

**PROPOSED MODEL INNKEEPER'S LIMITATION OF LIABILITY STATUTE**

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## Introduction

Historically, if a guest's property was lost or stolen while he or she was at an inn, innkeepers were held liable for the value of the property. Today, even though this general rule still exists, every state has enacted an "innkeepers statute," setting a cap on the amount the innkeeper is liable for, provided he or she complies with certain statutory requirements. However, statutory requirements differ from state to state, making compliance cumbersome for guests, lodging operators (especially those operating in more than one state), and the insurance companies that provide coverage for these incidents.

### Historical Development of Innkeeper's Limitation of Liability Statute

As early as the year 1367 in England, the innkeeper has been responsible for the protection of the personal property of his or her guests.<sup>1</sup> In the early years of travel, one of the primary functions of the innkeeper was to protect its guests against thieves.<sup>2</sup> If a guest was robbed at the inn, it was considered a breach of the innkeeper's duty to protect the guest from this misfortune.<sup>3</sup> If the innkeeper's employee stole guests' personal property, guests could recover double the value of the property.<sup>4</sup> Furthermore, even if the perpetrator could not be identified, the innkeeper still was liable to the guest for the value of the stolen property, which resulted in strict liability against the innkeeper and protected travelers from untrustworthy innkeepers.<sup>5</sup>

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<sup>1</sup> John E. H. Sherry, *The Law of Innkeepers: For Hotels, Motels, Restaurants, and Clubs* 415 (Cornell University Press 3rd ed. 1993).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> David S. Bogen, *The Innkeeper's Tale: The Legal Development of a Public Calling*, 1996 Utah L. Rev. 51, 53 (1996).

<sup>5</sup> *Id.* at 53-54.

Most U.S. jurisdictions adopted this rule of law from England. The innkeeper's liability was based on the rule of law for common carriers for loss or damage to goods entrusted to the carrier.<sup>6</sup> Under this rule, "the innkeeper is responsible for any loss or damage, regardless of the presence or absence of negligence on his part, unless the loss was caused by negligence or fraud of the guest or by an act of God or the public enemy."<sup>7</sup> The only burden on the guest was to show that the guest's property was lost while in the inn.<sup>8</sup> This common law rule, subject to statutory limitations on liability, is still the rule in a majority of states.<sup>9</sup>

The minority of jurisdictions that do not follow the common law rule have adopted the *prima facie* liability rule. The *prima facie* liability rule states that, "an innkeeper is only **presumed** to be liable for loss or damage to the goods of the guest and may **exculpate** himself by proving that the loss did not happen through any fault or negligence on his part or that of his servants."<sup>10</sup> States that have adopted the *prima facie* rule include Indiana, Illinois, Kentucky, Maryland, Texas, and Vermont.<sup>11</sup>

Despite this philosophical split, all U.S. jurisdictions have enacted statutes limiting the liability of innkeepers for the property of its guests. See Appendix A. These statutes vary considerably from state to state in both the innkeeper's duties and the innkeeper's maximum liability.

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<sup>6</sup> Sherry, *supra* note 1, at 415.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 416.

<sup>9</sup> *Id.* at 417.

<sup>10</sup> *Id.* Emphasis added.

<sup>11</sup> *Id.*

## **Why the Need for a Model Innkeeper's Limitation of Liability Statute**

Lodging operators, insurance companies, and guests would all benefit from a model innkeeper's statute. With most major hotel companies, as well as many smaller ones, operating hotels in multiple states, and with the relatively high level of turnover in the lodging industry, it is difficult for hotel owners and operators to stay current with each state's statutory requirements to limit liability. In order to do this, hotel owners and operators must be familiar with the statutory language in each state in which they operate. Furthermore, hotel owners and operators must ensure they are in compliance with the statutory requirements regarding where the limitations of liability notice is posted, the exact language the posting must have, and the on-site availability of a safe or safety deposit boxes for the guests. This is a very time-consuming endeavor on the part of owners and operators of multi-state hotels, especially when tracking amendments in 50 states.

Insurance companies that provide coverage to the hotels must keep up with the specific requirements of each state statute. The insurance companies must know the extent to which the hotel is liable, in the event of stolen or damaged personal property of the guest. Thus, in order to calculate the premium on a hotel's general liability policy, the insurance companies must be well-versed in each state's limitation of liability statute. Furthermore, in order to not risk paying out claims beyond the statutory limits, they must ensure that the innkeeper is in compliance with the statutory requirements.

Guests, as well, would benefit from an adoption of a model statute. As people travel more than ever before, guests expect some certainty in their obligations when visiting a hotel. Guests would like to know what they must do when staying at a hotel to protect their personal property, whether they are in New York or in California. If a model statute existed, hotel guests would know the extent to which their valuables are protected and whether they need to make extra accommodations to guard against loss. Additionally, a model statute developed today would embrace the societal changes that have occurred since most innkeeper statutes were amended over fifty years ago. These societal changes include: (1) the increased value of property that guests travel with; and (2) guests' property that didn't exist fifty years ago, such as laptops that are typically too large for most safety deposit boxes maintained at the front desk and called for by most statutes today.

A model statute would allow for consistent application and compliance requirements of an innkeeper's limitations of liability. The hotel industry may resist this proposed model statute due to its reluctance to changing the low liability ceilings currently in place. However, a modification of the current law is needed to properly balance the legitimate interests of innkeepers and of guests; to bring the laws up-to-date so that they take social evolution and the development of in-room safes into consideration; and to provide clarity for the innkeeper in its compliance obligations. The benefits of the model statute exceed the disadvantages of the increased cap amount. As you will see from the

case analysis below, there have been varying interpretations of the innkeepers' statutes among the states, which makes probable outcome predictability difficult.

