

MICHIGAN LIQUOR CONTROL CODE OF 1998 (EXCERPT)

Act 58 of 1998

Chapter 8

436.1801 Granting or renewing license; selling, furnishing, or giving alcoholic liquor to minor or to person visibly intoxicated; right of action for damage or personal injury; actual damages; institution of action; notice; survival of action; general reputation as evidence of relation; separate actions by parents; commencement of action against retail licensee; indemnification; defenses available to licensee; rebuttable presumption; prohibited causes of action; section as exclusive remedy for money damages against licensee; civil action subject to revised judicature act.

Sec. 801.

(1) A retail licensee shall not directly, individually, or by a clerk, agent, or servant sell, furnish, or give alcoholic liquor to a minor except as otherwise provided in this act. A retail licensee shall not directly or indirectly, individually or by a clerk, agent, or servant sell, furnish, or give alcoholic liquor to an individual who is visibly intoxicated.

(2) Except as otherwise provided in this section, an individual who suffers damage or who is personally injured by a minor or visibly intoxicated person by reason of the unlawful selling, giving, or furnishing of alcoholic liquor to the minor or visibly intoxicated person, if the unlawful sale is proven to be a proximate cause of the damage, injury, or death, or the spouse, child, parent, or guardian of that individual, has a right of action in his or her name against the person who by selling, giving, or furnishing the alcoholic liquor has caused or contributed to the intoxication of the person or who has caused or contributed to the damage, injury, or death. In an action under this section, the plaintiff has the right to recover actual damages in a sum of not less than \$50.00 in each case in which the court or jury determines that intoxication was a proximate cause of the damage, injury, or death.

(3) An action under this section must be instituted within 2 years after the injury or death. A plaintiff seeking damages under this section shall give written notice to all defendants within 120 days after entering an attorney-client relationship for the purpose of pursuing a claim under this section. Failure to give written notice within the time specified is grounds for dismissal of a claim as to any defendants that did not receive that notice unless sufficient information for determining that a retail licensee might be liable under this section was not known and could not reasonably have been known within the 120 days. In the event of the death of either party, the right of action under this section survives to or against his or her personal representative. In each action by a husband, wife, child, or parent, the general reputation of the relation of husband and wife or parent and child is prima facie evidence of the relation, and the amount recovered by either the husband, wife, parent, or child is his or her sole and separate property. The damages, together with the costs of the action, must be recovered in an action under this section. If the parents of the individual who suffered damage or who was personally injured are entitled to damages under this section, the father and mother may sue separately, but recovery by 1 is a bar to action by the other.

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

(5) Any licensee subject to subsection (2) regarding the unlawful selling, furnishing, or giving of alcoholic liquor to a visibly intoxicated person has the right to full indemnification from the alleged visibly intoxicated person for all damages awarded against the licensee.

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

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

(8) The alleged visibly intoxicated person does not have a cause of action under this section and a person does not have a cause of action under this section for the loss of financial support, services, gifts, parental training, guidance, love, society, or companionship of the alleged visibly intoxicated person.

(9) This section provides the exclusive remedy for money damages against a licensee arising out of the selling, giving, or furnishing of alcoholic liquor to a minor or intoxicated person.

(10) Except as otherwise provided for under this section and section 815, a civil action under subsection (2) against a retail licensee is subject to the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2008, Act 11, Imd. Eff. Feb. 29, 2008 ;-- Am. 2019, Act 131, Imd. Eff. Nov. 21, 2019

Compiler's Notes: Former sections 22 to 22h of Act 8 of 1933 (Ex. Sess.), being MCL 436.22 to 436.22h, and which were repealed by Act 58 of 1998, Eff. Apr. 14, 1998, were formerly known and cited as the "Dram Shop Act."

Popular Name: Dram Shop Act

436.1803 Retailer or applicant for retail license; proof of financial responsibility; naming insurer or surety as defendant prohibited; effect of bankruptcy; policies and bonds to be continued from year to year; cancellation of liquor liability insurance policy; revocation; section inapplicable to special licensee or applicant for special license; rules.

Sec. 803.

