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THE DRAM SHOP ACT AND LIQUOR LIABILITY LAW IN MAINE

Report of a Study by the
JOINT STANDING COMMITTEE ON
LEGAL AFFAIRS

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STUDY REPORT: THE DRAM SHOP ACT AND LIQUOR LIABILITY LAW IN MAINE

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I. INTRODUCTION

Near the end of the First Regular Session of the 112th Legislature, the Joint Standing Committee on Legal Affairs held a public hearing and several work sessions on a bill seeking to amend the Maine Dram Shop Act. The Dram Shop Act imposes liability upon a person who illegally served alcoholic beverages for any injuries or damages caused by the intoxicated person. In early 1985, restaurateurs, innkeepers and other business persons who sell alcoholic beverages found that insurance covering liquor liability was increasingly hard to purchase. Where the insurance was available the cost was often prohibitive. The commercial servers of alcohol asked the Legislature for changes in the Maine Dram Shop Act to reduce the risk of doing business, help make affordable insurance available or both.

The Legal Affairs Committee responded with a two-step approach. First, the Committee reported out a bill, later enacted and signed, amending the Dram Shop Act by changing the type of liability imposed - several instead of joint and several - and by instituting a 2-year notice period for suits brought under the Act. Public Laws of 1985, c. 435. These amendments were intended to provide immediate but only temporary relief and are effective only through September 30, 1987.

The second step was to undertake a full-committee study of the problem to determine what are the best long-term solutions. Three public hearings were held during the interim, and several work sessions were held at the beginning of the Second Regular Session. The Committee invited participation from all interested parties and considered a large volume of information. Any comprehensive changes are projected to be in place before the 1985 amendments are repealed in 1987.

This report and the accompanying legislation are the results of that study.

II. BACKGROUND

1. LIQUOR LIABILITY IN GENERAL

"Liquor liability" is the term used to describe the legal responsibility for the actions of intoxicated persons. The theory is based on the belief that the person who improvidently provided alcohol to an individual, and the alcohol contributed to that individual's intoxication, is at least partly responsible for foreseeable damages that the intoxicated individual causes.

Under the common law, no such legal liability existed because the consumption of the liquor, not the provision of the liquor, was considered the proximate cause of any injuries. Recognizing that the properties of alcohol may create a dangerous situation, several states enacted statutes in derogation of the common law which allowed injured parties to seek damages from the provider of the liquor. The courts in other states have held that a server is liable for damages when that server provides alcohol in a situation in which such provision creates a foreseeable risk of harm to someone. The most common situation meeting this standard is when the person served is "obviously intoxicated" or "visibly intoxicated." Another way courts have imposed liability is through violation of the state's liquor control laws: Making a prohibited sale is often found to be "negligence per se," and the seller is responsible for resulting damages, even if there is no statute creating such liability.

2. LIQUOR LIABILITY IN MAINE

A dram shop act has existed in Maine in some form or another since as far back as 1856. After a total revision in 1872, the Act has retained basically the same language into the present. Despite the long existence of the Maine Dram Shop law, it has been only the last several years or so in which injured persons have become aware of the statute as a way to find compensation for their injuries. This may be due in part to the increased attention recently given drunk driving in Maine and across the nation.

The Maine law holds liable "anyone who, by selling or giving any intoxicating liquors or otherwise, in violation of law, has caused or contributed to the intoxication of" the person who causes injury. 17 MRSA @2002. The liquor control laws of Title 28 define what sale or service is in violation of law. Licensees cannot legally sell, furnish, give or deliver any liquor to any person visibly intoxicated, to any mentally ill person, to a known habitual drunkard, to any pauper, to persons of known intemperate habits or to any minor. 28 MRSA @303. It is illegal for any person other than a licensee to procure, furnish, give or deliver liquor to a minor or an intoxicated person (except when the furnishing to a

minor is in a home in the presence of the minor's parent or guardian). 28 MRSA @1058. This latter section means that social hosts can be held liable if their guest, served while intoxicated or if a minor, injures someone after leaving.

The current law is very broad in what damages a server must pay. If the server caused or even contributed to a person's intoxication, the server is then responsible for all injuries and damages caused by the intoxicated person or by reason of the intoxication of the person. Interpreted literally, the server is liable for anything the person does while intoxicated, even if neither the provision of the liquor nor the consumption of the liquor is a proximate cause of the act. This langauge, therefore, not only provides the link the common law refused to acknowledge (that the provision of liquor is the proximate cause of the damages), but goes one step farther by eliminating the requirement of proximate cause altogether. The necessary elements for liability are simply: 1) the server provided liquor in violation of law 2) which caused or contributed to the drinker's intoxication and 3) the drinker injured someone while intoxicated. There is no actual requirement that the intoxication must be a factor in the cause of the injury.

The current law also holds the owner or lessor of the building liable with the person selling or giving liquor if the owner or lessor knows that liquor is being sold on the premises contrary to law.

Before the 1985 amendments to the Dram Shop Act, servers of liquor were jointly and severally liable for any damages caused by the people they served. Joint and several liability means that each defendant found liable is responsible for paying the full amount of damages awarded. For example, if server Andy serves another drink to visibly intoxicated Beth, and Beth then injures plaintiff Paul on the way home, Andy and Beth are both liable for all of Paul's damages. If the jury awards Paul $100,000 for his injuries, and Beth has no insurance or assets, Andy will pay the full $100,000. He can try to force Beth to reimburse him for her share, but, unless her situation changes, Andy will end up financing the full award by himself. Paul, however, will be able to collect the full amount awarded for his injuries.

The result is different under several and not joint liability where the law requires the jury to determine the amount for which each party is liable. If Andy is found to be 40% liable and Beth 60% liable, Andy is responsible for only his $40,000 share of the $100,000 verdict, even if Beth cannot pay anything. Andy is better off than under joint and several liability because he is not paying any of Beth's share. It is Paul that suffers under several liability with apportionment because he, even though an innocent party, cannot recover all his damages.

3. LIQUOR LIABILITY IN OTHER STATES

Many legislatures are now examining liquor liability statutes and case law in their own states. Although several states have amended their laws, it is difficult to discern any emerging trend. For example, North Carolina enacted a dram shop statute in 1983, as did Massachusetts in 1985. South Dakota, on the other hand, enacted a law in 1985 which abolished liquor liability, and Wisconsin greatly limited liability in late 1985.

