request a hearing for the purpose of presenting any facts or reasons to the commission as to why the penalty, suspension, or revocation should be modified or rescinded. Any such request shall be in writing and accompanied by a fee of \$25.00. The commission, after reviewing the record made before a commissioner or a duly authorized agent of the commission, may allow or refuse to allow the hearing in accordance with the commission's rules. The right to a hearing provided in this subsection, however, shall not be interpreted by any court as curtailing, removing, or annulling the right of the commission to suspend or revoke licenses as provided for in this act. A licensee does not have a right of appeal from the final determination of the commission, except by leave of the circuit court. Notice of the order of suspension or revocation of a license or of the assessment of a penalty, or both, shall be given in the manner prescribed by the commission. The suspension or revocation of a license or the assessment of a penalty, or both, by the commission or a duly authorized agent of the commission does not prohibit the institution of a criminal prosecution for a violation of this act. The institution of a criminal prosecution for a violation of this act or the acquittal or conviction of a person for a violation of this act does not prevent the suspension or revocation of a license or the assessment of a penalty, or both, by the commission. In a hearing for the suspension or revocation of a license issued under this act, proof that the defendant licensee or an agent or employee of the licensee demanded and was shown, before furnishing any alcoholic liquor to a minor, a motor vehicle operator or chauffeur license or a registration certificate issued by the federal selective service, or other bona fide documentary evidence of majority and identity of the person, may be offered as evidence in a defense to a proceeding for the suspension or revocation of a license issued under this act. A licensee who has reason to believe that a minor has used fraudulent identification to purchase alcoholic liquor in violation of section 703 shall file a police report concerning the violation with a local law enforcement agency and shall also present the alleged fraudulent identification to the local law enforcement agency at the time of filing the report if the identification is in the possession of the licensee. The commission may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, regarding the utilization by licensees of equipment designed to detect altered or forged driver licenses, state identification cards, and other forms of identification.

(3) In addition to the hearing commissioners provided for in section 209, the chairperson of the commission may designate not more than 2 duly authorized agents to hear violation cases. A person appointed under this subsection shall be a member in good standing of the state bar of Michigan.

(4) A duly authorized agent who has been designated by the chairperson pursuant to subsection (3) shall have, in the hearing of violation cases, the same authority and responsibility as does a hearing commissioner under this act and the rules promulgated under this act.

(5) A duly authorized agent who has been designated by the chairperson pursuant to subsection (3) shall be ineligible for appointment to the commission for a period of 1 year after the person ceases to serve as a duly authorized agent.

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

23 (a) "Administrator" means a qualifying company, postsecond-  
24 ary educational institution, or trade association authorized by  
25 the commission to offer server training programs and instructor  
26 certification classes in compliance with this section and to

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1 certify to the commission that those persons meet the  
2 requirements of this section.

3 (b) "Instructor" means an individual certified by an admin-  
4 istrator and approved by the commission to teach server training  
5 programs. AN INSTRUCTOR MAY BE A LICENSEE OR AN EMPLOYEE OF A  
6 LICENSEE.

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

10 (d) "Responsible vendor" means a designation by the commis-  
11 sion of a retail licensee meeting the standards of this section.

12 (e) "Server training program" means an educational program  
13 whose curriculum has been approved by the commission under the  
14 standards described in this section and is offered by an adminis-  
15 trator OR INSTRUCTOR to a retail licensee for its employees.

16 (2) THE COMMISSION SHALL APPROVE THE ESTABLISHING OF A  
17 SERVER TRAINING PROGRAM DESIGNED FOR ALL NEW ON PREMISES LICENS-  
18 EES OR TRANSFEREES OF MORE THAN A 50% INTEREST IN AN ON PREMISES  
19 LICENSE ON OR AFTER THE COMMENCEMENT OF THE MANDATORY SERVER  
20 TRAINING PROGRAM, AND FOR ANY EXISTING RETAIL LICENSEES THE COM-  
21 MISSION DETERMINES TO BE IN NEED OF TRAINING DUE TO THE FREQUENCY  
22 OR TYPES OF VIOLATIONS OF THIS ACT INVOLVING THE SERVING OF ALCO-  
23 HOLIC LIQUOR. THIS SUBSECTION DOES NOT APPLY TO SPECIAL LICENSES  
24 EXCEPT THAT THE COMMISSION MAY REQUIRE SERVER TRAINING FOR CER-  
25 TAIN SPECIAL LICENSEES BASED UPON THE SIZE AND NATURE OF THE  
26 LICENSED EVENT. THE COMMISSION MAY ADOPT THE EXISTING STANDARDS  
27 AND PROGRAMMATIC FRAMEWORK OF PRIVATE ENTITIES AND MAY DELEGATE

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1 NONDISCRETIONARY ADMINISTRATIVE FUNCTIONS TO OUTSIDE PRIVATE  
2 ENTITIES.

3       (3) ~~-(2)-~~ The commission shall establish a program in which  
4 the commission designates certain retail licensees, EXCEPT SPE-  
5 CIAL LICENSES, as responsible vendors. The commission may adopt  
6 the existing standards and programmatic framework of private  
7 entities and may delegate nondiscretionary administrative func-  
8 tions to outside private entities.

9       (4) ~~-(3)-~~ The commission shall designate as a responsible  
10 vendor a retail licensee who makes available to all full-time and  
11 part-time retail employees, within 60 days after being hired, a  
12 server training program and who is also free of convictions or  
13 administrative determinations involving prohibited sales for not  
14 less than 12 months before applying for the designation. The  
15 designation continues until suspended by the commission.

