

## Michigan

### General Overview of the Law

#### Dramshop Liability

##### *First-Party*

Michigan does not recognize an action for first-party liability brought by an injured intoxicated person. MCL 436.1801(9). Similarly, no derivative claims run to others as a result of loss of the intoxicated person's financial support, services, gifts, parental training, guidance, love, society, or companionship.

##### *Third-Party*

Michigan does recognize an action brought by a third party injured by an adult who was served while visibly intoxicated or by a minor who was served alcohol. MCL 436.1801(3). This includes both negligence torts and intentional torts (e.g. bar fight). *Weiss v Hodge*, 223 Mich App 620; 567 NW2d 468 (1997).

#### Social Host Liability

Social host liability in Michigan is a creature of common law and an application of Michigan's Liquor Control Act, MCL 436.1101 *et seq* and laws prohibiting selling or furnishing alcohol to minors, MCL 436.1701. See e.g. *Longstreth v Gensel*, 423 Mich 675; 377 NW2d 804 (1985).

##### *First Party*

**Minors.** Michigan does recognize an action for liability brought by a minor who was served by a social host. *Longstreth v Gensel*, 423 Mich 675; 377 NW2d 804 (1985). Comparative negligence principles apply. *Id.*

**Adults.** Michigan does not recognize an action for social host liability brought by an adult against his or her social host.

##### *Third Party*

**Minors.** Michigan does recognize an action for liability brought by a Plaintiff injured by an *minor* who was served by a social host. *Longstreth v Gensel*, 423 Mich 675; 377 NW2d 804 (1985).

**Adults.** Michigan does not recognize an action for social host liability brought by a Plaintiff who was injured by an intoxicated adult guest who was served by a social host. *Id.*

### Key Statues & Regulations

#### Dramshop Statute

Michigan's Dramshop Statute is codified at MCL 436.1801. It applies to "retail licensees" which generally covers all entities licensed to serve alcoholic beverages. The statute provides in relevant part:

(3) ... 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 ...

**Exclusive Remedy.** A claim under the Dramshop Act is the exclusive remedy against a retail liquor licensee for providing alcohol to minor or visibly intoxicated person. MCL 436.1801(10).

**Name and Retain.** The Act requires that the alleged visibly intoxicated person be named in the action and retained until the conclusion of the action. MCL 436.1801(5). The purpose of this requirement is to prevent fraud and collusion by ensuring that the alleged intoxicated person has a direct financial stake in the litigation. If the alleged intoxicated person's identity is unknown, Plaintiff may maintain the action upon a showing of due diligence in attempting to identify the alleged intoxicated person.

The name and retain provision of the Act does not preclude settlement through Michigan's Case Evaluation process. *Shay vs. JohnKAL, Inc.*, 437 Mich. 394; 471 NW2d 551 (1991).

**Defenses.** The retail liquor licensee is entitled to all defenses had by the alleged intoxicated person. MCL 436.1801(7).

Proof that the licensee demanded identification and the minor presented genuine appearing identification (that showed him or her to be over 21) is a defense. MCL 436.1801(7).

**Indemnification.** A retail liquor licensee is entitled to full indemnification from the alleged visibly intoxicated person for all damages awarded against the licensee. MCL 436.1801(6).

**Multiple Licensees Presumption.** When multiple retail licensees furnished alcohol to the minor or visibly intoxicated person, there is a rebuttable presumption that the licensees, other than the last licensee, have not committed any act giving rise to Dramshop liability. MCL 436.1801(8). A plaintiff may rebut this presumption by clear and convincing evidence to the contrary.

## Notable Cases

*Reed v Breton*, 475 Mich. 531; 1718 NW2d 77 (2006) interpreted the Dramshop Act as requiring objective manifestations of actual visual intoxication. The Court held that circumstantial evidence, such as blood alcohol levels, time spent drinking, or the condition of other drinkers, cannot alone as a predicate for expert testimony demonstrate that the person was *visibly* intoxicated because it does not show what behavior, if any, a person *actually manifested* to a reasonable observer.

## Statute of Limitations

**Dramshop.** Dramshop actions are governed by a two year statute of limitations. MCL 436.1801(4).

**Social Host.** A claim for social host liability is governed by a three year statute of limitations. MCL 600.5805(10).

## **Notice**

A Dramshop Plaintiff must give written notice to all Defendants within 120 days after entering into an attorney-client relationship for pursuing a Dramshop claim. MCL 436.1801(4). Failure to give notice is grounds for dismissal and does not requiring any showing of prejudice. *Brown v JoJo-Ab, Inc.* 191 Mich App 208, 212; 477 NW2d 121 (1991).

## **Comparative Fault**

Michigan is a modified comparative fault state. MCL 600.2959. A judgment is reduced by the Plaintiff's share of comparative fault as determined by the fact finder. If the Plaintiff's percentage of fault is greater than the aggregate fault of the other parties and non-parties, then the Plaintiff is precluded from recovering non-economic damages. MCL 600.2959.

In certain circumstances, a plaintiff's recovery is barred if he or she actively contributes to the intoxication of the visibly intoxicated person. *Arciero v Wicks*, 150 Mich App 522; 389 NW2d 116 (1986).

Additionally, it is an absolute defense if the Plaintiff was intoxicated and as a result of this impaired ability was 50% or more of the cause of the event that caused his or her injuries. MCL 600.2955a.

## **Joint and Several Liability/Contribution**

Michigan has generally abolished joint and several liability in favor of "fair share liability" system. The jury or fact finder is tasked with making specific findings regarding the plaintiff's total damages and the percentages of fault of each party (and non-party disclosed as potentially at fault pursuant to Michigan's allocation of fault statute). MCL 600.6304 and MCL 600.2957. Accordingly, as a defendant cannot generally be held liable for damages beyond his or her *pro rata* share, valid contribution claims are rare.

A Defendant remains jointly and severally liable if his or her actions result in the conviction for a crime, an element of which includes gross negligence or a crime involving alcohol (including the operation of a motor vehicle.) MCL 600.6312.

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