As of November, 1985, 25 states had some form of a dram shop act which imposes liability. The courts in 13 states and the District of Columbia (all without statutory liquor liability) recognize a common law cause of action for liquor liability. Six states impose no civil liability on servers. Information was not available to determine whether liquor liability exists in the remaining 6 states.

III. STUDY PROCESS

1. INTERESTED PARTIES

An invitation was extended to all interested parties, and participation throughout the study was enthusiastic and helpful. The participants can be divided into roughly 3 areas. Those most interested in limiting the servers' liability formed the "Coalition for Dram Shop Reform." The "Coalition" includes the Maine Innkeepers Association, the Maine Restaurant Association, the Maine Grocers Association, the Maine Chamber of Commerce and Industry, the Maine Campground Owners' Association, the Ski Maine Association, the Maine Wholesale Beer and Wine Distributors and the Maine Merchants Association.

The Maine Trial Lawyers participated to ensure that people injured by intoxicated individuals are treated fairly under the law.

The 3rd basic group was the insurance interests. The Bureau of Insurance provided what information it has on liquor liability insurance, and was present to answer the Committee's questions. Several insurance agents and representatives of insurance associations also attended. However, there was very little participation by the insurance companies themselves.

2. STATUTES AND CASE LAW OF OTHER STATES

The Committee officially began the study by briefly examining the laws of all 50 states and the District of Columbia. This overview quickly pointed out that most if not all jurisdictions of the United States are wrestling with some facet of liquor liability. No state has addressed the issue to the Committee's satisfaction, although aspects of several states' statutes were later considered for Maine law.

3. THE MODEL ALCOHOLIC BEVERAGE RETAIL LICENSEE LIABILITY ACT OF 1985

The Prevention Research Group of the Medical Research Institute of San Francisco spent several months examining current statutes and case law and, based on that research, developed a model dram shop law. Mosher, The Model Alcoholic Beverage Retail Licensee Liability Act of 1985, Western State University Law Review, Appendix A, Vol. 12, pp. 442-517. This model act includes statutory provisions and commentaries explaining why the drafters wrote the provisions in that manner. The model act was extremely useful to the Committee as a starting point for discussion and drafting of key issues.

4. THE LIQUOR LIABILITY INSURANCE PROBLEM

The unavailability of affordable liquor liability insurance was the impetus for the opening of the dram shop issue, and the committee discussed the problem and possible solutions throughout the study.

Unfortunately, the insurance companies themselves offered very little cooperation in identifying specific problems in the law or specific improvements which could be made. The Committee compiled a series of questions which were posed to insurance companies through the Bureau of Insurance. The responses indicate that liquor liability insurance rates for businesses in Maine are not based on Maine experience, mainly because there are so few statistics available that they are not reliable for underwriting purposes. A large part of the liquor liability insurance is written by surplus line insurers, which are for the most part not regulated. The responding insurance companies indicated that they have incurred very little losses to date under their Maine liquor liability policies.

5. PROPOSED LEGISLATION BY INTEREST GROUPS

The "Coalition for Dram Shop Reform," at the Committee's direction, prepared its own redraft of the Maine Dram Shop Law. The proposed legislation was presented to the Committee at the third Dram Shop Study meeting. The Maine Trial Lawyers added their comments and criticisms of the Coalition's draft. Representatives of the Coalition and the Trial Lawyers were available at the drafting work sessions to further explain their positions on specific provisions. The proposed draft and comments are included in Appendix A.

6. POLICY QUESTIONS

After collecting the information provided in the 3 public hearings, the Committee met in work session. There was concensus to rewrite the Dram Shop Law, and the Committee started by examining a series of policy questions designed to focus attention on the underlying issues before working on specific language. The policy questions the Committee discussed are the following:

1. What are the problems we are here to address?

2. What do we want the law to do; purpose(s) of the law?

3. How should those purposes be achieved?

4. What act or behavior should create liability (other than intoxicated person's behavior or acts)?

5. Who should be held legally accountable for committing that act or behaving in that manner?

6. To what extent should the defendant identified in 5. be held responsible?

7. When, if ever, should the injured party (plaintiff) not be able to recover damages from the server?

8. Should this be the exclusive remedy for an injured plaintiff (i.e., no common law cause of action)?

9. Should an injured plaintiff be required to notify potential defendant within certain time period?

10. Are there defenses which should be included in the law?

11. Should there be a different statute of limitations for this law (current law is 6 years for most torts)?

12. Should the law include specific responsible acts for which a server may not be held liable?

13. What should be necessary to claim the responsible serving practices defense?

14. Any other appropriate provisions?

7. SERVER EDUCATION

Throughout the study, the Committee was quite concerned about alcohol server education. Although there are a few courses available now, they do not cover all the areas the committee thinks should be addressed. The Bureau of Vocational Education, Division of Adult and Community Education, in the Department of Educational and Cultural Services, assigned Gary Crocker, Special Training Consultant, the task of developing a server education program. The program was developed in conjunction with the Bureau of Liquor Enforcement, Department of Public Safety, and is projected to be ready for implementation by late February. The program, titled "The Maine Course," will be available through the adult education network and the vocational-technical institutes throughout the State.

IV. CONCLUSIONS AND RECOMMENDATIONS

1. INSURANCE

One of the major factors an insurer looks at in determining whether to underwrite a risk is predictability - predictability of loss occurrences and the amount of those losses. Because the current Dram Shop Law is very broad and therefore makes it difficult to predict losses, insurers are reluctant to write any liquor liability insurance. By increasing predictability one can theoretically increase insurer willingness to write insurance. The insurance industry itself, however, is currently experiencing the low reaches of its cycle. Publicity concerning huge verdicts in dram shop cases in other states has only helped to convince insurers to stay out of the liquor liability line while the whole insurance community is doing so poorly.

The Committee recognized that all states are experiencing insurance unavailability in one form or another. The National Association of Insurance Commissioners (NAIC) issued a memo in October of 1985 outlining the State responses to availability concerns, terming the situation an "availability crisis."

