

# Liquor Licensees

## Avoiding Consequences of Negative Employee Actions

By Teri L. Quimby

Alcoholic beverage regulation holds a unique place in both American and Michigan history and has been the subject of not one, but two, amendments to the U.S. Constitution. With Michigan's borders on the Great Lakes and its proximity to Canada, the state played a significant role under the Eighteenth and Twenty-first amendments.

Possession of even small quantities of alcohol in Michigan during Prohibition was a felony. Michigan's strict laws gained national attention.<sup>1</sup> On October 28, 1928, Etta May Miller was arrested for liquor law violations after she allegedly sold two pints



During Prohibition, Etta May Miller allegedly sold two pints of moonshine whisky and was sentenced to life under Michigan's criminal code, the "life-for-a-pint" law.

of moonshine whisky. Miller became the first woman sentenced to life for alcohol-related offenses under the state's criminal code, the "life-for-a-pint" law.<sup>2</sup> The Michigan Supreme Court found error and reversed her conviction in 1930.<sup>3</sup>

Fast forward to April 10, 1933, when Michigan became the first state to ratify the Twenty-first Amendment. Other states soon followed, and Prohibition ended with the repeal of the Eighteenth Amendment on December 5, 1933. Regulation of alcohol—not prohibition—became the preferred approach.

### Licensees have thousands of employees; each one may affect the license

Over the years, the Michigan Liquor Control Commission has issued thousands of liquor licenses. Currently, the number of active retail licenses exceeds 16,000. These retail licensees employ thousands of people at the many restaurants, hotels, bars, stores, entertainment venues, and other businesses that sell or serve alcohol. The 600 or so small winemakers, micro brewers, and small distillers, along with the many tasting rooms, add even more employees working in this regulated industry. Most other businesses are not faced with serious consequences triggered by the actions of a single employee.<sup>4</sup> However, a business with a liquor license faces an abrupt change in fortune including fines, a lengthy suspension of the license, or even a revocation based on the actions of a single employee, which can result in civil and criminal liability for violating the Michigan Liquor Control Code. With a workforce of 14.4 million in the U.S., the restaurant industry is the second-largest private-sector employer.<sup>5</sup> The fact that employee turnover rate in the restaurants-and-accommodations sector was 72.1 percent in 2015 only exacerbates the problem.<sup>6</sup>

### Commission authority

Article IV, Section 40, of the Michigan Constitution permitted establishment of a Liquor Control Commission. The commission was established under MCL 436.1209, and through powers enumerated under MCL 436.1201, granted the "sole right, power, and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within the state, including the manufacture, importation, possession, transportation and sale thereof."

While all five liquor control commissioners are appointed by the governor, two are designated as hearing commissioners and are tasked with presiding over hearings involving, and deciding, violations of the code and administrative rules. The other three commissioners administer the provisions of the code relating to licensing, purchasing, enforcement, merchandising, and distribution. The administrative commissioners also act as an appeal board for the decisions rendered by the hearing commissioners as well as for its own licensing decisions, and any other final action of the commission.

### Violations and sanctions

Violations of the code and administrative rules range from the seemingly minor, such as failure to properly display a license, to those more severely sanctioned, such as sales to minors or visibly intoxicated persons. A list of common violations can be found on the commission website.<sup>7</sup> Nonsufficient checks written to the state are a persistent problem and a violation of the commission's rules, resulting in unnecessary costs

## Fast Facts:

Most businesses are not faced with serious implications caused by one act of one employee; however, a business with a liquor license can face an abrupt change in fortune while serving a lengthy suspension of the license, or even a revocation.

In 2015, a total of 2,005 violations were submitted to the Michigan Liquor Control Commission, with 1,827 licenses penalized as follows: 3 revocations, 26 suspensions, and 1,821 fines.

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to the state and taxpayers.<sup>8</sup> The commission has sanctioned a licensee with a three-day suspension for habitually writing bad checks.<sup>9</sup> It is not uncommon for a licensee to argue that an employee did not hang a newly renewed license, did not pay attention while making a sale to a minor even though identification was presented, or did not make a bank deposit in a timely manner resulting in bounced checks.

A licensee is exposed to violations when the commission staff or law enforcement are refused entry into licensed premises, or customers are allowed on the premises after the legal selling hours of alcohol. The explanation that an employee allowed friends or regular customers to stay does not absolve the licensee of responsibility.

Certain conduct is allowed only with commission approval, such as sales on Sunday for all retailers. For on-premise retailers, sales in outdoor service areas, dancing, entertainment, or topless activity require approval. Failure to submit required applications may result in fines or suspension or revocation of a license.

A warning ticket may be issued for lesser violations, especially for a first-time offense, and when public policy does not indicate otherwise (such as with sales to minors or visibly intoxicated individuals). Other offenses or repeated offenses can be expected to result in written violations.

Violation hearings held in 2015 totaled 729. This represents 2,005 submitted violations, with 1,827 licenses penalized as follows: 3 revocations, 26 suspensions, and 1,821 fines. Only 93 cases were dismissed. In addition to these violation hearings, the administrative commissioners held 12

“penalty” hearings; any licensee with three sales to minors or intoxicated individuals within 24 months receives a suspension or revocation.<sup>10</sup> This commission has issued suspensions for up to 90 days when the facts of the case warrant such a lengthy sanction.<sup>11</sup>

### Compliance checklist

The regulator's goal is complying with the law, not imposing punitive sanctions for violations. There are certain steps an employer can take to maintain compliance with the code and administrative rules.