(1) Before the renewal or approval and granting of a retail license, a retail licensee or applicant for a retail license shall file with the commission proof of financial responsibility providing security for liability under section 801(2) of not less than \$50,000.00. The proof of financial responsibility may be in the form of cash, unencumbered securities, a policy or policies of liquor liability insurance, a constant value bond executed by a surety company authorized to do business in this state, or membership in a group self-insurance pool authorized by law that provides security for liability under section 801.

(2) A licensee may furnish proof of financial responsibility that exceeds the requirements of this section.

(3) An insurer under a policy or policies of liquor liability insurance or a surety under a bond must not be named as a defendant in an action brought against the insured or bonded licensee for liability under section 801. Bankruptcy of the insured does not discharge an insurer or surety under this section from liability. Insurance policies and bonds issued for purposes under this section must continue from year to year unless sooner canceled by the insurer.

(4) An insured retail licensee shall not cancel a liquor liability insurance policy except upon 30 days' prior written notice to the commission and unless new proof of financial responsibility complying with this section is procured by the retail licensee and delivered to the commission before the expiration of the 30-day period. The commission shall revoke the license of a retail licensee that violates this subsection.

(5) This section does not apply to a special licensee or applicant for a special license.

(6) The commission shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement and enforce this section.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2016, Act 105, Eff. Aug. 1, 2016 ;-- Am. 2019, Act 131, Imd. Eff. Nov. 21, 2019

Compiler's Notes: Former sections 22 to 22h of Act 8 of 1933 (Ex. Sess.), being MCL 436.22 to 436.22h, and which were repealed by Act 58 of 1998, Eff. Apr. 14, 1998, were formerly known and cited as the "Dram Shop Act."

Popular Name: Dram Shop Act

Admin Rule: R 436.2001 et seq. of the Michigan Administrative Code.

436.1805 Suit to enforce liability when service of process not effected; affidavit; service upon commission in duplicate; return; copy served on defendant; hearing; duty of commission.

Sec. 805.

If an action is instituted against a retailer as defendant in any court of competent jurisdiction to enforce the liability provided in section 801 and service of process has not been effected in the manner provided for by law, and either the sheriff or constable to whom process has been delivered for service shall make return that he or she has not been able to serve the defendant for a period of 30 days, in which period he or she has made 3 or more attempts to serve the defendant at his or her residence or place of business, or the plaintiff or another person with knowledge of the facts files an affidavit in the cause stating that the defendant has ceased to be a resident of the state of Michigan or has been absent from the state for a continuous period of 6 months, then it shall be competent for the

plaintiff to cause service of process to be made upon the defendant by service of the process upon the commission, the liability for which suit is brought arose during the period in which the defendant was a licensed retailer and was insured under the provisions of section 803. Such service of process shall be made in duplicate on the commission, and return showing such service shall be made to the court. The commission shall mail a copy of the process served upon it to the defendant at the address shown in the consent to service of process, and shall immediately transmit to the clerk of the court in which the action is pending an acknowledgment of the mailing of the copy of that process by the commission to the defendant. Whenever the foregoing provisions of this section have been complied with, the court may proceed to hear and determine the matter as fully and effectually as though the defendant retailer had been personally served with process within the jurisdiction of the court. The commission shall also notify the insurer under the liability policy of the defendant, on file with the commission, that the commission has received service of that process, stating the names of the parties to the action and the court in which the action is pending. If the defendant retailer is deceased, service of process may be made upon the executor or administrator of the deceased defendant by service on the commission, in an action in which that service would be authorized by this section upon the defendant if he or she were living, in the manner provided in this section.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

Compiler's Notes: Former sections 22 to 22h of Act 8 of 1933 (Ex. Sess.), being MCL 436.22 to 436.22h, and which were repealed by Act 58 of 1998, Eff. Apr. 14, 1998, were formerly known and cited as the "Dram Shop Act."

Popular Name: Dram Shop Act

436.1807 Insurer to file notice of termination or cancellation of contract or policy; effective date.

Sec. 807.

