

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND TWELFTH LEGISLATURE

**SECOND REGULAR SESSION**  
January 8, 1986 to April 16, 1986

**SECOND SPECIAL SESSION**  
May 28, 1986 to May 30, 1986

AND AT THE

**THIRD SPECIAL SESSION**  
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN  
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Co., Inc.  
Augusta, Maine

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**PUBLIC LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED AT THE  
SECOND REGULAR SESSION  
of the  
ONE HUNDRED AND TWELFTH LEGISLATURE  
1985

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same as that for which disability retirement was initially granted.

This provision shall apply to state employees and teachers and shall not apply to participating local districts.

Effective July 16, 1986.

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## CHAPTER 723

H.P. 1478 - L.D. 2080

### 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Sec. 1. 17 MRSA §2002, as amended by PL 1985, c. 435, §§1 and 4, is repealed.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. Primary legislative purpose. The primary legislative purpose of this Act is to prevent intoxication-related injuries, deaths and other damages among the State's population.

2. Secondary purposes. The secondary legislative purposes are to:

A. Establish a legal basis for obtaining compensation to those suffering damages as a result of intoxication-related incidents in accordance with this Act;

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

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

§1403. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Intoxicated individual. "Intoxicated individual" means an individual who is in a state of intoxication as defined by this Act.

2. Intoxication. "Intoxication" means a substantial impairment of an individual's mental or physical faculties as a result of drug or liquor use.

3. Licensee. "Licensee" means any person to whom a license of any kind is issued by the commission and any person who is required to be licensed to serve liquor.

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

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

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

§1404. Plaintiffs

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

1. Persons who may not bring suit. The following may not bring an action under this Act against a defendant for negligently serving liquor to an individual:

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

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

C. Any person asserting claims arising out of the personal injury or death of the intoxicated individual if the intoxicated individual was at least 18 years of age when served by the defendant.

§1405. Defendants

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

2. Nonlicensee as a defendant. Any nonlicensee who commits an act giving rise to liability, as provided in section 1406, subsection 1, and section 1407, may be made a defendant to a claim under this Act.

§1406. Negligent service of liquor; liability

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

2. Negligent service to a visibly intoxicated individual. A defendant, as defined in section 1405, who negligently serves liquor to a visibly intoxicated individual is liable for damages proximately caused by that individual's consumption of the liquor.

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

4. Defendant's knowledge of individual's consumption. A defendant is not chargeable with knowledge of an individual's consumption of liquor or other drugs off the defendant's premises unless the individual's appearance and behavior, or other facts known to the defendant, would put a reasonable and prudent person on notice of such consumption.

§1407. Reckless service of liquor; liability

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

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

3. Reckless conduct. Service of liquor is reckless if a defendant intentionally serves liquor to an individual when the server knows that the individual being served is a minor or is visibly intoxicated and the defendant consciously disregards an obvious and substantial risk that serving liquor to that individual will cause physical harm to the drinker or to others.

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

4. Evidence of reckless conduct. Specific serving practices that are admissible as evidence of reckless conduct include, but are not limited to, the following:

A. Active encouragement of intoxicated individuals to consume substantial amounts of liquor;

B. Service of liquor to an individual who is under 18 years of age when the defendant has actual or constructive knowledge of the individual's age; and

C. Service of liquor to an individual that is so continuous and excessive that it creates a substantial risk of death by alcohol poisoning.

§1408. Damages

1. Damages. Damages may be awarded for property damage, bodily injury or death proximately caused by the consumption of the liquor served by the defendant.

2. Damages under wrongful death and survival laws. Except as otherwise provided in this Act, damages may be recovered under Title 18-A, sections 2-804 and 3-817, as in other tort actions, subject to the damage limits of section 1409.

§1409. Limit on awards

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 employees and agents, may not exceed \$250,000 for any and all claims arising out of a single accident or occurrence.

2. Multiple claimants. When the amount for all losses, except expenses for medical care and treatment, including devices and aids, awarded to or settled for multiple claimants, exceeds the limit imposed by this section, any party may apply to the Superior Court for the county where the defendant is located to allocate each claimant his equitable share of the total, limited as required by this section.

A. Any award by the court in excess of the maximum liability limit specified by subsection 1 shall be automatically abated by operation of this section to the maximum limit of liability.

§1410. Common law defenses

Defenses applicable to tort actions based on negligence and recklessness in this State may be asserted in defending actions brought under this Act.

§1411. Exclusive remedy

This Act is the exclusive remedy against defendants, as described in section 1405, for claims by those suffering damages based on the defendants' service of liquor.

§1412. Name and retain; several liability

1. Name and retain. No action against a defendant may be maintained unless the minor, the intoxicated individual or the estate of the minor or intoxicated individual is a named defendant in the action and is retained in the action until the litigation is concluded by trial or settlement.



2. Several but not joint liability. The intoxicated individual and any defendant, as described in section 1405, are each severally liable and not jointly liable for that percentage of the plaintiff's damages which corresponds to each defendant's percentage of fault as determined by the court or a jury.