#### Renew on time

If the client already holds a license, make sure a timely and sufficient application for renewal is made before the annual expiration date of April 30. Exercise care when delegating this task, as it may result in cancellation of the license if not performed in a timely manner. The code does not allow for reinstatements once a cancellation has taken place.

#### Train employees to prevent violations for sales to minors or visibly intoxicated persons and other illegal sales

Lengthy suspensions, or even a revocation, can result from one or more of these violations. With a liquor license comes



great responsibility. When a violation occurs and a penalty is assessed, the business's reputation can suffer as well as business income. The law requires an on-premise licensee to offer proof that it has employed or has present on the licensed premises, *at a minimum*, supervisory personnel during all hours in which alcoholic liquor is served who have successfully completed a server-training program approved by the commission.<sup>12</sup> Training is widely available. Licensees may want to consider the benefits of exceeding the minimum requirement and training all employees on all shifts. Periodic formal training, however, is only one part. Thorough and regular training of employees, including internal "compliance check" operations similar to those conducted by law enforcement and commission staff, may be the real key to success. Well-written policies may also benefit the employee and the business. Employee mistakes or lack of training are frequently cited as reasons for violations. Unfortunately, those excuses are not sufficient for a complaint to be dismissed or adjudicated without penalty.

#### Maintain orderly business documents

The commission may issue an emergency suspension order.<sup>13</sup> One of the situations in which the commission may take this action is when it has reason to believe someone other than the approved licensee owns or operates a business. At a minimum, it is reasonable to expect a violation for such activity.<sup>14</sup> The code and other statutes pertaining to governance of businesses require disclosures of organizational changes such as shareholders or officers.<sup>15</sup> Depending on the nature of the change, the commission's approval may be needed for continued use of the license. The code also requires licensees to be authorized to do business in Michigan and be in good standing with the Bureau of Corporations, Securities & Commercial Licensing.<sup>16</sup> Dissolution of the business entity prevents a licensee from renewing or transferring a liquor license. The licensee should ensure that this paperwork is filed annually and timely—especially if entrusting another to do it—to avoid possible suspensions or other action.

#### Maintain orderly premises

The licensee should expect violations if the employees, management team, or security do not take appropriate actions when illegal activities occur on the licensed premises, including incidents involving drugs, weapons, or fights.<sup>17</sup>

## Conclusion

A licensee clearly remains responsible for any acts of clerks, agents, servants, or employees under MCL 436.1917. One distracted clerk or a new employee making one sale to a minor could result in a license being suspended or even revoked in addition to fines. If your client is entrusting operations of his or her business—and liquor license—to an employee, make sure he or she understands the consequences. ■



*Teri L. Quimby was appointed to the Michigan Liquor Control Commission in 2011 by Governor Snyder and reappointed for another four years in 2015. She has been a member of the State Bar of Michigan since 1989 and is also licensed in Illinois. In addition to her background on regulatory issues concerning the environment, utilities, commerce, and alcoholic beverages, she also has local government experience as a previously elected official.*

## ENDNOTES

1. *Prohibition: From and After*, TIME Magazine (January 14, 1929) <<http://content.time.com/time/magazine/article/0,9171,737191,00.html>>. All websites cited in this article were accessed October 5, 2016.
2. *Life for Pint Woman is Freed After One Year*, Chicago Tribune (March 12, 1930), p. 15 <<http://archives.chicagotribune.com/1930/03/12/page/15/article/life-for-pint-woman-is-freed-after-one-year>>.
3. *People v Miller*, 250 Mich 72; 229 NW 475 (1930).
4. MCL 436.1917.
5. National Restaurant Association, *2016 Restaurant Industry Forecast* <<http://www.restaurant.org/News-Research/Research/Forecast-2016>>.
6. National Restaurant Association, *Employee turnover rate tops 70% in 2015* <<http://www.restaurant.org/News-Research/News/Employee-turnover-rate-tops-70-in-2015>>.
7. Department of Licensing and Regulatory Affairs, *Common Liquor Code Violations* <[https://www.michigan.gov/documents/CIS\\_LCC\\_violations\\_80218\\_7.pdf](https://www.michigan.gov/documents/CIS_LCC_violations_80218_7.pdf)>.
8. Mich Admin Code, R 436.1059.
9. *In re Show Cause Hearing Order for CM II, LLC*, DLARA Liquor Control Commission Order (No. 718380), issued February 18, 2014.
10. MCL 436.1903(1).
11. *In re Penalty Hearing Order for Brownstown Liquor Nancy, LLC*, DLARA Liquor Control Commission Order (No. 231255), issued October 13, 2016.
12. MCL 436.1501(1).
13. MCL 24.292(2).
14. Mich Admin Code, R 436.1041.
15. MCL 436.1525(1) and MCL 450.1911.
16. MCL 436.1535.
17. Mich Admin Code, R 436.1011.