

EXCERPT FROM “MICHIGAN LIQUOR LAW”

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A BRIEF HISTORY OF LIQUOR CONTROL IN MICHIGAN

Alcohol is inextricably intertwined into the history of Michigan. Before becoming a U.S. territory, Michigan served as a home to the trading posts that emerged as sordid examples of the manner through which alcohol could be used to manipulate the Native Americans.² Throughout its first 150 years, the state’s legislature was a battleground for liquor-related debates; three times, the state approved prohibition.³ Today, Michigan remains at the forefront of a national debate over a state’s right to control the sale of liquor.⁴

A. Territorial Laws and Liquor Control through the Eighteenth Amendment

Michigan’s grapple with intoxicating liquor began as a response to an “Indian” population that spent “one half the year starving, and the other half intoxicated”⁵ These problems arose in large part as a result of local traders’ use of alcohol to manipulate and defraud the native population.⁶ After local governments failed to respond with formal restraints on liquor

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² THOMAS MCINTYRE COOLEY, MICHIGAN: A HISTORY OF GOVERNMENTS 51, 144–45 (2009).

³ See MICH. CONST. of 1850, art. 4 § 47; Public Act 161 (Mich. 1917).

⁴ See, e.g., *Granholm v. Heald*, 544 U.S. 460 (2005). *Granholm v. Heald* examined the states’ power, under the Twenty-first Amendment, to control direct-to-consumer wine shipments from out-of-state wine sellers. For further information on the case and its ramifications on state liquor interests, see M. Rotter & Joshua S. Stambaugh, *What’s Left of the Twenty-First Amendment?*, 6 CARDOZO PUB. L. POL’Y & ETHICS J. 601 (2008); Stuart Banner, *Granholm v. Heald: A Case of Wine and a Prohibition Hangover*, 2005 CATO SUP. CT. REV. 263.

⁵ COOLEY, *supra* note 2, at 144–45.

⁶ See *id.* at 51; see also SILAS FARMER, THE HISTORY OF DETROIT AND MICHIGAN 837 (2009) (quoting a missionary to the Detroit region who noted that “[i]n corrupting the savages, brandy has not been spared.”); John Fitzgibbon, *King Alcohol: His Rise, Reign and Fall in Michigan*, 2

traffic,⁷ Detroit merchants initiated a local covenant; under this covenant, the sale of alcohol was confined to limited locations and Native Americans could receive no more than one glass of alcohol at a time.⁸ Beyond this, few measures were taken to control liquor sales in Michigan until the early 19th century.⁹

1. 1805-1835: Liquor Control in the Michigan Territory

In 1805, Michigan came under the governance of an independent, territory-wide government for the first time in its history.¹⁰ Exercising its newly granted legislative control, the territorial government immediately passed a number of territorial acts. One of these acts laid the first foundation for a structured system of liquor control by instituting a compulsory licensing system that applied to all tavern owners.¹¹ However, because alcohol was widely accepted as a positive facet of daily life throughout North America,¹² this act made no attempt to control the

MICH. HIST. MAG. 737, 737–38 (1918). Although the use of alcohol to defraud Native Americans was not unique to Michigan, the problem was significantly exacerbated in Michigan because of the region’s prosperous and long-lived fur trade. *See Fitzbiggon, supra*, at 737–39.

⁷ *See Fitzgibbon, supra* note 6, at 738; *see also* FARMER, *supra* note 6, at 837.

⁸ *See* FARMER, *supra* note 6, at 837; Fitzgibbon, *supra* note 6, at 773.

⁹ In 1795, the Courts of Quarter Sessions were authorized to license the sale of beer and wine throughout Detroit; however, the license provisions were not enforced. *See* FARMER, *supra* note 6, at 838.

¹⁰ *See* COOLEY, *supra* note 2, at 140. Prior to 1805, Michigan belonged to the Indiana Territory. *Id.*

¹¹ *See* An Act Concerning Ferries, Tavern-keepers, and Retailers of Merchandise, Aug. 29, 1805, in 1 LAWS OF THE TERRITORY OF MICHIGAN 40 (Lansing, W.S. George & Co. 1871) [hereinafter Act of 1805].

