

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document

No. 2080

H.P. 1478

House of Representatives, February 27, 1986

Reported by Representative Masterman from the Committee on Legal Affairs. Sent up for concurrence and ordered printed. Approved by the Legislative Council on June 18, 1985.

Reported from the Joint Standing Committee on Legal Affairs under Joint Rule 19.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SIX

AN ACT to Create the Maine Liquor Liability
Act.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 17 MRSA §2002, as amended by PL 1985, c. 435, §§1 and 4, is repealed.

Sec. 2. 28 MRSA c. 33 is enacted to read:

CHAPTER 33

MAINE LIQUOR LIABILITY ACT

§1401. Short title

This Act shall be known as the "Maine Liquor Liability Act."

§1402. Purpose

1 1. Primary legislative purpose. The primary
2 legislative purpose of this Act is to prevent
3 intoxication-related injuries, deaths and other dam-
4 ages among the State's population.

5 2. Secondary purposes. The secondary legisla-
6 tive purposes are to:

7 A. Establish a legal basis for obtaining compen-
8 sation to those suffering damages as a result of
9 intoxication-related incidents in accordance with
10 this Act;

11 B. Allocate the liability for payment of damages
12 fairly among those responsible for the damages,
13 which will encourage liquor liability insurance
14 availability; and

15 C. Encourage all servers of alcohol to exercise
16 responsible serving practices.

17 §1403. Definitions

18 As used in this chapter, unless the context indi-
19 cates otherwise, the following terms have the follow-
20 ing meanings.

21 1. Intoxicated individual. "Intoxicated indi-
22 vidual" means an individual who is in a state of in-
23 toxication as defined by this Act.

24 2. Intoxication. "Intoxication" means a sub-
25 stantial impairment of an individual's mental or
26 physical faculties as a result of drug or liquor use.

27 3. Licensee. "Licensee" means any person to
28 whom a license of any kind is issued by the commis-
29 sion and any person who is required to be licensed to
30 serve liquor.

31 4. Nonlicensee. "Nonlicensee" means any person
32 who is neither a licensee nor an employee or agent of
33 a licensee and is not required to be licensed under
34 this Title.

35 5. Service of liquor. "Service of liquor" means
36 any sale, gift or other furnishing of liquor.

1 6. Visibly intoxicated. "Visibly intoxicated"
2 means a state of intoxication accompanied by a per-
3 ceptible act or series of acts presenting clearly
4 unmistakable sign or signs of intoxication.

5 §1404. Plaintiffs

6 Except as provided in subsection 1, any person
7 who suffers damage, as provided in section 1408, may
8 bring an action under this Act against a defendant
9 for negligently or recklessly serving liquor to an
10 individual.

11 1. Persons who may not bring suit. The follow-
12 ing may not bring an action under this Act against a
13 defendant for negligently serving liquor to an indi-
14 vidual:

15 A. The intoxicated individual if he is at least
16 18 years of age when served by the defendant;

17 B. The estate of the intoxicated individual if
18 the intoxicated individual was at least 18 years
19 of age when served by the defendant; and

20 C. Any person asserting claims arising out of
21 the personal injury or death of the intoxicated
22 individual if the intoxicated individual was at
23 least 18 years of age when served by the defend-
24 ant.

25 §1405. Defendants

26 1. Licensee as a defendant. Any licensee and
27 any employee or agent of a licensee who commits an
28 act giving rise to liability, as provided in sections
29 1406 and 1407, may be made a defendant to a claim under
30 this Act.

31 2. Nonlicensee as a defendant. Any nonlicensee
32 who commits an act giving rise to liability, as pro-
33 vided in section 1406, subsection 1, and section
34 1407, may be made a defendant to a claim under this
35 Act.

36 §1406. Negligent service of liquor; liability

1 1. Negligent service to a minor. A defendant,
2 as described in section 1405, who negligently serves
3 liquor to a minor is liable for damages proximately
4 caused by that minor's consumption of the liquor.

5 2. Negligent service to a visibly intoxicated
6 individual. A defendant, as defined in section 1405,
7 who negligently serves liquor to a visibly intoxi-
8 cated individual is liable for damages proximately
9 caused by that individual's consumption of the li-
10 quor.

11 3. Negligent conduct. Service of liquor to a
12 minor or to an intoxicated individual is negligent if
13 the defendant knows or if a reasonable and prudent
14 person in similar circumstances would know that the
15 individual being served is a minor or is visibly in-
16 toxicated.

17 4. Defendant's knowledge of individual's con-
18 sumption. A defendant is not chargeable with knowl-
19 edge of an individual's consumption of liquor or oth-
20 er drugs off the defendant's premises unless the
21 individual's appearance and behavior, or other facts
22 known to the defendant, would put a reasonable and
23 prudent person on notice of such consumption.