In light of this nationwide problem in almost all areas of commercial property/casualty insurance, coupled with the fact that liquor liability insurance in Maine is not written on just Maine liquor liability losses, the Committee concluded that whatever the Legislature does, short of eliminating liquor liability altogether, it will not have a major effect on the availability of insurance. The Committee thus drafted the legislation with more weight given to the policy questions involved and not focusing on availability of insurance as the central issue. The Committee did note that any changes which limit or clarify liquor liability will probably help make liquor liability insurance available, although insurance companies have not been able to guarantee such results.

The Committee has included a section which requires the Superintendant of the Bureau of Insurance to collect and maintain certain information about liquor liability insurance in Maine. This information was greatly needed by the Committee in this study, but it had never been compiled. The new law will make future evaluations much easier to complete.

2. PURPOSES OF THE LIQUOR LIABILITY ACT

(The proposed legislation is attached as Appendix B.)

A. Reduce intoxication-related injuries

The Committee determined that the main purpose behind the new liquor liability act is to reduce intoxication-

related injuries. That the law can achieve this goal is indicated by testimony and opinions expressed outside of the Committee that servers, particularly social hosts, are much more careful in serving alcohol because they may be held liable for any damages caused by an intoxicated person they served. The Committee believes such a duty of care is not too heavy a burden in most situations if it will save lives and reduce injuries, especially on our highways. (See 3., A-C, for specific discussion on liability.)

B. Clarity and Fairness

The standard of care which a server must employ is also important in reducing intoxicated-related injuries. The current law has been interpreted as a strict-liability statute; that is, if the server serves a minor who has believable but false identification documents and does not reasonably appear to be a minor, the server is still liable. Such a liability standard is appropriate for liquor enforcement purposes, but the Committee determined that it is not appropriate for civil damages purposes. A standard of care based on the server's ability to conform his actions to the circumstances as he knows them to be is more effective in modifying behavior than a strict liability standard. This is because the server is in charge of his own fate, liability speaking, while under strict liability he may be held liable despite his best efforts. The Committee thus drafted the new bill to hold the server liable only if she is at least negligent. Negligence is deviating from what the reasonable and prudent person would do in similar circumstances. (The Committee is taking no action on the standard used for enforcement purposes.)

There are several areas of the old Dram Shop Law that many members of the Committee felt were unfair. This unfairness includes making a defendant pay 100% of the damages when he was only partially responsible, and allowing the intoxicated individual to sue the person who served her. The issues of several liability with apportionment (@2512), added in the 1985 amendment, and first-party suits (@2504) are addressed in the legislation.

The Committee agreed that the intoxicated individual who directly caused the injuries should be made to bear his share of the damages. Included in the legislation, then, is a "name and retain" section, modeled on the Michigan law. (@2512) When a server is sued under the Act, the intoxicated person she served must be named as a defendant in the suit and retained until the suit is concluded. This will make sure that a responsible party is not left out of the suit in zeal for reaching only the "deep pocket." It also ensures that the situation will be avoided where the intoxicated individual settles with the injured party, probably at the limits of his insurance policy, then

accepts all responsibility for the damages as a witness in the suit against the server, so the server pays little or nothing, and the plaintiff receives inadequate compensation. In adding the "name and retain" section, the Committee realized that such a provision discourages, prohibits in some cases, settlement. The Committee determined, however, that the sacrifice in settlements should be made for the increase in fairness shown to both the plaintiff and the server.

C. Compensation

Another purpose served by the Act is to make clear that injured parties, in some situations, have another source from which to seek compensation for their injuries. Of course, this is limited to situations in which the server has been negligent, or worse, in serving liquor. If the server has, at least negligently, contributed to the risk to the public by serving a minor or a visibly intoxicated individual, that server should bear his share of the damages.

D. Server education

A very important aspect of liquor liability is alcohol server education. By educating servers about the effects of alcohol, how to recognize when a person has had too much to drink, how to stop serving someone and alternatives to alcohol and drunk driving, servers can play an effective role in reducing intoxication-related injuries and deaths. The Committee recognized this important factor, and has created incentive for commercial establishments to send servers and management to server education programs by including it in a "responsible serving practices defense." Proof that the establishment's servers attended server education programs shall be admitted as evidence that the business was not negligent or reckless, although it will not prove conclusively that the server was not negligent in any particular case. (@2515)

(There is nothing in the legislation or this report that implies that nonlicensee servers cannot take advantage of the "responsible serving practices" defense; the provision is tailored for licensee servers because it is assumed they will be in a position to use it most.)

The Committee has determined that an appropriate alcohol server education program will contain at least the following:

- Instruction on:
    - how to recognize signs of intoxication
    - how to prevent excessive consumption, including server intervention
    - promotion of non-alcoholic and low-alcohol drinks

- the effects of alcohol on the human body
- alcoholism as a disease
- what treatment and assistance programs are available for people with alcohol problems
- Maine liquor laws, including liquor liability laws
- examining identification documents

- Pre-testing and post-testing of participants
- Certificate awarded to participants who successfully complete the course and final evaluation.

3. SPECIFIC ISSUES

A. Which servers should be held liable

A controversial issue addressed by the Committee is which servers should be liable. If looking at the question from an injured party's perspective, it makes sense to hold liable all servers who served improvidently: It does not matter what the source of the liquor is, just that it was provided when it should not have been provided. This would mean that all licensees could be held liable, whether they sold liquor by the drink for consumption on the premises or by the bottle for consumption off the premises. It would pull in all social hosts and the State of Maine as the proprietor of State liquor stores.

Another view , however, is that nonlicensees serve liquor in a social, not a for-profit, situation. Because they experience no economic gain, they should not be forced to suffer economic loss for their actions.

There was agreement that all servers of alcohol should be liable for resulting damages if they recklessly or negligently serve a minor. The Committee also agreed that licensees should be liable for negligently or recklessly serving a visibly intoxicated individual. The Committee disagreed, however, when it came to liablity of the social host for serving a visibly intoxicated adult. For drafting purposes, the Committee agreed to hold a nonlicensee liable for recklessly serving a visibly intoxicated individual. No liability would attach to a social host who negligently serves a visibly intoxicated individual. (@2505)

The draft does not waive sovereign immunity for State liquor stores because the Committee feared that serious repercussions would be felt outside of the liquor liability area.