### **Conditions Imposed On Innkeepers to Assert Limited Liability**

Generally, innkeeper's statutes require the innkeeper to provide the guest with a specific type of notice, to post a copy of the statute in specific areas of the hotel, and to post the statute in a specific font, in a specific language, and in a specific size. However, even if innkeepers do comply with the statute, they may still be held liable for the full amount of the misplaced or stolen property, if they are negligent, if their employee is responsible for the theft, or if they fail to provide a safe or safety deposit box.

### **Constructive Notice Required Even if Actual Notice Occurs**

From the research that has been compiled, the guest's constructive knowledge of the limited liability statute is far more important than the guest's actual knowledge of the statute. For instance, it would be far more risky for a hotel to verbally tell every guest about the limited liability statute rather than to post the hardly-noticed sign that is in most hotel guest rooms. Below are cases where the guest's constructive knowledge was more critical than the guest's actual knowledge.

In an 1879 Missouri case, while the guest was staying at the innkeeper's hotel, money and jewelry were taken from his room. The limitation of liability statute provided that no innkeeper who had a safe and who kept a copy of the statute in an inn was liable for lost valuables. The statute exonerated innkeepers if they complied with the statutory conditions. The court held that the statute did

not provide that actual notice of the safe could be substituted for the posting of statute copies. If the innkeeper wished to avail himself of the statutory exemption from liability, he was required to comply with the precise terms of the statute.<sup>12</sup>

A 1933 Washington case provides another example where the guest's actual knowledge of the limited liability statute was inadequate. While staying at the innkeeper's hotel, the guest discovered that his ring, watch, penknife, and cash had been stolen. Thereafter, the guest filed a negligence action against the innkeeper, seeking to recover the value of the lost articles. In defense, the innkeeper claimed that the limited liability statute relieved him of liability. The innkeeper stated the guest had actual knowledge of the limitation of liability statute. The court rejected the innkeeper's contention that since the guest had actual knowledge of the rule requiring guests to use the safe provided for their accommodation, "such actual knowledge displaced and dispensed with the necessity of constructive notice under the statute."<sup>13</sup> The court stated, "the statute makes no provision for an actual notice, and a strict construction of the statute does not permit the innkeeper who has failed to comply with the terms of it to assert the actual notice of the guest as a sufficient substitute for the statutory requirement."<sup>14</sup>

In a 1936 Alabama case, a hotel guest was robbed at the hotel and lost money and valuables. The hotel guest brought suit against the hotel to recover the lost property. The limited liability statute provided that innkeepers are not liable if they post notices that a safe is available for the deposit of valuable

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<sup>12</sup> *Batterson v. Vogel*, 8 Mo. App. 24 (Mo. Ct. App. 1879).

<sup>13</sup> *Featherstone v. Dessert*, 22 P.2d 1050 (Wash. 1933).

<sup>14</sup> *Id.*



articles belonging to guests. The statute required written notices to be posted on the doors and other public places in the hotel. The hotel conceded that it had not posted notices required under the statute. However, the hotel owner argued that the hotel guest had actual knowledge of the statute. The hotel owner had posted the limitation of liability statute on the hotel register, and the hotel guest signed the hotel register. The court stated that since the terms of the statute were to be strictly construed, even actual notice to the guest would not constitute compliance with the statute.<sup>15</sup>

Finally, in a 1960 New Jersey case, actual knowledge of the statute was no substitute for compliance with the statute. The appellate court held that the trial court's dismissal was improper because the innkeeper's notice of its provision of a safe for guest's valuables was insufficient as a matter of law. The court found that the limited liability statute required that such notice be placed in a conspicuous position in order to limit a hotelkeeper's liability. The court reasoned that the notice provided by the innkeeper, which was a minor appendage to a hotel directory, was not itself conspicuous as a matter of law. The court held that evidence of the guests' actual knowledge of the availability of the hotel safes and of the limitation of liability statute was not acceptable substitutes for strict compliance with the statute's notice requirements.<sup>16</sup>

### **Posting of the Limited Liability Statute (Precise Location)**

Every limited liability statute requires some type of posting of the statute. Furthermore, the statute dictates the location(s) the statute is required to be

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<sup>15</sup> *Johnston v. Mobile Hotel Co.*, 167 So. 595 (Ala. Ct. App. 1936).

<sup>16</sup> *North River Ins. Co. v. Tisch Management, Inc.*, 166 A.2d 169 (N.J. Super. Ct. App. Div. 1960).

posted in the hotel. In the majority of jurisdictions, the statute must be posted in guest bedrooms and at the front desk of the hotel. For instance, the Colorado statute requires every innkeeper to “keep posted in a public and conspicuous place in the office, public room, and public parlors of such hotel or public inn, and upon the inside entrance door of every public sleeping room in such hotel or public inn a notice . . . .”<sup>17</sup> Most states require strict compliance with the location of the posting. Below are a few cases illustrating how strictly this statutory requirement is enforced.

In a 1925 Washington case, the hotel guests retired for the night, leaving a wallet in some trousers and some diamond rings on a dresser. When the items were discovered missing in the morning, the hotel guests sought recovery. The hotel company argued that it was exempt from liability due to its compliance with the limited liability statute. The court held that notice on the hotel register that valuables should be left in the office was not in compliance with statutory requirements that such notice be posted in the hotel bedrooms.<sup>18</sup>

Likewise, in the aforementioned *Featherstone* case, decided in Washington in 1933, where a hotel guest discovered that somebody had stolen his ring, watch, penknife, and cash, the guest filed a negligence action against the innkeeper, seeking to recover the value of the lost articles. In defense, the innkeeper claimed that the limited liability statute, which protected innkeepers who posted notice of their safe in three or more public rooms, relieved him. Even though the innkeeper had posted notices outside the elevator shaft, the court

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<sup>17</sup> COLO. REV. STAT. § 12-44-105 (2006).