¹² THOMAS R. PEGRAM, *BATTLING DEMON RUM* 3, 6–9 (1998). Many citizens believed that water held no nutritional value but their health was benefitted by regular alcohol consumption. *Id.* at 9. Indeed, at the turn of the nineteenth century, many of Detroit’s leading citizens were

manner of sales.¹³ Tavern keepers and retailers retained complete control over the flow of alcohol within the territory until 1815, when a new act banned Sunday liquor sales, as well as sales to minors or Native Americans.¹⁴

In the first twenty years of the nineteenth century, an increase in public awareness of and concern over the effects of “habitual drunkenness” coincided with a growth in the popularity of unsavory local taverns.¹⁵ Throughout the United States, the public’s association of alcohol-related problems with taverns led to legislative attempts to reform existing liquor laws.¹⁶ In

widely recognized as heavy drinkers. FARMER, *supra* note 6, at 838.

¹³ Only three obligations were placed upon tavern keepers: First, they were required to obtain a license. Second, they were required to provide lodging for those who drank at the tavern. Third, they were not permitted to permit or incite riots. *See* Act of 1805 §§ 7, 9, 10, *supra* note 11, at 42–43.

¹⁴ *See* An Act for the Better Regulation of Taverns and Sellers of Spirituous and Fermented Liquors, Feb. 1, 1815, in 1 LAWS OF THE TERRITORY OF MICHIGAN, *supra* note 11, at 201, 201–02 [hereinafter Act of 1815]. Although this act did not define the term “minors,” contemporaneous acts denoted twenty-one years to be the age of majority for men and eighteen years for women. *See, e.g.*, An Act to Adjust the Estates and Affairs of Deceased Persons, Jan. 19, 1811, in 1 LAWS OF THE TERRITORY OF MICHIGAN, *supra* note 11, at 160.

¹⁵ PEGRAM, *supra* note 12, at 7–8, 11. This is not to say that local taverns came into existence during this period; indeed, the taverns had been popular, even highly esteemed, during the colonial era. *Id.* at 7–8. The “growth of unsavory local taverns” is in reference to a tide of less reputable taverns that came to be associated with drunkenness, financial woes, and various social problems. *See* PEGRAM, *supra* note 12, at 7–8, 11. A thorough and fascinating treatment of early American taverns is provided in W. J. RORABAUGH, *THE ALCOHOLIC REPUBLIC: AN AMERICAN TRADITION* chs. 1–2 (1981).

¹⁶ *See* PEGRAM, *supra* note 12, at ch.1 (detailing the reform movements and legislative actions throughout the United States during this period).

Michigan, the territorial government responded to the public's concerns by passing "An Act to Regulate Taverns" in 1819.¹⁷ This act retained compulsory licensing for tavern owners while adding a formalized system of rules and enforcement mechanisms intended to police tavern keepers and regulate the conditions of taverns.¹⁸ Licensing became subject to actual requirements; all applicants had to be "of good moral character" and demonstrate a public need for the license.¹⁹ As under the Act of 1815, tavern keepers were not permitted to sell alcohol to minors or to sell alcohol on Sunday.²⁰ Additionally, gambling was prohibited in locations that sold alcohol and debts to tavern keepers in excess of 10 shillings became uncollectable.²¹ Aimed directly at remedying specific social problems, these requirements were intended not to slow the flow of alcohol, but to limit its detrimental effects on the general public.²²

2. 1835-1850: Statehood to Statewide Prohibition of Alcohol

Under the first statutory regime enacted after Michigan gained statehood, the liquor

¹⁷ See An Act to Regulate Taverns, 1820 Mich. Terr. Laws 68 [hereinafter Act of 1819]. In addition to this act, Detroit passed its own local ordinance governing liquor sales in 1825. This ordinance came in response to "many disorders, riots, and indecencies" and proscribed higher license fees in addition to harsher penalties for violation of the state law. See FARMER, *supra* note 6, at 838.