16       (5) ~~-(4)-~~ A person may apply to the commission for qualifi-  
17 cation as an administrator for the offering of server training  
18 programs and instructor certification classes.

19       (6) ~~-(5)-~~ The commission shall approve a curriculum for a  
20 server training program presented by a certified instructor in a  
21 manner considered by the commission to be adequate that includes,  
22 but is not limited to, all of the following topics:

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

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



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

3 (d) Variables associated with visible intoxication, includ-  
4 ing the rate of drinking, experience, weight, food consumption,  
5 sex, and use of other drugs.

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

8 (f) Procedures for monitoring consumption and maintaining  
9 incident reports.

10 (g) The understanding of acceptable forms of personal iden-  
11 tification, techniques for determining the validity of identifi-  
12 cation, and procedures for dealing with fraudulent  
13 identification.

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

16 (i) The identification of potential second-party sales and  
17 furnishing alcohol to minors by persons 21 years of age or over.

18 (j) The understanding of possible legal, civil, and adminis-  
19 trative consequences of violations of this act, the rules of the  
20 commission, and other pertinent state laws.

21 (k) The understanding of Michigan laws pertaining to minors  
22 attempting to purchase, minors in possession, and second-party  
23 sales or furnishing of alcohol from adults to minors.

24 (l) Knowledge of the legal hours of alcohol service and  
25 occupancy.

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

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

3 (7) ~~(6)~~ The commission shall issue an instructor certifi-  
4 cation to an individual presenting evidence acceptable to the  
5 commission of having successfully completed instructor certifica-  
6 tion classes and shall issue an identification card indicating  
7 that certification by the commission.

8 (8) ~~(7)~~ Upon approval by the commission of a server train-  
9 ing program, the commission shall appoint the person sponsoring  
10 the server training program as an administrator of that program.  
11 The administrator shall provide a certification to the commission  
12 that a retail licensee has successfully completed the server  
13 training program offered by a certified instructor and approved  
14 by the commission and shall recommend that the commission desig-  
15 nate the licensee as a responsible vendor.

16 (9) A CERTIFIED INSTRUCTOR WHO IS A LICENSEE OR AN EMPLOYEE  
17 OF A LICENSEE MAY OFFER SERVER TRAINING PROGRAMS APPROVED BY THE  
18 COMMISSION TO THE EMPLOYEES OF THE LICENSEE AND CERTIFY TO THE  
19 COMMISSION THOSE PERSONS WHO SUCCESSFULLY COMPLETED THE PROGRAM.

20 (10) AN ON PREMISES LICENSEE WHOSE LICENSE WAS ISSUED OR WHO  
21 WAS THE TRANSFEREE OF MORE THAN A 50% INTEREST IN AN ON PREMISES  
22 LICENSE ON OR AFTER THE COMMENCEMENT OF THE MANDATORY SERVER  
23 TRAINING PROGRAM OR AN ON PREMISES LICENSEE DETERMINED BY THE  
24 COMMISSION TO BE IN NEED OF TRAINING DUE TO THE FREQUENCY OR  
25 TYPES OF VIOLATIONS OF THIS ACT INVOLVING THE SERVING OF ALCO-  
26 HOLIC LIQUOR MUST HAVE EMPLOYED OR PRESENT ON THE LICENSED  
27 PREMISES, AT A MINIMUM, SUPERVISORY PERSONNEL WHO HAVE

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1 SUCCESSFULLY COMPLETED A SERVER TRAINING PROGRAM ON EACH SHIFT  
2 AND DURING ALL HOURS IN WHICH ALCOHOLIC LIQUOR IS SERVED. AN ON  
3 PREMISES LICENSEE MUST KEEP A COPY OF THE RESPONSIBLE VENDOR DES-  
4 IGNATION OR PROOF OF COMPLETION OF SERVER TRAINING ON THE  
5 LICENSED PREMISES TO FACILITATE THE VERIFICATION OF SUCH DESIGNA-  
6 TION BY THE COMMISSION, AGENT OF THE COMMISSION, OR LAW ENFORCE-  
7 MENT OFFICER. AN ON PREMISES LICENSEE DETERMINED BY THE COMMIS-  
8 SION TO HAVE VIOLATED THIS SUBSECTION IS SUBJECT TO REVOCATION,  
9 SUSPENSION, OR OTHER SANCTION AS PROVIDED FOR IN SECTION 903. A  
10 VIOLATION OF THIS SUBSECTION IS NOT A VIOLATION OF SECTION 909.

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

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1       (12) ~~-(9)-~~ The commission may suspend the designation of a  
2 retail licensee as a responsible vendor upon a conviction or  
3 administrative determination of a prohibited sale on the  
4 licensee's licensed premises. The retail licensee losing such a  
5 designation may reapply for designation as a responsible vendor  
6 upon the passage of 12 months from the date of the conviction or  
7 administrative determination of a prohibited sale if the licensee  
8 is not convicted or administratively determined to have engaged  
9 in a prohibited sale on the licensed premises. After the first  
10 instance of a retail licensee losing its designation as a respon-  
11 sible vendor, that retail licensee is not eligible to reapply for  
12 such a designation until an additional 3 months for each subse-  
13 quent conviction or determination. The 3-month time periods are  
14 to be in addition to the 12-month period described in this  
15 subsection.

16       (13) ~~-(10)-~~ A responsible vendor is not considered to be in  
17 violation of the prohibition contained in R 436.1005(4) of the  
18 Michigan administrative code regarding allowing an intoxicated  
19 person to frequent or loiter on the licensed premises unless the  
20 facts demonstrate otherwise.