<sup>18</sup> *Gillett v. Waldorf Hotel Co.*, 241 P. 14 (Wash. 1925).

held that posting notices outside the elevator shaft did not constitute sufficient compliance with the statute. The court noted that the statute demanded strict compliance and that the enlarged space around and about the elevator did not constitute "a room" within the statute's meaning.<sup>19</sup>

In a 1939 New York case, the guest sued the hotel after cash and other items were stolen from her room. The hotel claimed that the limited liability statute absolved it from liability. The statute required the hotel to post the notice in the hotel office, stating that the hotel had safekeeping available for guests' valuables and that the failure to place items in safekeeping absolved the hotel for their loss. The court held that the hotel had not complied with the statute because it had not placed the required notice in the hotel office. The court held that a registration card resting on the registration desk did not fulfill the requirements of the statute. The court used the definition of "posting" from the statute, which meant "to nail, attach, affix, or otherwise fasten up physically and to display in a conspicuous manner."<sup>20</sup> Thus, the publication of the notice on the registration card was not sufficient and could not operate as a substitute for the required posting.<sup>21</sup>

In a 1945 Texas case, while the guests were asleep in their hotel room, an individual with an emergency key gained access to their room and stole two diamond rings. The guests instituted an action against the hotel to recover the value of the rings. The court explained that the limited liability statute exempted a hotelkeeper from liability for the theft of a guest's property over the value of \$50 if

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<sup>19</sup> *Featherstone*, 22 P.2d 1050.

<sup>20</sup> *Epp v. Bowman-Biltmore Hotels Corp.*, 12 N.Y.S.2d 384 (N.Y. Mun. Ct. 1939).

<sup>21</sup> *Id.*

the hotel posted a copy of the statute "on the door of the sleeping room" of the guest. The only printed copy of the statute that was posted in the guests' room had been placed on the inside of the bathroom door. The court concluded that "the statute required the posting of a copy of the law on the door of the sleeping room on which the hotel kept a suitable bolt or lock and that posting it on the bathroom door failed to satisfy the statute."<sup>22</sup>

Once again, in a 1972 New York case, jewelry was found missing from a guest room at the hotel. The hotel raised an affirmative defense of statutory limited liability. The state's statute provided that in order to limit liability, the innkeeper must place a notice in all public rooms. The General Manager of the hotel testified that required notice had not been posted in all public rooms. Even though the hotel had posted the notice in the guest rooms, the hotel was not protected by the statutory limitation of liability.<sup>23</sup>

In a 1996 Louisiana case, the claimants were guests in the hotel where their jewelry and camera were stolen. The guests instituted a suit against the hotel. The limited liability statute required a hotel to conspicuously post a sign in the guest room and registration area, alerting guests to the fact that a safe deposit facility was available for valuables. The record indicated that the hotel failed to post such a sign in its registration area. A sign stating that the hotel was not responsible for valuables was not sufficient to satisfy the provisions of the

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<sup>22</sup> *Southwestern Hotel Co. v. Rogers*, 184 S.W.2d 835 (Tex. 1945).

<sup>23</sup> *Insurance Co. of North America, Inc. v. Holiday Inns of America, Inc.*, 337 N.Y.S.2d 68 (N.Y. App. Div. 1972).

statute. Hence, the hotel was not protected by the statutory limitation of liability.<sup>24</sup>

In a 2002 D.C. Circuit case, the guests locked nearly \$1.2 million dollars worth of jewelry in convenience safes located in their suite at the hotel. The jewelry was stolen without forcible entry. Additionally, the hotel manager testified that at least one master key ring was missing at the time. The limited liability statute required the notice limiting liability be posted in “guest and public rooms.” The court held that the hotel had not strictly complied with the requirements of the limited liability statute because it had not posted a copy of the statute in the hotel's public rooms. Furthermore, it was irrelevant whether the guests had actual notice of the availability of the safety deposit boxes or of the hotel's limited liability.<sup>25</sup>

There have also been cases that were decided in favor of the hotels, such as a 1988 Georgia case, where the motel guests filed an action against the motel to recover damages for the loss of personal property from a guest room that they occupied during their stay at the motel. In order to limit the motel's liability for the loss of items, the limited liability statute required only that the motel post a notice stating the availability of a safe and that guests place valuables into the safe. The motel had posted the notice not only on the guests' registration card but also in their room and behind the registration desk. The court concluded that the notices were sufficient to comply with the posting requirement of the statute,

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<sup>24</sup> *Searcy v. La Quinta Motor Inns*, 676 So. 2d 1137 (La. Ct. App. 1996).

<sup>25</sup> *Paraskevaides v. Four Seasons Washington*, 292 F.3d 886 (D.C. Cir. 2002).

thereby insulating the motel from liability for the loss of valuables not deposited in the motel's safe.<sup>26</sup>

In a 1997 New York case, a hotel guest left his valuables in the hotel, where they were stolen. The guest did not declare to any agent or employee of the hotel the value of what he was keeping in his room and did not use the hotel safe deposit boxes. The inn was in compliance with the posting requirements of the limited liability statute. The guest brought action against the hotel. The court held that the hotel was protected by the statutory limitation of liability because of the conspicuous posting of notices and because of the guest's failure to either inform the hotel of his valuable property or use the safe deposit boxes. The fact that the guest did not see the notices did not preclude the hotel from asserting the limited liability shield.<sup>27</sup>

### **Notice Criteria (Font, Size, Language, etc.)**

Most of the limited liability statutes also have notice criteria. The statutes often specifically state the type of font, size of font, and the exact language that must be on the notice. For example, in Missouri, the notice criteria are, “[K]eep a copy of sections 419.020 and 419.030 printed in large plain English type . . . .”<sup>28</sup> Likewise, in Nebraska, “A copy of this section printed in not smaller than ten-point type shall be conspicuously posted . . . .”<sup>29</sup> Once again, courts have been very strict with the innkeeper’s compliance with the specifics of the limited liability statute. Below are examples of reported cases interpreting the notice criteria.