¹⁸ See Act of 1819 § 1 et seq., 1820 Mich. Terr. Laws 68–72.

¹⁹ Act of 1819 § 2, 1820 Mich. Terr. Laws 69.

²⁰ Act of 1819 §§ 2, 5, 1820 Mich. Terr. Laws 69–70.

²¹ Act of 1819 § 5, 1820 Mich. Terr. Laws 70.

²² See PEGRAM, *supra* note 12, at 10–13. In particular, the public began to associate drunkenness with financial problems during this era. See RORABAUGH, *supra* note 15, at 3–10 (discussing the social problems that began to arise during this era as a result of increased rates of alcohol consumption). Because these restrictions did not apply to non-tavern retailers of liquor, the sale of liquor for off-premises consumption remained unrestricted.

licensing provisions became more thorough.²³ Licenses became mandatory for any individual or business that sold alcoholic beverages for personal consumption.²⁴ To ensure that local retailers explicitly fell within the licensing provisions, classes of permitted license-holders were expanded to include “common victuallers.”²⁵

As with the Act of 1819, gambling on licensed premises,²⁶ sales to minors,²⁷ and sales to Native Americans²⁸ remained prohibited. Regulations on alcohol related debts were strengthened; extending credit over seventy-five cents for alcohol sales became a criminal offense.²⁹ Perhaps the most notable additions to the law related specifically to drunkenness. This act granted municipalities the power to “cut-off” any local drunkards; by written order, the municipality could bar all licensed premises from serving specific individuals.³⁰ Additionally, licensed sellers were liable for criminal sanctions if they “suffer[ed] any person to drink to drunkenness.”³¹

²³ See MICH. REV. STAT. ch. 5 (1838) [hereinafter Act of 1835]. The increased thoroughness of these regulations was, in part, a reaction to the vast growth of the tavern industry. In 1833, the territory averaged one tavern per each thirteen families. See FARMER, *supra* note 6, at 840.

²⁴ Act of 1835 § 3. Sales for personal consumption included any sales in quantities of less than twenty-eight gallons. *Id.*

²⁵ Act of 1835 § 1. Historically, victuallers sold food and provisions. The term also referred to licensed sellers of alcohol. See WEBSTER’S UNABRIDGED DICTIONARY 2120 (1996)

²⁶ Act of 1835 §§ 9, 10.

²⁷ Act of 1835 § 11.

²⁸ Act of 1835 § 12. In reality, the state legislature could not allow Native Americans to purchase or consume alcohol; as of 1834, Congress had banned the sale of liquor to Native Americans. See Trade and Intercourse Act, Ch. 161, 4 Stat. 729, 732 (1834) (repealed 1953).

²⁹ Act of 1835 § 13.

³⁰ Act of 1835 § 15.

³¹ Act of 1835 § 11.

Until 1850, the law remained relatively unchanged, with the exception of one notable amendment in 1845. This amendment established the “local option,” which required each municipality to hold annual referendums on the issue of liquor licenses.³² Every year, voters were granted the right to prohibit renewal of all licenses within the municipality during the subsequent year.³³ At the time, Michigan’s enactment of the local option was unique; it was not until several years later that local option laws became prevalent throughout New England and the Midwest.³⁴ As a result, the local option in Michigan was applauded as a model method of effectuating localized prohibition without the need for a statewide referendum.³⁵

Although enactment of the local option did not create statewide prohibition, it did reflect the ongoing and increasingly fervent debate over prohibition in the northern half of the United States.³⁶ Throughout these states, politicians began gaining widespread support due to their alignment with local prohibitionist groups.³⁷ Simultaneously, the liquor industry funded politicians in these states with the hopes avoiding prohibition through institution of a stricter

³² Act of 1845 §§ 27–29. Prior to 1845, licenses could be granted whenever local officials determined that such licenses were for the “public good.” *See, e.g.*, Act of 1835 § 3.

³³ Act of 1845 §§ 27–29.

