

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1
2

L.D. 2080
(Filing No. H- 635)

3
4
5
6

STATE OF MAINE
HOUSE OF REPRESENTATIVES
112TH LEGISLATURE
SECOND REGULAR SESSION

7
8
9

COMMITTEE AMENDMENT "^A" to H.P. 1478, L.D.
2080, Bill, "AN ACT to Create the Maine Liquor Lia-
bility Act."

10
11
12
13

Amend the Bill in section 2 in that part desig-
nated "§1403." by striking out all of subsection 6
(page 3, lines 1 to 4 in L.D.) and inserting in its
place the following:

14
15
16
17
18

'6. Visibly intoxicated. "Visibly intoxicated"
means a state of intoxication accompanied by a per-
ceptible act, a series of acts or the appearance of
an individual which clearly demonstrates a state of
intoxication.'

19
20
21
22
23

Further amend the Bill in section 2 in that part
designated "§1408." in subsection 2 in the last line
(page 5, line 28 in L.D.) by inserting after the un-
derlined word "actions" the following: 'subject to
the damage limits of section 1409'

24
25
26

Further amend the Bill in section 2 by striking
out all of that part designated "§1409." and insert-
ing in its place the following:

27

'§1409. Limit on awards

28
29
30
31
32
33
34
35
36

1. Limitation on damages for losses other than
expenses for medical care and treatment. In actions
for damages permitted by this Act, the claim for and
award of damages for all losses, except expenses for
medical care and treatment, including devices or
aids, against both a defendant and defendant's em-
ployees and agents, may not exceed \$250,000 for any
and all claims arising out of a single accident or
occurrence.

COMMITTEE AMENDMENT "A" to H.P. 1478, L.D. 2080

1 2. Multiple claimants. When the amount for all
2 losses, except expenses for medical care and treat-
3 ment, including devices and aids, awarded to or set-
4 tled for multiple claimants, exceeds the limit im-
5 posed by this section, any party may apply to the Su-
6 perior Court for the county where the defendant is
7 located to allocate each claimant his equitable share
8 of the total, limited as required by this section.

9 A. Any award by the court in excess of the maxi-
10 mum liability limit specified by subsection 1
11 shall be automatically abated by operation of
12 this section to the maximum limit of liability.'

13 Further amend the Bill in section 2 by striking
14 out all of that part designated "§1418." and insert-
15 ing in its place the following:

16 '§1418. Informal evaluation

17 The joint standing committee of the Legislature
18 having jurisdiction over legal affairs shall conduct
19 an informal evaluation of this Act, to be completed
20 within 2 years of its effective date. The evaluation
21 shall address the effectiveness of the Act in achiev-
22 ing its stated purposes.

23 §1419. Approval of alcohol server education courses

24 1. Approval of alcohol server education courses.
25 The Commissioner of Public Safety shall approve alco-
26 hol server education courses which meet the criteria
27 developed under this section.

28 2. Advisory committee; appointment. The commis-
29 sioner shall appoint the Server Education Advisory
30 Committee consisting of 7 members, to include:

31 A. A representative of the faculty at the Maine
32 Criminal Justice Academy;

COMMITTEE AMENDMENT "A" to H.P. 1478, L.D. 2080

- 1 B. A representative of the Bureau of Liquor En-
2 forcement;
- 3 C. A representative of the Department of the At-
4 torney General;
- 5 D. A representative of the Department of Human
6 Services;
- 7 E. A representative of the Department of Educa-
8 tional and Cultural Services;
- 9 F. A representative of a statewide liquor li-
10 cencee organization; and
- 11 G. A representative of a statewide trial lawyers
12 organization.
- 13 3. Advisory committee; course criteria. The ad-
14 visory committee shall determine specific criteria
15 which an alcohol server education course must contain
16 to receive approval. The specific criteria shall be
17 based on and include the following.
- 18 A. The instructors of the program possess the
19 relevant skills to provide instruction.
- 20 B. The course provides instruction and the de-
21 velopment of skills in the following subject mat-
22 ters:
- 23 (1) Identification of intoxicated individu-
24 als and minors;
- 25 (2) Intervention to prevent excessive con-
26 sumption of alcohol by such methods as
27 serving food and encouraging the consumption
28 of nonalcoholic beverages;
- 29 (3) Making consumers aware of their condi-
30 tion and their responsibility for driving in
31 an intoxicated condition and providing al-

COMMITTEE AMENDMENT "A" to H.P. 1478, L.D. 2080

- 1 ternate transportation when available;
- 2 (4) Knowledge of state laws relating to the
3 sale and distribution of alcohol and the le-
4 gal responsibilities of servers and consum-
5 ers;
- 6 (5) Knowledge of the effect of alcohol by
7 volume and timing of intake in relation to
8 an individual's weight;
- 9 (6) Examination of proof of age identifica-
10 tion and methods of detecting false or al-
11 tered age identification documents;
- 12 (7) Policies and practices to prevent the
13 sale or service of alcohol to minors and
14 visibly intoxicated individuals; and
- 15 (8) The effects of alcohol on the human
16 body, including the disease concept of alco-
17 holism.
- 18 C. Participants are evaluated before taking the
19 course and after completion of the course.
- 20 D. Participants who successfully complete the
21 course and the final evaluation are awarded cer-
22 tificates recognizing that they have successfully
23 completed an approved alcohol server education
24 course.
- 25 4. Advisory committee; review and recommenda-
26 tion. The advisory committee shall review each alco-
27 hol server education course submitted to the commis-
28 sioner and recommend that the commissioner either ap-
29 prove or not approve the course based on whether the
30 course meets the criteria the advisory committee de-
31 veloped under subsection 3.
- 32 Sec 3. PL 1985, c. 435, §4 is repealed.'