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<sup>26</sup> *Kates v. Brunswick Motel Enterprises, Inc.*, 371 S.E.2d 686 (Ga. Ct. App. 1988).

<sup>27</sup> *Bleam v. Marriott Corp.*, 655 N.Y.S.2d 566 (N.Y. App. Div. 1997).

<sup>28</sup> MO. REV. STAT. § 419.020 (2007).

<sup>29</sup> NEB. REV. STAT. § 41-211 (2007).

In an 1874 Missouri case, a burglar entered a guest's room and robbed him while he slept. The innkeeper relied on the defense that the inn kept an iron safe as required by the limitation of liability statute and that he kept a copy of the statute printed in large plain English type conspicuously posted in the office and other public rooms. The court found that the innkeeper offered a slip of paper that contained a copy of the statute to prove their defense. The court held that the copy offered was not printed in such type as required by the law and that it was printed in very small type. Hence, the court found that the innkeeper was liable for the valuables stolen from the guest's room.<sup>30</sup>

In a 1924 California case, while five guests were dining in the restaurant of the hotel, the guests' personal property disappeared from their rooms. The limitation of liability statute required the posting of a notice that a fireproof safe was provided for the safekeeping of valuable personal property. The court held that the notice reading: "Positively not responsible for any valuables unless left at hotel office," was not in compliance with the statute, since there was no reference to the fireproof safe.<sup>31</sup>

Finally, in a 1929 New York case, the hotelkeeper posted notices that it provided a safe to protect the valuables of its guests. Without advising the hotelkeeper of the value of her jewelry, the guest placed it in the hotelkeeper's safety deposit box. A hotel employee stole the guest's jewelry. The court held that the hotelkeeper was liable for the value of the stolen jewelry for more than the statutory limitation of \$250. The statute provided that a hotelkeeper could

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<sup>30</sup> *Porter v. Gilkey*, 57 Mo. 235 (Mo. 1874).

<sup>31</sup> *Baxter v. Shanley-Furness Co.*, 226 P. 391 (Cal. 1924).

limit his liability for valuables of his guest by conspicuously posting a copy of such statute. The innkeeper conspicuously placed a notice which merely read: "A safe is provided in the office of this hotel for the use of guests in which money, jewels or other valuables may be deposited for safekeeping."<sup>32</sup> The court held that since the notice did not notify the guest of the limitation of liability but only that a safe was provided, the limitation of liability did not apply. The court further stated, "Where the statute attempts to set out with exactitude the formal requisites of notice, it has been held that such requisites are mandatory and must appear exactly as the statute provides."<sup>33</sup>

### **Safe Requirements**

In all limited liability statutes, the innkeeper is required to provide some type of safe or safety deposit box for the guest. For example, in Iowa the statute limits the innkeeper's liability, "if such keeper or owner at all times provides a metal safe or vault, in good order and fit for safekeeping of such property."<sup>34</sup> Thus, to be able to assert the limited liability protection, the innkeeper must actually provide such accommodations for the guest. As one court, in the 1946 case cited below held, even if the innkeeper complies with the statute, except for the providing of the safe, and the guest doesn't try to place his valuables in the non-existent safe, the innkeeper will still be fully liable for the value of the missing

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<sup>32</sup> *Millhiser v. Beau Site Co.*, 167 N.E. 447 (N.Y. 1929). See also *World Diamond, Inc. v. Hyatt Corp.*, 699 N.E.2d 980 (Ohio Ct. App. 1997).

<sup>33</sup> *Id.*

<sup>34</sup> IOWA CODE § 671.1 (2006).



personal property, since the innkeeper did not strictly comply with the statute by providing a safe for the valuables of the guest.<sup>35</sup>

In this 1946 Louisiana case, the guest occupied a certain hotel room for several months. The guest alleged that after he left the hotel after locking his room and delivering the key to the hotel employee, several items of personal property were stolen. The limitation of liability statute required the innkeeper to provide an iron safe or other safe deposit for valuables belonging to guests. In this instance, the innkeeper did not provide such a safe as required by statute, although he had posted notices in the rooms that there was a safe in the front office. Further, the guest was even aware that the hotel did not have a safe. The court held under such circumstances, when a guest knows that a safe is not provided, there is no alternative but for him to keep the valuables in his own room, and the fault lies with the innkeeper, who bears the liability.<sup>36</sup>

### **Negligence of the Innkeeper**

Statutes vary on whether the limited liability statute protects an innkeeper if he or she was negligent in protecting the guest's valuables. The majority of states hold the innkeeper liable for the full value of the stolen property if the innkeeper was negligent. However, in a minority of states, the innkeeper is still protected under the limited liability statute, even if the loss was due to his/her own negligence. For instance, in Mississippi, an example of a state that follows the majority rule, the statute states, "Every innkeeper shall be liable for any loss of the above enumerated articles by a guest in his inn caused by the theft or

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<sup>35</sup> *Lack v. Anderson*, 27 So. 2d 653 (La. Ct. App. 1946).