³⁴ *See* PEGRAM, *supra* note 12, 37–40.

³⁵ *See* Fitzgibbon, *supra* note 6, at 738. Commentators have noted that this was intended to be an initial step toward statewide prohibition. FARMER, *supra* note 6, at 839.

³⁶ Perhaps because of the prevalence of southern distilleries, states located below the Mason-Dixon line did not experience the same push for prohibition. PEGRAM, *supra* note 12, 38–39. In fact, many northerners believed that a “Rum Power,” created by the southern liquor industry, was secretly funding anti-prohibitionist politicians. *Id.*

³⁷ *See* WILLIS F. DUNBAR & GEORGE S. MAY, MICHIGAN: A HISTORY OF THE WOLVERINE STATE 385–87, 469–71 (1995) (discussing the growth and popularity of the Michigan’s “prohibitionist” politicians during this period); *see also* PEGRAM, *supra* note 12, at ch. 2 (describing the nationwide growth of prohibitionist politicians).

licensing regime.³⁸ Between the years 1845 and 1850, debates over prohibition and licensure remained a constant fixture in the Michigan state capital and throughout the northern United States.³⁹

3. 1850-1920: *The Fight to Prohibit Liquor Sales Throughout Michigan*

In 1850, prohibitionists won the legislative battle in Michigan; the state ratified a new constitution that explicitly forbade the granting of licenses for the sale of intoxicating liquors.⁴⁰ In this regard, Michigan became a pioneer; it was the first state to enact a statewide ban on liquor licenses.⁴¹ Ironically, however, the legislature failed to enact provisions banning the sale of intoxicating liquors without a license.⁴² As a result, liquor sales became largely unregulated in Michigan, creating even greater problems than existed before the constitutional amendment.⁴³ By the time the legislature enacted an “iron-clad” prohibition law in 1855, twelve other northern states had instituted statewide prohibition.⁴⁴

³⁸ Fitzgibbon, *supra* note 6, at 748. While the fears regarding “Rum Power” may have had some basis in truth, many of the breweries that funded these politicians in Michigan were locally based. *Id.*

³⁹ See PEGRAM, *supra* note 12, 39–41; *see also generally* REPORT OF THE PROCEEDINGS AND DEBATES IN THE CONVENTION TO REVISE THE CONSTITUTION OF THE STATE OF MICHIGAN (Lansing, R.W. Ingals 1850) (cataloguing the debates over prohibition and licensure at the 1850 constitutional convention and referencing similar debates over the preceding five years).

⁴⁰ See MICH. CONST. of 1850, art. 4 § 47. The legislature’s decision to prohibit licensure arose largely as a response to “the demands of the multiplied thousands who have petitioned for protection from the blighting curse of the liquor traffic.” S. 32-16, Reg. Sess., at 9 (Mich. 1853).

⁴¹ See PEGRAM, *supra* note 12, 38–39; Fitzgibbon, *supra* note 6, at 748.

⁴² See FARMER, *supra* note 6, at 840–41; Fitzgibbon, *supra* note 6, at 748.

⁴³ See FARMER, *supra* note 6, at 840–41.

⁴⁴ See MICH. COMP. LAWS ch. 52 (1857); FARMER, *supra* note 6, at 840–41; PEGRAM, *supra* note 12, 40. This law was modeled after a similar law passed in Maine. *See* FARMER, *supra* note

Perhaps not surprisingly, iron-clad prohibition laws failed to stymie liquor trafficking in any state; Michigan was no exception.⁴⁵ In Detroit, the law was “openly and flagrantly” defied.⁴⁶ In general, the law lacked public approval and enforcement remained limited outside of municipalities with strong prohibitionist sentiments.⁴⁷ As Michigan historian John Fitzgibbons noted, “no Michigan laws were ever so brazenly defied”; even “judges openly refused to receive complaints against violators.”⁴⁸ After twenty years of unabided prohibition, the legislature realized that they had “fail[ed] to accomplish the result desired” and sought an alternative means of controlling liquor traffic.⁴⁹