COMMITTEE AMENDMENT "A" to H.P. 1478, L.D. 2080

1

STATEMENT OF FACT

2 The purpose of this amendment is to refine the
3 Maine Liquor Liability Act developed in the Dram Shop
4 Study. Several provisions of the original bill did
5 not at the time of drafting reflect the views of all
6 members of the committee, but were agreed to for the
7 sole purpose of providing a draft to be printed.
8 This amendment represents the final versions of those
9 contested sections as well as additional sections and
10 clarifications found to be necessary.

11 The first change is a clarification of the defi-
12 nition of "visibly intoxicated." The original defi-
13 nition focused on "unmistakable" signs of intoxica-
14 tion, which is much too high a standard. Many other
15 causes of signs of intoxication exist which means
16 that no signs of intoxication are "unmistakable."
17 The amendment instead bases the definition on a per-
18 ceptible act or series of acts, or the appearance of
19 a person, which clearly demonstrate a state of intox-
20 ication. A person is visibly intoxicated if he shows
21 signs that are generally recognized as associated
22 with being intoxicated and those signs are readily
23 observable. A server who provides liquor to such an
24 individual may be creating a foreseeable risk of harm
25 to the individual or others.

26 The 2nd change clarifies that any damages awarded
27 under the application of the survival act or wrongful
28 death act are limited by the damage limits of this
29 Act.

30 The 3rd change amends the damage limits. Damages
31 for any losses other than for expenses for medical
32 care and treatment are limited to \$250,000 per acci-
33 dent or occurrence. Expenses for medical care and
34 treatment specifically include the costs of devices
35 or aids. This limit means that, for example, a com-
36 mercial licensee and his agents and employees togeth-
37 er cannot be liable for more than \$250,000 for any

COMMITTEE AMENDMENT "A" to H.P. 1478, L.D. 2080

1 single accident or occurrence. This is a cap of
2 \$250,000 for the whole establishment that was negli-
3 gent or reckless. Specifically not intended and not
4 allowed by this section is an award of \$250,000 in
5 nonmedical related damages against the licensee, an-
6 other award of up to \$250,000 against the bartender
7 and still another award of up to \$250,000 against a
8 waiter or waitress, all at the same establishment.
9 This \$250,000 cap does not affect the amount of dam-
10 ages which may be awarded for actual medical costs,
11 including expenses for medical treatment and costs of
12 devices and aids, such as wheelchairs or artificial
13 limbs. The purpose of the cap on all but medical
14 damages is to insulate the server from inflated
15 awards for pain and suffering and other noneconomic
16 damages, as well as lost earnings, while still com-
17 pensating the injured plaintiff for all of his medi-
18 cal costs.

19 The section on damage limits also changes the way
20 the \$250,000 in nonmedical damages may be distributed
21 among multiple plaintiffs. This amendment tracks the
22 Maine Tort Claims Act by requiring the Superior Court
23 in the county where the defendant is located to allo-
24 cate the \$250,000 among the plaintiffs if the award
25 or settlement exceeds that amount. Even if the court
26 awards more than that amount, the law cuts off the
27 liability for everything other than expenses for medi-
28 cal care and treatment at \$250,000.

29 The original bill included a very detailed eval-
30 uation section. This amendment requires the Joint
31 Standing Committee on Legal Affairs to perform only
32 an informal review in 2 years to determine if the Act
33 is effective in achieving its stated purposes.

34 Another new section is added which provides an
35 approval process for alcohol server education pro-
36 grams. The Commissioner of Public Safety will ap-
37 point members of 7 different state and private agen-
38 cies or organizations. These 7 people will serve as
39 an advisory committee on server education programs.

COMMITTEE AMENDMENT "A" to H.P. 1478, L.D. 2080

1 Their first job will be to develop criteria that ev-
2 ery program must contain before they recommend that
3 the course be approved. The basic criteria are in-
4 cluded in the law. Their 2nd duty will be to review
5 courses submitted to the commissioner for approval to
6 determine if the courses do meet the criteria. If a
7 course does meet the criteria, the committee shall
8 recommend that the commissioner approve the course.

9 This amendment adds a 3rd section to the bill.
10 To avoid confusion in the future, this section re-
11 peals the "sunset" provision which applies to the
12 1985 amendments to the old Dram Shop Act, which is
13 repealed by section 1 of this bill.

14

7031032686

Reported by the Committee on Legal Affairs
Reproduced and distributed under the direction of the Clerk of the
House
4/1/86 (Filing No. H-635)