<sup>36</sup> *Id.*

negligence of the innkeeper or any of his servants.”<sup>37</sup> Contrast the Florida statute, which follows the minority rule and states, “[T]he operator is not liable for the loss thereof unless such loss was the proximate result or fault or negligence of the operator. However, the liability of the operator shall be limited to \$1,000 for such loss . . . .”<sup>38</sup> Below are cases that have interpreted both the majority and the minority rule.

In a 1905 Missouri case, the court followed the minority rule. There, the guest requested a hotel employee look after a box containing an undisclosed gold-filled locket while the guest ate dinner at the hotel’s restaurant. The hotel employee obliged. The guest admitted that he intended to retrieve the locket and keep it in his room during the night but claimed that he forgot to call for it and never thought of it again until midnight after he had retired. The locket was lost in the process of delivery to him by the negligence of the employee. The court held that the locket was never offered for deposit in the safe of the hotel and no disclosure of its value was made to the employee. Thus, at most, the hotel was a gratuitous bailee and would only be responsible if it had been grossly negligent in losing the locket.<sup>39</sup>

In a 1971 Louisiana case, following the minority rule, a number of fine furs were stolen from a salesman while the salesman was staying at the hotel. The salesman left the furs in his room during his stay and did not make use of the hotel's safety deposit vault, which was maintained for the purpose of holding the valuables of hotel guests. The court limited the hotel's liability for the fur to \$100

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<sup>37</sup> MISS. CODE ANN. § 75-73-5 (2007).

<sup>38</sup> FLA. STAT. § 509.111 (2007).

<sup>39</sup> *Horton v. Terminal Hotel & Arcade Co.*, 89 S.W. 363 (Mo. Ct. App. 1905).

under the limited liability statute after finding that the hotel complied with the terms of the statute by maintaining a safety deposit vault on the hotel premises where the valuables of all guests could be deposited for safekeeping. Furthermore, the court held, regardless of whether or not the hotel was negligent in any way regarding the theft of the salesman's furs, the hotel's liability was limited to \$100 for the lost furs.<sup>40</sup> Thus, the Louisiana statute protected the innkeeper, regardless of his/her negligence.

However, a West Virginia court in 1947 followed the majority rule. In that case, certain personal property valued in excess of \$500 was removed from a guestroom. The trial court found in favor of the innkeeper and the guests appealed. The court reversed and remanded and held that to avail himself of the benefit of any statute limiting his liability as to personal property, the innkeeper had the burden of establishing his due care and diligence. The court held the statute did not protect the innkeeper, stating, “[T]he rule should be that, in case of loss resulting from negligence of the innkeeper, there should be recovery for the full value of the property lost.”<sup>41</sup>

A 1981 Louisiana court also followed the majority rule. The guest registered at the hotel and received a safe deposit box in order to secure her jewelry, which included a diamond solitaire ring, a platinum guard ring containing sapphires, and two flower-shaped diamond and ruby clips. After the guest attended social events, she returned to the hotel with her companion and attempted to place her jewelry in the safe deposit box. However, because no

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<sup>40</sup> *Zurich Ins. Co. v. Fairmont Roosevelt Hotel, Inc.*, 250 So. 2d 94 (La. Ct. App. 1971).

<sup>41</sup> *Shifflette v. Lilly*, 43 S.E.2d 289, (W. Va. 1947).

hotel employee was available for assistance, the guest was unable to deposit her jewelry. Thereafter, the guest and her companion went to her room and fell asleep. When they awoke in the morning, the guest's jewelry was missing. Subsequently, the guest filed an action against the hotel for the damages she sustained from the jewelry loss. The hotel sought to limit its liability through the limited liability statute. The court found that the statute only limited the hotel's contractual liability, not its tort liability. The court determined that the hotel was negligent because none of its employees were present to assist the guest and because the unauthorized third party gained access to the guest's room. Therefore, the court concluded that the statute did not protect the innkeeper and the guest was entitled to the full value of the missing jewelry.<sup>42</sup>

A 1982 Louisiana court again followed the majority rule. In that case, the hotel employee gave non-guests a key to enter their alleged room, and they used the key to wrongfully enter an actual guests' room. The perpetrators physically assaulted both guests and robbed them. The guests brought action against the hotel to recover damages for the money taken and for physical and mental injuries sustained. The court held that the hotel had a duty to take reasonable precautions against criminals and had a duty to safeguard the room keys. The court reasoned that the hotel's breach of its duty was the direct cause of the guests' physical, emotional, and financial damages; thus, the statute did not protect the innkeeper and the hotel was held fully liable. Furthermore, the court

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<sup>42</sup> *Durandy v. Fairmont Roosevelt Hotel, Inc.*, 523 F. Supp. 1382 (E.D. La. 1981).

noted that if a forcible armed entry were unaccompanied by fault on the part of the hotel or its employees, there would be no liability on the part of the hotel.<sup>43</sup>

### **Theft by Employee of Innkeeper**

A minority of states do not hold the innkeeper liable for employee theft of guest property. For example, in Illinois where “[S]uch hotel, the proprietor or manager thereof, is not liable for the loss of or damage to such property sustained by such guest or other owner thereof in any amount exceeding the sum of \$500, regardless of whether such loss or damage is occasioned by theft, the fault or negligence of such proprietor or manager or his agents or employees . . . .”<sup>44</sup>

However, the majority of states hold the innkeeper fully liable for the value of the stolen property if a hotel employee is responsible for the theft of the property. For example, in Maine, “Every keeper of an inn, hotel or boardinghouse is liable for any guest’s loss of the articles or property . . . after those articles have been accepted for deposit, if the loss is caused by the theft or negligence of the keeper or any of the keeper’s employees.”<sup>45</sup> Below in the aforementioned *Millhiser* case, is an example where the limited liability statute did not protect the hotel from being liable for the full value of the stolen property.

