

HOUSE BILL NO. 5242

July 01, 2021, Introduced by Reps. Garza and Rabhi and referred to the Committee on Government Operations.

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
by amending section 801 (MCL 436.1801), as amended by 2019 PA 131.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 801. (1) A retail licensee shall not directly,
2 individually, or by a clerk, agent, or servant sell, furnish, or
3 give alcoholic liquor to a minor except as otherwise provided in
4 this act. A retail licensee shall not directly or indirectly,
5 individually or by a clerk, agent, or servant sell, furnish, or

1 give alcoholic liquor to an individual who is visibly intoxicated.

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

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

1 reputation of the relation of ~~husband and wife~~ **spouses** or parent
2 and child is prima facie evidence of the relation, and the amount
3 recovered by either the husband, wife, parent, or child is his or
4 her sole and separate property. The damages, together with the
5 costs of the action, must be recovered in an action under this
6 section. If the parents of the individual who suffered damage or
7 who was personally injured are entitled to damages under this
8 section, the father and mother may sue separately, but recovery by
9 1 is a bar to action by the other.

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

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

19 (6) All defenses of the alleged visibly intoxicated person or
20 the minor are available to the licensee. In an action alleging the
21 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, is a defense to the
26 action.

27 (7) There is a rebuttable presumption that a retail licensee,
28 other than the retail licensee who last sold, gave, or furnished
29 alcoholic liquor to the minor or the visibly intoxicated person,

1 has not committed any act giving rise to a cause of action under
2 subsection (2).

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

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

12 (10) Except as otherwise provided for under this section and
13 section 815, a civil action under subsection (2) against a retail
14 licensee is subject to the revised judicature act of 1961, 1961 PA
15 236, MCL 600.101 to 600.9947.

16 Enacting section 1. This amendatory act does not take effect
17 unless Senate Joint Resolution ____ or House Joint Resolution ____
18 (request no. 02344'21) of the 101st Legislature becomes a part of
19 the state constitution of 1963 as provided in section 1 of article
20 XII of the state constitution of 1963.