

**H.288: Maine and New Hampshire Liquor Liability Summary
March 2, 2023**

Maine

The Maine Liquor Liability Act, Me. Rev. Stat. Tit. 28-A, §2501, et seq., is based on the Model Alcoholic Beverage Retail Licensee Liability Act of 1985 (“Model Act”).

The act defines “visibly intoxicated” as 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.” ME. REV. STAT. tit 28-A, §2503(7). Sections 2506 and 2507 provide liability for both the negligent service of liquor and the reckless service of liquor as follows:

Section 2506.

1. Negligent service to a minor. A server 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 server 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 server 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. Server’s knowledge of an individual’s consumption. A server is not chargeable with knowledge of an individual’s consumption of liquor or other drugs off the server’s premises unless the individual’s appearance and behavior or other facts known to the server would put a reasonable and prudent person on notice of such consumption. ME. REV. STAT. Tit. 28-A, §2506 (2021).

Section 2507.

1. Reckless service to a minor. A server 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 server 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 server intentionally serves liquor to 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. For purposes of this act, the disregard of the risk, when viewed in light of the nature and purpose of the server’s conduct and the circumstances known to the server, 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 server 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. ME. REV. STAT. Tit. 28-A, §2507 (2021).

The statute contains a provision that written notice of a violation of the state's statute must be given to the defendants within 180 days. ME. REV. STAT. Tit. 28-A, §2513 (2021). The statute also provides a two-year statute of limitations. ME. REV. STAT. Tit. 28-A, §2514 (2021). Finally, the statute sets forth a limit on damages which can be awarded. ME. REV. STAT. Tit. 28-A, §§2508-2509 (2021). Specifically, an award for damages, except medical expenses and treatment, is limited to \$350,000 for all claims arising out of a single occurrence. This provision has also survived a constitutional challenge. *Peters v. Saft*, 597 A.2d 50 (Me. 1991).

The statute further provides for several, but not joint, liability in §2512(2). This has also survived constitutional challenge. See *Peters*, supra. Section 2512(a) states that no third-party action may be maintained against the server unless the intoxicated tortfeasor is also named as a defendant in the lawsuit and retained in the action until the complete conclusion of the litigation. In *Swan v. Sohio Oil Co.*, 618 A.2d 214 (Me. 1990), the case against the bar was dismissed because the driver settled and was released before suit filed.

The Supreme Court of Maine, in *Beaulieu v. Aube Corp.*, 796 A.2d 683 (Me. 2002), held that while evidence of a person's later intoxication may be relevant to whether the person was visibly intoxicated when served, there necessarily must be some factual link between the two points in time. The court reiterated that to set forth a prima facie case for negligent service of liquor, a plaintiff must establish: (1) the defendant server provided liquor to an intoxicated individual by sale, gift, or any other means of furnishing liquor; (2) at the time of service, the individual was visibly intoxicated; (3) the server actually knew or a "reasonable and prudent person in similar circumstances would know" that the person served was visibly intoxicated; and (4) the plaintiff's injuries were proximately caused by the negligent service of liquor to the intoxicated individual. *Id.* at 690; citing ME. REV. STAT. Tit. 28-A, §§2503, 2506 (2018).

New Hampshire

New Hampshire follows the model act in N.H. Rev. Stat. Ann. §507-F:1, et seq., and provides for both the negligent service of alcohol and the reckless service of alcohol as follows:

507-F:4 Negligent Service of Alcoholic Beverages.

1. A defendant who negligently serves alcoholic beverages to a minor or to an intoxicated person is liable for resulting damages, subject to the provisions of this chapter.
2. Service of alcoholic beverages to a minor or to an intoxicated person is negligent if the defendant knows or if a reasonably prudent person in like circumstances would know that the person being served is a minor or is intoxicated.
3. Proof of service of alcoholic beverages to a minor without request for proof of age as required by RSA 179:8 shall be admissible as evidence of negligence.
4. Service of alcoholic beverages by a defendant to an adult person who subsequently serves a minor off the premises or who is legally permitted to serve a minor does not constitute service to the minor unless a reasonably prudent person in like circumstances would know that such subsequent service is reasonably likely to occur and is illegal.
5. A defendant does not have a duty to investigate whether a person being served alcoholic beverages intends to serve the alcoholic beverages to other persons off the premises.
6. A defendant is not chargeable with knowledge of a person's consumption of alcoholic beverages or other drugs off the defendant's premises, when the person misrepresents such consumption or the amount of such consumption, unless the defendant's service to such person qualifies as reckless under RSA 507-F:5.
7. A defendant is not under a duty to recognize signs of a person's intoxication other than those normally associated with the consumption of alcoholic beverages except for intoxication resulting in whole or in part from other drugs consumed on defendant's premises with defendant's actual or constructive knowledge. N.H. REV. STAT. ANN. §507-F:4 (2021).

507-F:5 Reckless Service of Alcoholic Beverages.

1. A person who becomes intoxicated may bring an action against a defendant for serving alcoholic beverages only when the server of such beverages is reckless. The service of alcoholic beverages is reckless when a defendant intentionally serves alcoholic beverages to a person when the server knows, or a reasonable person in his position should have known, that such service creates an unreasonable risk of physical harm to the drinker or to others that is substantially greater than that which is necessary to make his conduct negligent.
2. A defendant who recklessly provides alcoholic beverages to another is liable for resulting damages.
3. Specific serving practices that are admissible as evidence of reckless conduct include, but are not limited to, the following:
 - (a) Active encouragement of intoxicated persons to consume substantial amounts of alcoholic beverages.

- (b) Service of alcoholic beverages to a person, 16 years of age or under, when the server knows or should reasonably know the patron's age.
- (c) Service of alcoholic beverages to a patron that is so continuous and excessive that it creates a substantial risk of death by alcohol poisoning.
- (d) The active assistance by a defendant of a patron into a motor vehicle when the patron is so intoxicated that such assistance is required, and the defendant knows or should know that the intoxicated person intends to operate the motor vehicle. N.H. REV. STAT. ANN. §507-F:5 (2021).

Source: Wilson Elser: *2022 50-State Survey*