In the 1929 New York *Millhiser* case, the hotelkeeper posted notices that it provided a safe to protect the valuables of its guests. Without advising the hotelkeeper of the value of her jewelry, the guest placed it in the hotelkeeper’s safety deposit box from which some jewelry was stolen by the hotelkeeper’s

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<sup>43</sup> *Kraaz v. La Quinta Motor Inns, Inc.*, 410 So. 2d 1048 (La. 1982).

<sup>44</sup> 740 ILL. COMP. STAT. 90/1 (2007).

<sup>45</sup> ME. REV. STAT. ANN. tit. 30-A, § 3851 (2006).

employee. The court held that a hotel's liability is not capped "where the value of the articles left for safekeeping in a safe is not disclosed, and the articles are stolen by the hotel keeper."<sup>46</sup> The court construed the limited liability statute "to mean a theft of property from the hotelkeeper and not a theft from the guest by the hotelkeeper."<sup>47</sup> The court declined to impose liability on the innkeeper for the employee's actions, stating, "The act of the defendant's employee in stealing the jewelry was a wrongful act, outside the scope of his employment and for his own enrichment. It was not in any sense the act of the defendant."<sup>48</sup> The court held the hotelkeeper was not protected by the limited liability statute and was liable for the full value of the jewelry stolen by the hotel employee because the innkeeper had not properly posted the statute.<sup>49</sup>

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<sup>46</sup> *Millhiser*, 167 N.E. at 448.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

## Other Issues

### Monetary Limitations of Liability Not Unconscionable

Most of the limited liability statutes were passed in the early and mid-1900s and have not been amended since that time.<sup>50</sup> Thus, in most instances, the maximum liability (ranging from \$50<sup>51</sup> to \$5000<sup>52</sup> and varying by state) is usually very favorable to the innkeeper, given the value of property guests travel with today.<sup>53</sup>

A 1960 Hawaii case specifically addressed the monetary limits of liability the hotel is required to pay from the loss of personal property. After paying its insured's claim for the value of a lost or stolen mink that had been entrusted to an employee of the hotel, the insurer filed a suit seeking subrogation from the innkeeper. The court held the innkeeper's liability to the guest for the loss of apparel through the negligence of the employee to whom it was entrusted was limited to \$50 under the limitation of liability statute. The court said the fact that the monetary limitations were not very realistic when viewed in light of present day values was a matter of legislative concern and could not affect construction of the statute.<sup>54</sup>

### Limited Application of the Frequent Traveler Defense

Some jurisdictions have applied the "frequent traveler" defense, which asserts that the guest is a frequent traveler and, thus, should be aware of the

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<sup>50</sup> Stephen Barth, *The Value Proposition of In-Room Safes*, Lodging Hospitality, Nov. 2004, at 40.

<sup>51</sup> TEX. OCC. CODE ANN. § 2155.052 (Vernon 2006).

<sup>52</sup> N.J. STAT. ANN. § 29:2-2 (West 2007).

<sup>53</sup> Barth, *supra* note 48, at 40.

<sup>54</sup> *Minneapolis Fire & Marine Ins. Co. v. Matson Navigation Co.*, 352 P.2d 335 (Haw. 1960).

limited liability statute and should not recover damages, even though the innkeeper has not fully complied with the requirements of the statute. However, other jurisdictions have refused its application.

This defense seems to directly contradict the previously mentioned principle that the guest's constructive knowledge is far more important than the guest's actual knowledge. This exception further contradicts the principle that the innkeeper must strictly comply with the requirements of the statute in order to assert its protection. Below are some reported cases where the court examined the frequent traveler defense.

In a 1921 West Virginia case, a frequent traveler was not precluded from recovering the full value of his stolen personal property since the innkeeper did not post the requisite statutory notice. Although he had been a guest at the hotel on several previous occasions and had sometimes deposited money in the office, he said nothing about his money on the occasion in question. While the guest slept, a thief took the guest's money from his coat pocket and carried it away. The innkeeper testified that the required notice was posted in the hotel lobby, as described in the statute, which warned guests to keep their valuables in the hotel's offices. However, the innkeeper was unable to say whether there was such a notice in the guest's room, as required by statute. The court held that the fact that the guest had deposited his money at the hotel's office on previous occasions merely tended to prove actual knowledge of the statute. Since there was no evidence that notice was posted in the guest's room, the innkeeper could



not rely on the limitation of liability statute since he did not strictly comply with the statute, even though the guest may have had actual knowledge of the statute.<sup>55</sup>

However, in a 1928 Massachusetts case, the court applied the frequent traveler defense in the innkeeper's favor. The guest was informed that his regular room was occupied but that it was to be vacated before noon and that the guest could have it at that time. When the hotel employee told the guest about the room, he also said he could check his baggage or leave it where it was, and the bellboy would take it to his room when he returned. The guest left the luggage in the lobby of the hotel, and on his return, the bag could not be found. In conspicuous places in each room, the limited liability statute was posted, which stated that the hotel would not be responsible for articles not checked with the porter. The court found that the guest had not yet gone to the room but had stayed at the hotel numerous times and should have been acquainted with the statute. Since the guest was a frequent visitor of the hotel, the innkeeper was relieved from full liability for the loss of the guest's luggage.<sup>56</sup>

### **Guest Must Also Strictly Comply with Statute**

In all limited liability statutes, guests have obligations that they must adhere to in order to be able to receive the statutory liability amount the innkeeper is responsible for if the guests' valuables become missing or damaged. In Indiana, "If the guest neglects or fails to deliver the guest's property to the person in charge of the office for deposit in the safe; the hotel, apartment hotel, or inn and proprietor or manager are not liable for any loss of or damage to

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<sup>55</sup> *Nesben v. Jackson*, 109 S.E. 489 (W. Va. 1921).