§1413. Notice required

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

§1414. Statute of limitations

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

§1415. Evidence of responsible serving practices

1. Responsible practices. Proof of defendant's responsible serving practices is admissible as evidence that the defendant was not negligent or reckless. Responsible serving practices include, but are not limited to:

A. The defendant's and defendant's employees attendance at a server education training course; and

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

2. Neither proof nor disproof of negligence or recklessness. Proof or disproof that the defendant was adhering to responsible serving practices is not by itself proof or disproof of negligence or recklessness.

§1416. Privileges

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

- A. Fails to show proper identification of age;
- B. Reasonably appears to be a minor; or
- C. Is refused service in a good faith effort to prevent him from becoming visibly intoxicated.

2. Holding identification documents. No licensee is liable for retaining identification documents presented to the licensee as proof of the individual's age for the purpose of receiving liquor provided that:

- A. Retention is for a reasonable length of time in a good faith effort to determine whether the individual is of legal age; and
- B. The licensee informs the individual why he is retaining the identification documents.

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

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

§1417. Insurance records

1. Superintendent shall keep records. The Superintendent of Insurance shall collect and maintain records on the following statistics concerning liquor liability insurance in this State:

- A. The number and names of companies writing liquor liability insurance, either as a separate line or in a larger policy;
- B. The number and dollar amount of premiums collected for liquor liability insurance policies; and
- C. The number and dollar amount of claims incurred under liquor liability insurance.

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

§1418. Informal evaluation

The joint standing committee of the Legislature having jurisdiction over legal affairs shall conduct an informal evaluation of this Act, to be completed within 2 years of its effective date. The evaluation shall address the effectiveness of the Act in achieving its stated purposes.

§1419. Approval of alcohol server education courses

1. Approval of alcohol server education courses. The Commissioner of Public Safety shall approve alcohol server education courses which meet the criteria developed under this section.

2. Advisory committee; appointment. The commissioner shall appoint the Server Education Advisory Committee consisting of 7 members, to include:

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

B. A representative of the Bureau of Liquor Enforcement;

C. A representative of the Department of the Attorney General;

D. A representative of the Department of Human Services;

E. A representative of the Department of Educational and Cultural Services;

F. A representative of a state-wide liquor licensee organization; and

G. A representative of a state-wide trial lawyers organization.

3. Advisory committee; course criteria. The advisory committee shall determine specific criteria which an alcohol server education course must contain to receive approval. The specific criteria shall be based on and include the following:

A. The instructors of the program possess the relevant skills to provide instruction.

B. The course provides instruction and the development of skills in the following subject matters:

(1) Identification of intoxicated individuals and minors;

(2) Intervention to prevent excessive consumption of alcohol by such methods as serving food and encouraging the consumption of nonalcoholic beverages;

(3) Making consumers aware of their condition and their responsibility for driving in an intoxicated condition and providing alternate transportation when available;

(4) Knowledge of state laws relating to the sale and distribution of alcohol and the legal responsibilities of servers and consumers;

(5) Knowledge of the effect of alcohol by volume and timing of intake in relation to an individual's weight;

(6) Examination of proof of age identification and methods of detecting false or altered age identification documents;

(7) Policies and practices to prevent the sale or service of alcohol to minors and visibly intoxicated individuals; and

(8) The effects of alcohol on the human body, including the disease concept of alcoholism.

C. Participants are evaluated before taking the course and after completion of the course.

D. Participants who successfully complete the course and the final evaluation are awarded certificates recognizing that they have successfully completed an approved alcohol server education course.

4. Advisory committee; review and recommendation. The advisory committee shall review each alcohol server education course submitted to the commissioner and recommend that the commissioner either approve or not approve the course based on whether the

course meets the criteria the advisory committee developed under subsection 3.

Sec. 3. PL 1985, c. 435, §4 is repealed.

Effective July 16, 1986.

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## CHAPTER 724

S.P. 816 - L.D. 2061

### AN ACT to Amend the Regulation of the Practice of Nursing.

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

Sec. 1. 32 MRSA §2101, 2nd ¶, as amended by PL 1967, c. 263, §1, is repealed.

Sec. 2. 32 MRSA §2102, sub-§2, as amended by PL 1977, c. 497, §10, is repealed and the following enacted in its place:

2. Professional nursing. The practice of "professional nursing" means the performance, by a registered professional nurse, for compensation of professional services defined as follows:

A. Diagnosis and treatment of human responses to actual or potential physical and emotional health problems, through such services as case finding, health teaching, health counseling and provision of care supportive to or restorative of life and well-being and execution of the medical regimen as prescribed by a licensed physician or dentist or otherwise legally authorized person acting under the delegated authority of a physician or dentist:

(1) "Diagnosis" in the context of nursing practice means that identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of the nursing regimen. This diagnostic privilege is distinct from medical diagnosis;