The drafted legislation no longer holds the owner or lessor of the building liable for service of liquor within the building, unless the owner or lessor is the license holder.

B. Liability

The Committee determined that there should be two levels of conduct for which a server should be liable. The first level is negligent conduct. Negligent service of liquor is defined in the legislation as serving a person when the server knows or a reasonable and prudent person in similar circumstances would know that the person was a minor or was visibly intoxicated. (@2506) The draft holds licensees and nonlicensees liable for negligently serving a minor, and licensees liable for negligently serving a visibly intoxicated individual. (@2505) A server who acts in the same manner that a reasonable and prudent person would in the same circumstances is not held liable.

The second culpable level of conduct is recklessness. For drafting purposes, the Committee agreed to define reckless service of liquor as when the server intentionally serves an individual when the server knows that the individual being served is a minor or is visibly intoxicated, and the server consciously disregards an obvious and substantial risk that serving liquor to that individual will cause physical harm to the drinker or to others. (@2507) This definition requires that the server intentionally serve a minor or a visibly intoxicated individual. This avoids the problem of trying to hold a server responsible under the reckless standard for serving an adult, who is not visibly intoxicated, and the server does not know that the adult is planning to give the liquor to a person the server could not serve.

The reckless level represents more outrageous conduct than negligence, and a reckless server is held liable accordingly. All servers, nonlicensees as well as licensees, are liable for damages resulting from reckless service of liquor to a minor or a visibly intoxicated individual. (@2505) More research will be done to determine if the language "obvious and substantial" creates the appropriate level of risk to be avoided.

The Committee agreed for drafting purposes to limit the damages for which a server is liable to those which are proximately caused by the minor's or intoxicated individual's consumption of the liquor. Proximate cause is defined as that which, in a natural and continuous sequence, unbroken by any foreseeable intervening cause, produces injury, and without which the result would not have occurred. With the insertion of this proximate cause language, the drafted legislation is considerably less broad than the current law. Other options considered were limiting the damages to those caused by the drinker on the server's premises or by the drinker's operation of a motor vehicle, and, the most limited, just those damages caused by the operation of a motor vehicle.

C. Who may sue for damages

There was considerable discussion about which injured parties should be permitted to sue the server. The points to be weighed against each other are the fairness in allowing the intoxicated individual who directly caused the damages to recover for his injuries from the server, against the bad public policy in letting a blameworthy server escape liability. The solution the Committee chose was to prohibit the drinker, if at least 18, from recovering damages from the server if the server provided him with liquor negligently (when the drinker was a minor or visibly intoxicated). Also prohibited from suing in that situation would be the estate of the drinker, and anyone claiming loss through the personal injury or death of the drinker. The Committee believes that even though an 18 year old cannot legally buy liquor in Maine, a person of that age should be responsible for the injuries to himself which he causes. However, if the server were more than negligent in serving a minor or a visibly intoxicated individual, i.e., if she were reckless, then the drinker is not barred from collecting damages from the server. This negligence/reckless distinction further encourages the server to be very careful in serving liquor. In all situations, a minor under 18 who is served negligently or recklessly can sue the server for his injuries. (@2504)

The Committee chose not to legislate in the area of whether one of the drinker's companions can sue the server assuming that the doctrines of comparative negligence and assumption of risk, as well as other common law defenses, are available to the server as defenses. (@2510)

D. Definitions

For drafting purposes, the Committee defined "intoxication" as a "substantial impairment of an individual's mental or physical faculties as a result drug or liquor use." "Substantial" impairment is necessary because even a small amount of alcohol may impair a person's faculties to some degree, but most people would not consider the person to be drunk or intoxicated at that stage. Reference to "drug" use as well as "liquor" use is made for 2 reasons. First, alcohol itself is often considered a type of drug, or at least on par with drugs. Second, a person may be intoxicated, even visibly intoxicated, by use of a drug other than alcohol although an observer may not be able to easily determine the cause of the intoxication. It is in the best interests of the public as well as the individual to not serve a person who is visibly intoxicated, no matter what the cause of the intoxication.

The most pivotal definition is for "visibly intoxicated," because it is the standard setting reasonable conduct apart from negligent and reckless conduct. The

goal is to set a standard for not serving an individual at a level of intoxication that is obvious enough to be perceived by a reasonable and prudent person, and that reasonable and prudent person would know not to serve that individual. The definition developed thus far is "a state of intoxication accompanied by a perceptible act or series of acts presenting clearly unmistakable sign or signs of intoxication." There is some disagreement whether this is actually too high a standard, i.e., servers can serve with impunity people who should not be served. The Committee will work on language which will describe an individual that is intoxicated and shows clear signs of intoxication without actually committing any perceptible act or series of acts. (@2503)

The term "licensee" is expanded to include any person who is required to be licensed under Title 28. This is to eliminate the possibility that a server will avoid application of this Act by selling or serving liquor without a license, but because she has no license, she cannot be termed a "licensee."

"Nonlicensee" is a new term and takes in the social host as well as anyone else serving liquor who does not need a license to do so, such as an employer at an office Christmas party.

"Service of liquor" is defined to include any provision of liquor, whether it be gratuitous, as a sale or otherwise.

E. Damages

A thorny issue the Committee faced was whether damage "caps" are appropriate. Those who favor putting a monetary limit on damages for which a server can be held liable assert that it is unfair to expose a server to unlimited liability when she was not the one who directly caused the injuries. In addition, damage limits may make insurers more confident and thus more likely to write insurance.

The arguments against damage caps include adherence to the "make-whole" doctrine of tort law which makes the culpable parties pay all the damages of an innocent injured party so he is fully compensated for his losses. With a damage cap, a plaintiff involved in a catastrophic accident will have to pay the bulk of expenses himself. In addition, damage caps have not helped the availability of insurance in other states or in other areas, such as municipal liability. (The Maine Tort Claims Act, 14 MRSA @8101 et seq., limits liability to $300,000 and municipalities still cannot easily obtain insurance.) Liability insurers are not liable above their policy limits, anyway. A damage limit is a disincentive for responsible serving practices (the server is not liable

beyond a certain amount so is not concerned about contributing to a catastrophic accident), and may increase the average settlement or verdict by giving the parties a figure at which to aim.