Throughout the 1860s and 1870s, almost every state that had adopted prohibition laws began the process of repealing these laws.⁵⁰ Following the example of these states, Michigan adopted the approach to controlling liquor traffic that had been previously proposed as an alternative to prohibition: strict licensure and high levels of taxation. Beginning in 1875, all persons who sold intoxicating liquors in Michigan were required to pay an annual tax, regardless of whether the sale was for personal consumption or at wholesale.⁵¹ As a means of discouraging the sale of alcohol, the legislature set license fees at much higher rates than existed before

6, at 841; Fitzgibbon, *supra* note 6, at 748.

⁴⁵ FARMER, *supra* note 6, at 841 (discussing Michigan); PEGRAM, *supra* note 12, 40–44 (discussing the problems nationwide); Fitzgibbon, *supra* note 6, at 748 (discussing Michigan).

⁴⁶ FARMER, *supra* note 6, at 841.

⁴⁷ *Id.*; see also JOURNAL OF THE SENATE OF THE STATE OF MICHIGAN 148, 158, 192, 210, 228, 243 (Lansing, Hosmer & Kerr 1859) (listing the numerous petitions for repeal of the prohibitory liquor law).

⁴⁸ Fitzgibbon, *supra* note 6, at 749.

⁴⁹ See *People v. Walling*, 18 N.W. 807 (Mich. 1884).

⁵⁰ PEGRAM, *supra* note 12, 50.

⁵¹ MICH. STAT. ch. 28, § 1281 (1882) (enacted 1875).

prohibition in 1850.⁵² With each subsequent reiteration of the liquor control law, the legislature increased these taxes.⁵³ Indeed, by 1918, the tax rates were among the highest in the nation.⁵⁴

Beyond payment of tax and posting of a bond,⁵⁵ the 1875 act and its predecessors added additional licensing requirements. As under pre-prohibition laws, the local government retained the discretion to approve or deny applications for licenses based on each applicant's moral character.⁵⁶ In addition to the personal characteristics of applicants, licenses could not be granted for use in locations that were in a residential district, or within 400 feet of a church or schoolhouse.⁵⁷ With the enactment of a quota system in 1909, a new limitation was imposed: no more than one license could be granted for every 500 persons in a municipality.⁵⁸

Restrictions on the operations of licensed locations saw increased enforcement during the era between 1875 and 1918.⁵⁹ Beyond the earlier prohibitions on gambling in locations that sold alcohol, the legislature enacted bans on entertainment in these locations; music and dancing were

⁵² Prior to the constitutional ban on licenses, a license to sell all forms of intoxicating liquor was \$20. Act of 1845 § 23. A license to sell beer and wine was \$8. Act of 1845 §24. Under the 1875 liquor law, the taxes were raised to \$300 and \$200, respectively. MICH. STAT. ch. 28, § 1281 (1882).

⁵³ *See, e.g.*, MICH. COMP. LAWS § 133.7031 (1915) (A license to sell any intoxicating liquors at wholesale or retail cost \$500. A license to sell at wholesale and retail cost \$800.).

⁵⁴ *See* Fitzgibbon, *supra* note 6, at 749.

⁵⁵ *See* MICH. STAT. ch. 28, § 1282 (1882).

⁵⁶ MICH. COMP. LAWS § 133.7034 (1909) (enacted 1877).

⁵⁷ MICH. COMP. LAWS § 133.7066 (1909) (enacted 1885).

⁵⁸ MICH. COMP. LAWS § 133.7065 (1909); *see also* Ploof v. Twp. Bd. of Bangor, 143 N.W. 3, 4 (noting that the legislature's obvious intent was to reduce the number of taverns in the state).