<sup>56</sup> *Widen v. Warren Hotel Co.*, 159 N.E. 456 (Mass. 1928).

the property . . . .”<sup>57</sup> The courts have made guests strictly comply with the statute in order to receive the little amount of protection that the statute does provide. Below are a few cases showing how strictly the statute is enforced against guests.

In a 1951 New York case, the guest arrived at the hotel for a stay but was a day early. The hotel found the guest accommodations at another hotel but retained the bags that she left with the hotel's bellhop. When the guest returned the next day to begin her stay at the hotel, she discovered that her jewelry was missing. The court held that “it was required of the guest, if she wished to give her jewelry hotel protection, to deliver it or at least tender it to the hotel for deposit in its safe and that the guest knew this, both as a matter of experience and sense.”<sup>58</sup> Further, the hotel guest is bound by notice regarding safekeeping of valuables and must bear the loss caused by not abiding by it.<sup>59</sup>

In a 1956 Tennessee case, the court determined that it was undisputed that the salesman, without notifying any hotel official or employee of the contents of his suitcases or bags, placed them for deposit and took a receipt. The court further determined that pursuant to the limited liability statute, the hotel was protected if it provided a safe place for the cases and gave the salesman notice of the depository. The court also determined that the statute limited the liability of the hotel, if the hotel complied with the provisions of the statute and a guest failed to avail himself of the service. The jury found that proper notice was

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<sup>57</sup> IND. CODE § 32-33-7-2 (2007).

<sup>58</sup> *Adler v. Savoy Plaza, Inc.*, 108 N.Y.S.2d 80 (N.Y. App. Div. 1951).

<sup>59</sup> *Id.*

posted and a depository was provided.<sup>60</sup> Thus, the guest's recovery was limited to \$300.00.<sup>61</sup>

### **Reasonable Amount of Personal Property in the Guest's Room**

A guest is not required to deposit with the innkeeper every possession the guest brings to the hotel. This is an inconceivable notion that the guest must place in the hotel safe the suit he plans to wear the next day. Therefore, courts have protected the guest that had a reasonable amount of personal property in their room. Furthermore, states such as Virginia have specifically addressed this situation, stating, "No hotel shall be held liable in a sum greater than \$300 for the loss of any wearing apparel, baggage, or other property not hereinafter mentioned belonging to a guest when such loss takes place from the room or rooms occupied by the guest."<sup>62</sup> Below are cases that allow the guest to keep a reasonable amount of personal property in the room.

In an 1882 Georgia case, the court vented its frustration when trying to interpret the statute. While holding the innkeeper liable for the loss of a guest's gold watch, chain, and a sum of money stolen while the guest was asleep in the room, the Court stated the following: "It cannot be that such a notice is applicable to guests in a room in the hotel. Is the guest to deposit his valise there, and go or send after it to get out a clean shirt to put on? Is he to leave his coat there, go to his room in his shirt sleeves, or send it down and get a check for it after he goes to bed? Is he to deposit there his watch and pocket change and

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<sup>60</sup> *David Karp Co. v. Read House, Inc.*, 228 F.2d 185 (6<sup>th</sup> Cir. Tenn. 1956).

<sup>61</sup> *Id.*

<sup>62</sup> VA. CODE ANN. § 35.1-28 (2007).

get a check for them? The whole regulation, if meant for guests in their rooms, is on its face not only unreasonable but absurd.”<sup>63</sup>

In a 1906 Michigan case, the guest did not leave his money with the hotel for storage in the hotel’s safe, even though the required notices were posted. The guest attempted to excuse his refusal to store his money with the hotel by showing that it was the usual practice for guests to retain some money in their rooms. The court held that it was for the jury to decide whether the amount of money was the kind that was common for guests to keep in their rooms. The court held in favor of the guest for the amount stolen from the guest’s room, since the evidence supported a conclusion that the amount of money, a little over \$400.00, was common and prudent for a guest to keep in his room.<sup>64</sup>

### **Waiver of Limitations of Liability by Innkeeper**

There are several reported instances where the innkeeper waived the protection of the limited liability statute. On the other hand, there are cases where affirmative acts by a hotel employee seemed to have waived the statutory limits of liability, but the court still allowed the innkeeper to be shielded by the statute. Below are reported instances of the discussion of the waiver of the limitation of liability statute by the innkeeper.

In a 1900 New York case, a hotel guest, relying on assurances by a hotel employee that her jewelry would be safe locked in a trunk in her locked room, left the jewels as suggested. The jewelry was stolen. The court found the hotel

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<sup>63</sup> *Murchison v. Sergeant*, 69 Ga. 206 (Ga. 1882).