For drafting purposes, the Committee agreed to put a $500,000 limit on damages that one server would have to pay for any one occurrence. If more than one person is injured in that occurrence, each person's claim would be reduced in proportion to the total amount of claims. (@2509)

The Committee also discussed whether punitive damages are appropriate and, if so, should they be subject to the $500,000 damage cap. Again, for drafting purposes, punitive damages were left out of the legislation. This decision was made while recognizing that the currect Dram Shop Law allows "actual and exemplary" damages; by not mentioning puntive damages in this draft, then, the award of punitive damages is disallowed by implication. This may change after the Committee receives further testimony on the issue.

As in the Maine Tort Claims Act, damages may be awarded for property damage, bodily injury and death. The Wrongful Death and Survival statutes are specifically intended to apply. (@2508)

F. Notice period

A server at a large business establishment may have a difficult time defending a suit. She must be able to show, once the plaintiff puts the issue in doubt, that she was not negligent or reckless in serving a particular person. In 1985, the Legislature added a 2-year notice period. Injured parties must notify the server of the potential suit within 2 years of the injury. This gives the server a chance to reconstruct that day at a period of time which is closer to the occurrence than if the server had not received notice of the suit until it was filed, up to 6 years later. A notice period prohibits suit if the plaintiff has not given notice of the suit to the defendant within that time period.

Although the Committee agreed a notice period was appropriate, there was disagreement as to the best length of a notice period. Worthy plaintiffs who are seriously injured may not be able to think about compensation or suing the server within a very short time period. In addition, if the plaintiff was injured by a drunk driver, it is unlikely that the driver will waive his Fifth Amendment rights and give the plaintiff the information necessary to find out if the server is liable.

The draft legislation contains a 180-day notice period, modeling the time period on the Maine Tort Claims

Act (14 MRSA @8107). Also borrowed from that section is the extension of the notice period if the plaintiff can demonstrate why notice could not have reasonably been given within the 180 days. The Committee tentatively agreed that such a provision provides a good balance of protection for both the plaintiff and the defendant. (@2513)

If more than one server negligently or recklessly served liquor to the drinker, the fact that the plaintiff did not give written notice within the 180 days to every server is not intended to void the effect of the proper notice given to the other server or servers.

G. Statute of limitations

The statute of limitations is often confused with the notice period provision; they are actually two distinct issues, even though the effects are often the same in barring suits. If suit is not filed within the statute of limitations, suit can never be brought. Under the current law, as long as the proper notice was given within the 2-year period, the suit may be filed anytime up to 6 years after the injury. (Currently the statute of limitations for dram shop actions is the same - 6 years - as for most other torts. 14 MRSA @752.)

The Committee was concerned that 6 years is too long a period for which to expose a server to suit. A shorter statute of limitations may make loss occurrence more predictable, but it also may prohibit worthy plaintiffs from collecting damages from a culpable server. For drafting purposes, then, the Committee agreed to a 2-year statute of limitations. (@2514)

H. Exclusivity of remedy

It is unclear whether a common law liquor liability cause of action exists in Maine. As this report is printed the Supreme Judicial Court of Maine is studying that question for the first time in the history of the Maine Dram Shop Act. The Committee has tried to consider all situations for which relief may be sought and has included the appropriate cases in this draft of legislation. It is the intent of the Committee, therefore, to designate this law as the only remedy for injured parties against licensees or nonlicensees who served liquor to minors or visibly intoxicated individuals. The broad standard that the server need only serve in violation of law to be held liable for damages is no longer in force.

I. Responsible serving practices.

A server who is following responsible serving practices should have the benefit of his good intentions

and acceptance of obligations. Thus, proof of the defendant's appropriate serving procedures shall be accepted by courts as evidence that the server was not negligent or reckless. Such responsible practices include attending alcohol server education programs and the imposition of policies to identify people who should not be served, providing alternatives to alcohol, making food available and other procedures which will help avoid over-consumption and the creation of hazards. However, negligence or recklessness is not proved or disproved by the disproof or proof of responsible serving practices alone. Even if the server has followed all appropriate practices, if he or she were actually negligent or reckless in serving an individual then the server is liable: Proof of responsible serving practices is not a complete defense. Just as important, however, is that by adding this language to the drafted legislation the Committee does not intend to create a standard by which all servers in Maine must be judged. There are estimated to be about 40,000 licensees and their employees in Maine. The geography and demography of Maine makes each business situation unique. The Committee did not believe that the benefits of requiring all servers to attend server education programs at this time would outweigh the burden such a requirement would place on servers. As the State-sponsored program develops and expands, however, such requirements may be added. For now, server education programs will be seen as evidence that the server was not negligent or reckless, and all servers are encouraged to attend appropriate programs as soon as possible.

J. Privileges

The Committee determined that cautious servers should be protected from paying civil damages when they refuse to serve a patron in a good faith effort to avoid creating a risk to that person or the general public. Licensees are also protected if they hold a person's identification documents, but only if the retention is for a reasonable period of time to determine if the person is of legal drinking age. The protection provided by the section is protection from civil suit by the person refused service or whose identification documents were retained. It does <u>not</u> address suit by a party who is subsequently injured by the person who was refused service. (To clarify the liability in this situation: If the server did not serve the person, the server is not liable under this law.)

A server is, of course, not liable to the person refused service if the person is a minor or is visibly intoxicated. To serve such a person is a violation of the license conditions and may create liability under this law. The protection provided by this section extends further than that by allowing the server to still be immune from civil suit by the patron if the server refuses to

provide liquor in a good faith effort to prevent the person from becoming visibly intoxicated. A visibly intoxicated individual presents a risk to the public even if he is not served any more liquor. Thus, the licensee can "cut off" a person before the person reaches the level where he is visibly intoxicated. (@2516)

The Committee is operating under the assumption that a liquor vendor can refuse to serve anyone at anytime, except for an unconstitutional reason.

The Committee inserted these privileges into the legislation only with the understanding that a licensee who chooses not to exercise these privileges will not be held liable because of such choice. Liability is founded only upon the negligent or reckless service of liquor to a minor or a visibly intoxicated individual, and failing to exercise these privileges is not negligence or recklessness in and of itself.