⁵⁹ Fitzgibbon, *supra* note 6, at 749. Although the Detroit police have been described as "ineffective" during this period, most municipalities saw increased rates of convictions for illegal liquor sales. *See* DUNBAR & MAY, *supra* note 37, at 470.

not permitted in any location that served or sold alcohol.⁶⁰ Sunday sales also remained prohibited, and no person could enter a location that sold alcohol between the hours of 9:00am and 10:00pm.⁶¹ As a means of enforcing these provisions, local law enforcement officers were required to visit each licensed location once a week.⁶²

The prohibition of alcohol sales to certain categories of persons under the 1877 laws remained generally the same as the prohibitions under the pre-1850 laws. Alcohol could not be sold to minors, Native Americans, intoxicated persons, or habitual drunkards.⁶³ Additionally, retailers could not sell to persons after receiving a written request that the person not be served.⁶⁴ The degree of liability for breaking these laws became increasingly harsh: in addition to criminal sanctions, civil liability was explicitly permitted, even for emotional harm caused to family members.⁶⁵

Increasingly harsh liquor control laws symbolized a growing movement through the nation: a campaign for nationwide prohibition. In the first decade of the twentieth century, the

⁶⁰ MICH. COMP. LAWS § 133.7044 (1915) (gambling); MICH. COMP. LAWS § 133.7046 (1915) (amusement).

⁶¹ MICH. COMP. LAWS § 133.7047 (1915). Under this law, tavern owners faced liability for entering their own tavern during restricted times. *See People v. Tolman*, 111 N.W. 772, 773 (Mich. 1907).

⁶² MICH. COMP. LAWS § 133.7052 (1915).

⁶³ MICH. COMP. LAWS §§ 133.7043, .7049 (1915). Knowledge of a person's status as a habitual drunkard was not necessary for conviction. *McMahon v. Dumas*, 56 N.W. 13, 14 (Mich. 1893).

⁶⁴ MICH. COMP. LAWS § 133.7043 (1915). These written requests could be issued by the individual's immediate family members, employer, or by the municipality. § 133.7043.

⁶⁵ MICH. COMP. LAWS § 133.7049 (1915); *see also Lucker v. Liske*, 70 N.W. 421, 422 (Mich. 1897) (allowing a married woman to recover for injury to her feelings caused by her husband's behavior after he became intoxicated at defendant's tavern).

American Anti-Saloon League began working throughout the United States in an effort to stir up anti-alcohol sentiments.⁶⁶ During this time, Michigan became a prime campaigning state for the Anti-Saloon League's efforts toward eventual nationwide prohibition.⁶⁷ Emphasizing moral concerns and denouncing saloons as the "evil twins" of brothels, the Anti-Saloon League gained overwhelming support throughout Michigan.⁶⁸ In 1916, state voters proposed and passed an amendment to the state constitution; beginning May 1st, 1918, Michigan once again became a dry state.⁶⁹

Less than two years later, on January 17th, 1920, the Eighteenth Amendment to the U.S. Constitution came into effect, and the United States became a dry nation.⁷⁰ For the next thirteen years, federal law dictated "no person shall manufacture, sell, barter, transport, import, export, deliver, or furnish any intoxicating liquor."⁷¹ Therefore, until ratification of the Twenty-first Amendment in 1933, the sale of intoxicating liquor remained prohibited in every state throughout the nation.

⁶⁶ DUNBAR & MAY, *supra* note 37, at 470.

⁶⁷ *Id.*

⁶⁸ See ANDREW BARR, DRINK: A SOCIAL HISTORY OF AMERICA 328 (1999); see also DUNBAR & MAY, *supra* note 37, at 470. By 1910, thirty-six Michigan counties had exercised the local option and voted to prohibit all liquor licenses. BRUCE A. RUBENSTEIN & LAWRENCE E. ZIEWACZ, MICHIGAN: A HISTORY OF THE GREAT LAKES STATE 212 (2008).

⁶⁹ Public Act 338, 1917 Mich. Pub. Acts page 820; DUNBAR & MAY, *supra* note 37, at 470.

⁷⁰ See U.S. CONST. amend XVIII (repealed 1933).

⁷¹ See The Volstead Act, ch. 85, 41 Stat. 305 (1919) (repealed 1933). For an in-depth discussion of nationwide prohibition, see generally PEGRAM, *supra* note 12.