The insurer shall file with the commission, at Lansing, Michigan, at least 30 days before the effectiveness of any termination or cancellation of the contract or policy, a notice giving the date at which it is proposed to terminate or cancel the contract or policy. Any termination of the contract or policy shall not be effective as far as the insured covered by the policy is concerned until 30 days after such notice of the proposed termination or cancellation is received by the commission.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

Compiler's Notes: Former sections 22 to 22h of Act 8 of 1933 (Ex. Sess.), being MCL 436.22 to 436.22h, and which were repealed by Act 58 of 1998, Eff. Apr. 14, 1998, were formerly known and cited as the "Dram Shop Act."

Popular Name: Dram Shop Act

436.1809 Payment of judgment and costs; time; failure or neglect to pay judgment and costs; punitive damages; action against insurer.

Sec. 809.

Except as otherwise provided for by law or the Michigan court rules, when an action for damages brought under this act has been reduced to a judgment, the insurer shall, within 90 days from the date of the judgment, pay the judgment together with the costs in full, unless the judgment has been paid or settled by the insured. If the insurer fails or neglects to pay the judgment and costs within 90 days, it shall be subject to punitive damages in the amount of \$1,000.00, in addition to the amount of the judgment and interest on the judgment. The amount of the judgment, with interest on the judgment, and the punitive damages provided for in this section may be recovered by the person or persons entitled to damages under the judgment in an action against the insurer in any court of competent jurisdiction in this state.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

Compiler's Notes: Former sections 22 to 22h of Act 8 of 1933 (Ex. Sess.), being MCL 436.22 to 436.22h, and which were repealed by Act 58 of 1998, Eff. Apr. 14, 1998, were formerly known and cited as the "Dram Shop Act."

Popular Name: Dram Shop Act

436.1811 Insurance policy; coverage; conditions.

Sec. 811.

The insurance policy described in this chapter shall cover the liability imposed by section 801 and shall contain the following conditions:

That no condition, provision, stipulation or limitation contained in the policy, or any other endorsement thereon, shall relieve the insurer from liability (within the statutory limits provided by section 803 of the Michigan liquor control code of 1998), for the payment of any claim for which the insured may be held legally liable under section 801 of said act.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 1998, Act 416, Imd. Eff. Dec. 21, 1998

Compiler's Notes: Former sections 22 to 22h of Act 8 of 1933 (Ex. Sess.), being MCL 436.22 to 436.22h, and which were repealed by Act 58 of 1998, Eff. Apr. 14, 1998, were formerly known and cited as the "Dram Shop Act."

Popular Name: Dram Shop Act

436.1813 False statement or breach of authority; cancellation of insurance.

Sec. 813.

No false statement or breach of authority or act or omission on the part of the insured shall vitiate this insurance, unless the intention of the insured to conceal a hazard of perpetrating fraud is proven; and this policy cannot be cancelled by the insured or the company without first giving thirty days' written notice to the commission in Lansing, Michigan.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

Compiler's Notes: Former sections 22 to 22h of Act 8 of 1933 (Ex. Sess.), being MCL 436.22 to 436.22h, and which were repealed by Act 58 of 1998, Eff. Apr. 14, 1998, were formerly known and cited as the "Dram Shop Act."

Popular Name: Dram Shop Act

436.1815 Adherence to responsible business practices as defense; compensation of employee on commission basis.

Sec. 815.

(1) In defense of a civil action under section 801, a retail licensee may present evidence that, at the time of the selling, giving, or furnishing of the alcoholic liquor, the retail licensee was adhering to responsible business practices. Responsible business practices are those business policies, procedures, and actions which an ordinarily prudent person would follow in like circumstances. The compensating of an employee of an on-premises retail licensee on a commission basis constitutes an unreasonable business practice for purposes of this section.

(2) The compensation of an employee of an on-premises retail licensee shall not be on a commission basis.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998

Compiler's Notes: Former sections 22 to 22h of Act 8 of 1933 (Ex. Sess.), being MCL 436.22 to 436.22h, and which were repealed by Act 58 of 1998, Eff. Apr. 14, 1998, were formerly known and cited as the "Dram Shop Act."

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