K. Insurance information

In the course of the study the Committee needed information on liquor liability insurance in Maine. Unfortunately, statistics were not broken down into specific areas helpful to the study. The legislation thus requires the Superintendant of the Bureau of Insurance to collect and maintain statistics on insurers, policies, premiums, awards and settlements. This information will aid the Committee in any future investigations of the liquor liability problem.

L. Evaluation

The Model Dram Shop Act suggested that the effectiveness of the act should be evaluated 2 years after enactment. The proposed legislation designates the Legal Affairs Committee as the body responsible for the evaluation. The appropriate state agencies will collect the necessary data, and the Committee will compile and analyze it. This evaluation process will ensure that the Act achieves and continues to achieve the purposes for which it was enacted.

M. Mandatory automobile insurance

The Committee considered the concept of mandatory automobile insurance as a method of ensuring that victims of drunk drivers will be fully compensated for their injuries. By requiring all registered car owners or even all licensed drivers to carry a minimum level of liability insurance, the primary responsibility for compensation would be borne by the person who directly caused the injury. Without such mandatory insurance, however, victim compensation cannot be guaranteed without requiring the

server of the liquor, one level removed from the injury, to pay a share. Appendix C shows how many states which impose some level of liquor liability and have mandatory automobile insurance. The Committee also considered requiring proof of financial responsiblity after the first Operating Under the Influence conviction. (Current law requires proof of financial responsibility after the second OUI conviction.) Because mandatory automobile insurance proposals have failed in the Maine Legislature in recent years, the Committee decided not to jeopardize the vast improvements in the law that the legislation will make by trying to include the mandatory insurance provisions.

APPENDIX A

Legislation proposed by the
Coalition for Dram Shop Reform
with comments by the
Maine Trial Lawyers

COALITION FOR DRAM SHOP REFORM PROPOSAL

Section 1. Amend 17 M.R.S.A. Section 2002 to read as follows:

§2002 Responsibility for injuries by drunken persons.

1. Remedy Created

Every person who suffers property damage, personal injury or death arising out of an accident caused by the negligent operation of a motor vehicle by an intoxicated driver shall have a right of action in his own name in accordance with this section. The right of action created by this section shall lie against anyone who has caused or contributed to the intoxication of the intoxicated driver by selling or giving alcoholic beverages to the intoxicated driver while he was visibly intoxicated or a minor in negligent or willful violation of law. If the intoxicated driver intoxicated is above the age for legal consumption of alcoholic beverages, neither he nor his estate, nor those asserting claims arising out of his personal injury or death shall have a right of action under this section.

2. Comparative Negligence and Several Liability

The law of comparative negligence shall apply to any action brought under this section except that each defendant shall be severally liable, and not

Maine Trial Lawyers Association
Response To ProposedDramshop Changes

Section 2

Elimination of joint liability results in the burden of medical expenses and other damages falling on the wrong people-the innocent victim and the innocent taxpayer. Joint and several liability is a well-established principle of Anglo-American law that applies in every other field of law. Without mandatory automobile liability insurance (not required by Maine law), this proposal if enacted would deprive innocent victims of compensation from those whom a judge or jury has found at fault.

jointly liable, for that percentage of the plaintiff's damages which corresponds to that defendant's percentage of fault as determined by the court or a jury.

3. Responsible Business Practices

A defendant's service of alcoholic beverages in violation of law is not negligent or willful if the defendant at the time of service is adhering to responsible business practices. Responsible business practices are those business policies, procedures and actions designed to prevent the sale of alcoholic beverages to visibly intoxicated persons or minors which an ordinarily prudent person would follow in like circumstances. Evidence of responsible business practices may include, but shall not be limited to, evidence that the defendant and/or his employees have conducted or attended alcohol seller or server education programs. The fact that the defendant and/or his employees have not conducted or attended alcohol seller or server education programs shall not in itself constitute negligence.

4. Persons Visibly Intoxicated

For the purposes of determining whether alcoholic beverages have been given or sold to a person who

Section 3

Although it should be the legislature's goal to encourage responsible business practices, the fact that a business generally follows such practices should not be a free ticket from liability in all cases. By analogy, the fact that an auto driver has taken the Defensive Driving Course is not a defense to a claim that on a particular occasion the driver has been negligent. The fact that the driver may have been involved in previous accidents is not now admissible to show negligence in a particular case. Rather, the focus (as it should be here) is on the facts of the particular event in question. If a bar serves a visibly intoxicated person, it should not be relieved from liability.

See comments on Section 4 next page

is visibly intoxicated, "visibly intoxicated" shall mean a state of intoxication accompanied by a series of actions which present clear and convincing signs of intoxication.

5. Notice of Claim

To recover damages under this section the injured person shall give written notice to the defendant within one hundred and eighty (180) days of the occurrence of the injury. The notice shall specify: the injured person's intention to bring an action under this section, the time, the date and the person to whom the sale or gift of alcoholic beverages was made; the name and address of the person injured or whose property was damaged, and the time, date and place where the injury to person or property occurred.

6. Naming of Intoxicated Driver

An action under this section shall not be commenced and maintained unless the alleged intoxicated driver or his estate is a named defendant in the action and is retained in the action as a defendant until the litigation is concluded by trial or settlement, provided that this subsection shall not apply to an action brought by an intoxicated driver who is below the

Section 4

Although it may be wise to place the "visibly intoxicated" standard in the statute, we suggest that the definition (visibly intoxicated) is a concept which is better left to development on a case-by-case basis by Maine Courts and Maine juries.

The drafters of these changes have attempted not only to define the term but also to radically increase the burden of proof from the current "preponderance of the evidence" standard to "clear and convincing". This change was not previously suggested.

Section 5

This period (180 days) is too short; In many cases, the victim has been badly hurt and unable to make the claim. A two year statute of limitations, as indicated in paragraph 11, is standard in negligence action.

Section 6

This section is closely tied to the issue of joint and several liability, which should be retained. This section should be rejected as it will discourage settlement of claims and increase litigation costs at a time when we should be encouraging just the opposite.

age for legal consumption of alcoholic beverages, or his estate, or those asserting claims arising out of his personal injury or death.