24 §1407. Reckless service of liquor; liability

25 1. Reckless service to a minor. A defendant, as
26 defined in section 1405, who recklessly provides li-
27 quor to a minor is liable for damages proximately
28 caused by that minor's consumption of the liquor.

29 2. Reckless service to a visibly intoxicated in-
30 dividual. A defendant, as defined in section 1405,
31 who recklessly serves liquor to a visibly intoxicated
32 individual is liable for damages proximately caused
33 by that individual's consumption of the liquor.

34 3. Reckless conduct. Service of liquor is reck-
35 less if a defendant intentionally serves liquor to an
36 individual when the server knows that the individual
37 being served is a minor or is visibly intoxicated and
38 the defendant consciously disregards an obvious and
39 substantial risk that serving liquor to that individ-
40 ual will cause physical harm to the drinker or to
41 others.

1 For purposes of this Act, the disregard of the risk,
2 when viewed in light of the nature and purpose of the
3 defendant's conduct and the circumstances known to
4 him, must involve a gross deviation from the standard
5 of conduct that a reasonable and prudent person would
6 observe in the same situation.

7 4. Evidence of reckless conduct. Specific
8 erving practices that are admissible as evidence of
9 reckless conduct include, but are not limited to, the
10 following:

11 A. Active encouragement of intoxicated individu-
12 als to consume substantial amounts of liquor;

13 B. Service of liquor to an individual who is un-
14 der 18 years of age when the defendant has actual
15 or constructive knowledge of the individual's
16 age; and

17 C. Service of liquor to an individual that is so
18 continuous and excessive that it creates a sub-
19 stantial risk of death by alcohol poisoning.

20 §1408. Damages

21 1. Damages. Damages may be awarded for property
22 damage, bodily injury or death proximately caused by
23 the consumption of the liquor served by the defend-
24 ant.

25 2. Damages under wrongful death and survival
26 laws. Except as otherwise provided in this Act, dam-
27 ages may be recovered under Title 18-A, sections
28 2-804 and 3-817, as in other tort actions.

29 §1409. Damage limits

30 The total amount of damages that may be awarded
31 to all aggrieved parties for any claims for relief
32 under this Act is limited to no more than \$500,000
33 for each occurrence against one defendant. When all
34 claims arising out of an occurrence against a defend-
35 ant exceed \$500,000, each claim shall be reduced in
36 the proportion it bears to the total of all claims.

37 §1410. Common law defenses

1 Defenses applicable to tort actions based on neg-
2 ligence and recklessness in this State may be as-
3 serted in defending actions brought under this Act.

4 §1411. Exclusive remedy

5 This Act is the exclusive remedy against defend-
6 ants, as described in section 1405, for claims by
7 those suffering damages based on the defendants' ser-
8 vice of liquor.

9 §1412. Name and retain; several liability

10 1. Name and retain. No action against a defend-
11 ant may be maintained unless the minor, the intoxi-
12 cated individual or the estate of the minor or intox-
13 icated individual is a named defendant in the action
14 and is retained in the action until the litigation is
15 concluded by trial or settlement.

16 2. Several but not joint liability. The intoxi-
17 cated individual and any defendant, as described in
18 section 1405, are each severally liable and not
19 jointly liable for that percentage of the plaintiff's
20 damages which corresponds to each defendant's per-
21 centage of fault as determined by the court or a ju-
22 ry.

23 §1413. Notice required

24 Every plaintiff seeking damages under this Act
25 must give written notice to all defendants within 180
26 days of the date of the defendant's conduct creating
27 liability under this Act. The notice must specify
28 the time, place and circumstances of the defendant's
29 conduct creating liability under this Act and the
30 time, place and circumstances of any resulting dam-
31 ages. No error or omission in the notice voids the
32 effect of the notice, if otherwise valid, unless the
33 error or omission is substantially material. Failure
34 to give written notice within the time specified is
35 grounds for dismissal of a claim unless the plaintiff
36 provides written notice within the limits of section
37 1414 and shows good cause why notice could not have
38 reasonably been filed within the 180-day limit.

39 §1414. Statute of limitations

1 Any action under this Act against a defendant al-
2 leging negligent or reckless conduct must be brought
3 within 2 years after the cause of action accrues.

4 §1415. Evidence of responsible serving practices

5 1. Responsible practices. Proof of defendant's
6 responsible serving practices is admissible as evi-
7 dence that the defendant was not negligent or reck-
8 less. Responsible serving practices include, but are
9 not limited to:

10 A. The defendant's and defendant's employees at-
11 tendance at a server education training course;
12 and

13 B. The defendant's implementation, at the time
14 of service, of responsible management policies,
15 procedures and actions.

16 2. Neither proof nor disproof of negligence or
17 recklessness. Proof or disproof that the defendant
18 was adhering to responsible serving practices is not
19 by itself proof or disproof of negligence or reck-
20 lessness.

21 §1416. Privileges

22 1. Refusal to serve. No licensee is liable for
23 damages resulting from a good faith refusal to serve
24 liquor to any individual who:

25 A. Fails to show proper identification of age;

26 B. Reasonably appears to be a minor; or

27 C. Is refused service in a good faith effort to
28 prevent him from becoming visibly intoxicated.

29 2. Holding identification documents. No licens-
30 ee is liable for retaining identification documents
31 presented to the licensee as proof of the
32 individual's age for the purpose of receiving liquor
33 provided that:

34 A. Retention is for a reasonable length of time
35 in a good faith effort to determine whether the
36 individual is of legal age; and

1 B. The licensee informs the individual why he is
2 retaining the identification documents.

3 3. Other defenses not limited. This section
4 does not limit a licensee's right to assert any other
5 defense provided by law.

6 4. Failure to exercise privileges. A licensee
7 may not be held liable under this Act for failing to
8 exercise any privilege provided in this section.
9 This section does not provide immunity from liability
10 under sections 1406 and 1407.

11 §1417. Insurance records

12 1. Superintendent shall keep records. The Su-
13 perintendent of Insurance shall collect and maintain
14 records on the following statistics concerning liquor
15 liability insurance in this State:

16 A. The number and names of companies writing li-
17 quor liability insurance, either as a separate
18 line or in a larger policy;

19 B. The number and dollar amount of premiums col-
20 lected for liquor liability insurance policies;
21 and

22 C. The number and dollar amount of claims in-
23 curring under liquor liability insurance.

24 2. Superintendent shall make records available.
25 The Superintendent of Insurance shall make available
26 to the Legislature the information collected and
27 maintained under subsection 1.

28 §1418. Evaluation

29 The joint standing committee of the Legislature
30 having jurisdiction over legal affairs shall conduct
31 an evaluation of the effectiveness of this Act, to be
32 completed within 2 years of its enactment. Evalua-
33 tion topics to be addressed include, but are not lim-
34 ited to, initiation of, extent of or changes in:

35 1. Driving while intoxicated offenses. The in-
36 cidence of driving while intoxicated offenses, inju-
37 ries and deaths;

1 The bill prohibits the intoxicated individual,
2 and his estate and those claiming under him, from
3 collecting damages from the server, but only when the
4 intoxicated individual was at least 18 years of age
5 when served.

6 Liability is based on the negligent or reckless
7 service of liquor to a minor or a visibly intoxicated
8 individual.

9 The bill holds liable all licensees who negli-
10 gently or recklessly serve a minor or a visibly in-
11 toxicated individual. Nonlicensees, often termed so-
12 cial hosts, are liable for recklessly serving a
13 visibly intoxicated individual or negligently or
14 recklessly serving a minor.

15 A defendant is liable for damages proximately
16 caused by the individual's consumption of the liquor
17 if the defendant negligently or recklessly served
18 that minor or visibly intoxicated individual.

19 Damages may be awarded for property damage, per-
20 sonal injury or death, but only up to \$500,000 for
21 each occurrence. If more than one person is injured
22 in an accident, each injured person's award is re-
23 duced in proportion to the total amount of claims.

24 This bill is the exclusive remedy for liquor lia-
25 bility claims against the defendants defined in the
26 bill.

27 The statute of limitations is reduced to 2 years.
28 The notice period is reduced to 180 days, with an ex-
29 ception for good cause shown.

30 The intoxicated person who directly caused the
31 injury or damage must be named in the suit and re-
32 tained until settlement or judgment. Liability is
33 several, not joint, and the court or jury will appor-
34 tion damages based on each defendant's responsibili-
35 ty.

36 Evidence that the server was exercising responsi-
37 ble serving practices shall be admitted as evidence
38 that the defendant was not negligent. The defense or
39 responsible serving practices is not intended to cre-

1 ate a standard of care which the defendant must in
2 all cases follow or is guilty of negligence or reck-
3 lessness.

4 Licensees are given protection from suit by a
5 person they refuse to serve when that person fails to
6 show proper identification or reasonably appears to
7 be a minor, or when the server refuses to serve the
8 person to prevent that person from even reaching the
9 level of visible intoxication. A server who does not
10 exercise these privileges is not automatically con-
11 sidered negligent.

12 This bill requires the Superintendent of Insur-
13 ance to maintain records concerning liquor liability
14 insurance, suits and settlements.

15 The bill requires the joint standing committee of
16 the Legislature having jurisdiction over legal af-
17 fairs to review the effectiveness of this Act in 2
18 years.

19 The committee report on the dram shop study, "The
20 Dram Shop Act and liquor liability in Maine," in-
21 cludes an in-depth explanation of each section.

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