7. Limitation on Damages

In any action for damages permitted under this section, the claim for and award of damages including costs against a defendant shall not exceed $300,000 for any and all claims arising out of a single occurrence. Court costs, interest and all other costs which a court may assess shall be included within the damage limit specified by this section. When the amount awarded to or settled for multiple claimants against a defendant exceeds the limit imposed by this section, any party may apply to the Superior Court to allocate to each claimant his equitable share of the total limited as required by this section. Any award by the court in excess of the maximum liability limit specified by this section shall be automatically abated by operation of this section to the maximum limit of liability.

8. Governmental Entities

A governmental entity, including the State of Maine, which sells or gives alcoholic beverages to a visibly intoxicated person or a minor, in

Section 7

This section institutes a special break for bars and restaurants that is unavailable to any other private entity in the State of Maine. We question the rationale. Passage of this wording will imply that bars are more socially important to us than hospitals, churches, or recreation areas. A catastrophically injured victim, facing $700,000.00 of bills for future medical and institutional care as the result of the clear fault of a defendant is entitled to full compensation under our current law. This section would deprive that victim of adequate, fair compensation in order to benefit a single class of citizens (bar and restaurant owners). Is this wise public policy?

negligent or willful violation of law shall be liable under this section to the same extent as a private person and to that extent the doctrines of governmental, sovereign and official immunity are expressly waived.

9. Exclusive Remedy

This section is the exclusive remedy for claims based on the sale or gift of alcoholic beverages to an intoxicated person or to a minor or otherwise in violation of law.

10. Privilege for Practices Designed to Prevent Violations of Law

No person may be held civilly liable for damages resulting from the refusal to serve alcoholic beverages to any person who: (1) fails to show proper identification of age, or (2) appears to a reasonably prudent person to be a minor, or (3) is refused service of alcoholic beverages in a good faith effort to prevent that person's intoxication. No person may be held civilly liable for holding a person's identification documents presented as proof of the person's age for the purposes of receiving alcoholic beverages provided: (1) such holding is for a reasonable length of time in a good faith effort to determine whether the person is of legal age, and

(2) the person whose identification documents are being held is informed of the reason for the defendant's action. No person may be held civilly liable for using reasonable force to detain for a reasonable period of time necessary to summons law enforcement officers a person who, in the defendant's presence, is attempting to operate a motor vehicle while intoxicated. This subsection does not limit a person's right to assert any other defense to a claim otherwise provided by law.

11. Statute of Limitations

Every claim permitted under this section shall be forever barred from the courts of this State, unless an action therein is begun within two years after the cause of action accrues.

Section 2. Amended 29 M.R.S.A. §1312-D(9) to read as follows:

9. Proof of Financial Responsibility

In the case of any person convicted of violating section 1312-B or convicted of violating Title 15 Section 3103, subsection 1, paragraph F, the Secretary of State shall not reinstate that person's license, right to operate or right to apply for or obtain a license until that person has complied with the financial responsibility provisions of section 782.

Section 3. Amend 29 M.R.S.A. §782 subsection 1 by amending the second sentence thereof to read as follows:

Upon receipt of an attested copy of the court record of a conviction under section 1312-B or Title 15, section 3103 subsection 1, paragraph F, the Secretary of State shall not reinstate the person's license, right to operate a motor vehicle or right to apply for or obtain a license until the person gives, and thereafter maintains for a period of 3 years, proof of his financial responsibility in the limits provided in this subsection, provided that the period of suspension shall in no case be less than the original period of suspension imposed for the conviction or adjudication.

APPENDIX B

Proposed legislation

FINAL DRAFT

SECOND REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document No.

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 is repealed.

Sec. 2. 28 MRSA c. 51 is enacted to read:

§2501. Short title

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

§2502. Purposes

1. Primary legislative purpose. The primary legislative purpose of this Act is to prevent intoxication-related injuries, deaths and other damages among Maine's population.

2. Secondary purposes. The secondary legislative purposes are:

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

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

C. To encourage all servers of alcohol to exercise responsible serving practices.

§2503. 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 the 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 or series of acts presenting clearly unmistakable sign or signs of intoxication.

§2504. Plaintiffs

Except as provided in subsection 1, any person who suffers damage, as provided in section 2508, may bring an action under this Act.

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, but may bring an action under this Act against a defendant for recklessly serving liquor to an individual:

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

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

§2505. 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 2506 and 2507, 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 2506, subsection 1, and section 2507, may be made a defendant to a claim under this Act.

§2506. Negligent service of liquor; liability

1. Negligent service to a minor. A defendant, as described in section 2505, who negligently serves liquor to a minor is liable for damages proximately caused by the minor's consumption of the liquor.

2. Negligent service to a visibly intoxicated individual. A defendant, as defined in section 2505, 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 defendant, would put a reasonable and prudent person on notice of such consumption.

§2507. Reckless service of liquor; liability

1. Reckless service to a minor. A defendant, as defined in section 2505, 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 2505, 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 old 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.

§2508. 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 statutes. Except as otherwise provide in this Act, damages may be recovered under Title 18-A, section 3-817, and Title 18-A, section 2-804, as in other tort actions.

§2509. Damage limits

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

§2510. Common law defenses

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

§2511. Exclusive remedy

This Act is the exclusive remedy against defendants, as described in section 2505, for claims by those suffering damages based on the defendants' service of liquor.

§2512. Name and retain; several liability

1. Name and retain. No action against a defendant may be maintained unless the minor or the intoxicated individual or his estate 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 2505, 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.

§2513. 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 2514 and shows good cause why notice could not have reasonably been filed within the 180-day limit.

§2514. 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.

§2515. 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. Defendant's and defendant's employees attendance at a server education training course; and

B. 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.

§2516. 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:

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; however, this subsection does not provide immunity from liability under sections 2506 and 2507.

§2517. Insurance records

1. Superintendant shall keep records. The Superintendant of the Bureau of Insurance shall collect and maintain records on the following statistics concering liquor liability insurance in Maine:

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

§2518. Evaluation

The joint standing committee of the Legislature having jurisdication over legal affairs shall conduct an evaluation of the effectiveness of this Act, to be completed within two years of its enactment. Evaluation topics to be addressed include, but are not limited to, initiation of, extent of, or changes in:

1. The incidence of driving while intoxicated offenses, injuries and deaths;

2. The incidence of other alcohol-related problems;

3. The incidence of sales to minors and intoxicated persons;

4. The number and type of server and manager training programs in the state;

5. The curricula of such programs;

6. The management policies, procedures and actions of licensees regarding the service of liquor;

7. The number of actions filed, settled, and litigated under the Act and the number and amounts of recoveries;

8. The number of successful defenses based on section 2515 of this Act; and

9. The legal interpretations of the provisions of this Act, particularly as compared to other state court interpretations.

STATEMENT OF FACT

The purpose of this bill, the result of a comprehensive study on the Maine Dram Shop law conducted by the Joint Standing Committee on Legal Affairs, is to clarify liquor liability in Maine. This bill repeals the Dram Shop Act, 17 MRSA §2002, and enacts a new chapter in the Liquor Laws of Title 28.

The Act's main purpose is to reduce intoxication-related injuries. The secondary purposes are to provide a mechanism whereby responsible persons compensate people injured by intoxicated individuals, payment of damages is allocated fairly to encourage insurance availability, and to encourage all alcohol servers to exercise responsible serving practices.

The Act prohibits the intoxicated individual, and his estate and those claiming under him, from collecting damages from the server, but only when the intoxicated individual was at least 18 years old when served.

Liability is based on the negligent or reckless service of liquor to a minor or a visibly intoxiated individual.

The Act holds liable all licensees who negligently or recklessly serve a minor or a visibly intoxicated individual. Nonlicensees, often termed social hosts, are liable for recklessly serving a visibly intoxicated individual or negligently or recklessly serving a minor.

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

Damages may be awarded for property damage, personal injury or death, but only up to $500,000 per occurrence. If more than one person is injured in an accident, each injured person's award is reduced in proportion to the total amount of claims.

This Act is the exclusive remedy for liquor liability claims against the defendants defined here.

The statute of limitations is reduced to 2 years. The notice period is reduced to 180 days, with an exception for good cause shown.

The intoxicated person who directly caused the injury or damage must be named in the suit and retained until settlement or judgment. Liability is several, not joint, and the jury must apportion damages.

Evidence that the server was exercising responsible serving practices shall be admitted as evidence that the defendant was not negligent. The defense of responsible serving practices is not intended to create a standard of care which the defendant must in all cases follow or is quilty of negligence or recklessness.

Licensees are given protection from suit by a person they refuse to serve when that person fails to show proper identification or reasonably appears to be a minor, or when the server refuses to serve the person to prevent that person from even reaching the level of visible intoxication. A server who does not exercise these privileges, however, is not automatically considered negligent.

This Act requires the Superintendant of Insurance to maintain records concering liquor liability insurance, suits and settlements.

The Act requires the Legal Affairs Committee to review the effectiveness of this Act in 2 years.

The Committee report on the Dram Shop Study includes an in-depth explanation of each section.

APPENDIX C

Liquor liability and mandatory automobile insurance in the 50 states

Liquor liability statutes and common law

("Common law" refers to case law which establishes a cause of action against the provider of alcohol outside of or without a dram shop statute)

State	Dram Shop Act	Common Law Liability	Mandatory Auto Ins.
Alabama	§6-5-71	unclear	no
Alaska	§04.21.020	yes	no
Arizona		yes	yes
Arkansas		no	no
California	Bus. & Prof. §25602.1 (Bus. & Prof. §25602)	no (nonliability)	yes
Colorado	§13-21-103	unclear	yes
Connecticut	§30-102	no	yes
Delaware		no	yes
District of Columbia		yes	yes
Florida	§738.125	yes	no
Georgia	§51-1-18	no	yes
Hawaii		yes	yes
Idaho		yes	yes
Illinois	Ch. 43 §135	no	no
Indiana		yes	yes
Iowa	§§123.92 - 123.94	yes	no
Kansas		unclear	yes
Kentucky		yes	yes
Louisiana		yes	yes
Maine	17 §2002	unclear	no

State	Dram Shop Act	Common Law Liability	Mandatory Auto Ins.
Maryland		no	yes
Massachusetts	231 §85s	yes	yes
Michigan	§436.22	yes	yes
Minnesota	§340.95	yes	yes
Mississippi		yes	no
Missouri	new statute	yes	no
Montana		yes	yes
Nebraska		no	yes
Nevada		no	no
New Hampshire		yes	no
New Jersey		yes	yes
New Mexico	§41-11-1	yes	yes
New York	Gen. Oblig. §§11-100 and 11-101	no	yes
North Carolina	§§18B-120 - 18B-129	unclear	yes
North Dakota	§5-01-06	unclear	yes
Ohio	§§4399.01 - 4399.08	yes	yes
Oklahoma		unclear	yes
Oregon	§§30.950 - 30.960	yes	yes
Pennsylvania	47 §4-497	yes	yes
Rhode Island	§§3-11-1 - 3-11-2	unclear	no
South Carolina		unclear	yes
South Dakota	new statute: no liability		no
Tennessee		yes	no

State	Dram Shop Act	Common Law Liability	
Texas		unclear	yes
Utah	§§32-11-1 - 32-11-2	unclear	yes
Vermont	T 7 §§501 - 507	unclear	no
Virginia		yes	no
Washington		yes	no
West Virginia		unclear	yes
Wisconsin		unclear	no
Wyoming	§12-5-502	yes	yes

TOTALS

States with Dram Shop Acts	25
States with Dram Shop Acts and Common law liability	12
States with just Common law liability (including Wash., D.C.)	14
TOTAL STATES WITH SOME FORM OF LIQUOR LIABILITY (INCLUDING Wash., D.C.)	39
States without liquor liability	6
States in which liability is unclear	6
States with liquor liability and mandatory auto insurance (including Wash., D.C.)	25
States with liquor liability but without mandatory auto ins.	14
States without liquor liability but with mandatory auto ins.	3
States with unclear liability but with mandatory auto ins.	5

(33 states (including Wash., D.C.) have mandatory automobile insurance)