<sup>64</sup> *Kerlin v. Swart*, 106 N.W. 710 (Mich. 1906).

employee's assurances acted as a waiver of the limitation of liability statute. The hotel was found liable for the entire amount of the stolen jewelry.<sup>65</sup>

In a 1948 Michigan case, the guest and his wife occupied a room in the hotel on a month-to-month basis while the guest worked as a jockey in racing season. The guest handed the hotel clerk an envelope containing \$3500 and instructed him to put it in the hotel safe. The clerk advised the guest that the hotel was insured only up to \$250. Furthermore, the clerk had no authority to accept valuables that were valued at more than \$250. When the money was stolen from the hotel safe, the guest filed an action against the hotel and recovered the amount of his loss. The court held that "the hotel was liable for the full amount of the loss since the clerk commonly disregarded the limitation of authority contained in the notice and that such disregard was known to the president of the hotel company, constituting a waiver of the limitation and denying the hotel from claiming its benefit."<sup>66</sup>

In a 1951 Florida case, guests placed their valuables in defendant hotel's safety deposit boxes per the directions on the registration card. Although the safety deposit box forms had blanks for some information, no space was provided for the value of the property. After guests' valuables were stolen from the boxes, the innkeeper argued the guests' failure to tender a value as required by the limited liability statute limited its liability to the statutory maximum. The court held the innkeeper was estopped from raising the defense of limited liability, since the guests' registration cards contained the statement that

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<sup>65</sup> *Friedman v. Breslin*, 65 N.Y.S. 5 (N.Y. App. Div. 1900).

<sup>66</sup> *Layton v. Seward Corp.*, 31 N.W.2d 678 (Mich. 1948).

valuables “must be deposited at the office, to be kept in the safe, otherwise the management will not be responsible for any loss.”<sup>67</sup> The court found this to imply that the innkeeper would be responsible for loss if such deposit were made, thus waiving the limited liability statute.<sup>68</sup>

Finally, in the aforementioned 1928 *Widen* case, the guest was informed that his regular room was occupied but that it was to be vacated before noon and that the guest could have it at that time. When the hotel employee told the guest about the room, he also said he could check his baggage or leave it where it was, and the bellboy would take it to his room when he returned. The guest left the luggage in the lobby of the hotel, and on his return, the bag could not be found. The court mentioned that the clerk had the authority to arrange for the baggage of the guest, and if the guest is ignorant of the statute, then the guest could follow the employee’s directions. Therefore, a guest ignorant of the statute could have recovered against the innkeeper for the entire loss of his personal property. However, in this case, the guest’s knowledge of the statute binds the guest, and the employee could not, under such circumstances, waive the protection of the statute.<sup>69</sup>

### **Special Arrangements Between Innkeeper and Guest**

Although it is rarely done, an innkeeper can make a special arrangement with a guest to protect the valuables of the guest beyond the statutory limitation. Most limited liability statutes allow for this special arrangement. For instance, the language in the Hawaii statute reads, “[T]he keeper shall not be liable for the loss

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<sup>67</sup> *Garner v. Margery Lane, Inc.*, 242 So. 2d 776 (Fla. Dist. Ct. App. 1951).

<sup>68</sup> *Id.*

<sup>69</sup> *Widen*, 159 N.E. 456.

of the same in any sum exceeding \$500 except that the keeper's liability may be in excess of \$500 by special agreement in writing with the keeper or the keeper's duly authorized representative."<sup>70</sup> Furthermore, a 1997 Ohio decision noted that under innkeeper liability statutes, innkeepers are not liable for the kinds of property enumerated in statutes that are valued at over \$500, unless special arrangements have been made with the guest.<sup>71</sup> When such special arrangements have been made, the innkeeper is liable for loss of any property received if the loss is caused by innkeeper's negligence or theft.<sup>72</sup>

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<sup>70</sup> HAWAII REV. STAT. § 486K-5 (2007).

<sup>71</sup> *World Diamond, Inc. v. Hyatt Corp.*, 699 N.E.2d 980 (Ohio Ct. App. 1997).

<sup>72</sup> *Id.*

## Proposed Model Innkeeper's Limitation of Liability Statute

The following is a suggested Model Innkeeper's Limitation of Liability Statute that is proposed for adoption by all fifty states:

(a) *Definitions:*

- (1) *"Posting" shall mean: placing/affixing notice included in this statute in fourteen-point type at the place of registration of the inn and inside the entrance door of every guest room.*
- (2) *"Receipt" shall mean, an itemized listing of items deposited with each item's declared value.*
- (3) *"Valuables" shall mean any money, cameras, computers, other electronic devices, jewelry, jewels, bank notes, bonds, negotiable security, or other valuable documents, and any other items **that will fit** in the safe provided by the innkeeper.*
- (4) *"Guest" shall mean, a transient guest who registers at an inn or otherwise avails oneself of the facility's food, beverage, lodging, or other services, including entertainment, baggage handling and storage or for any other purpose of lawfully utilizing the inn's accommodations, amenities, or services.*
- (5) *"Safe" shall mean a commercially viable lockbox, safe or vault, in good order and fit for safekeeping of Valuables, whether located in the individual rooms of the inn or behind the desk of the inn or at some other location controlled by the inn and its employees.*



*(b) It shall be the duty of the innkeeper to exercise reasonable care in providing honest employees and to take reasonable precautions to protect the valuables of their guests.*

*(c) The innkeeper shall be liable for the loss or damage of the valuables of the guest to the extent of its value or the sum of twenty-five hundred dollars (\$2500.00), whichever is less, if:*

*(1) the innkeeper provides a safe, in a convenient place, and fit for the safekeeping of valuables belonging to the guest;*

*(2) the innkeeper notifies the guest by posting the language at the end of this statute identified as "Notice to Guest" in fourteen-point type and in double space at the place of registration of the inn; and inside the entrance door of every guest room<sup>73</sup>; and*

*(3) the guest deposits valuables that can be accommodated in the safe.*

*(d) The innkeeper shall not be liable for any loss of or damage to the valuables of the guest, if the guest fails to deposit valuables with a value over three hundred dollars (\$300.00) in the in-room safe or to the innkeeper for deposit in a safe controlled by the hotel.*

*(e) The innkeeper shall be liable for a sum not exceeding three hundred dollars (\$300.00) for the loss of all other property, including any wearing apparel, baggage, or other property belonging to a guest when such loss or damage takes*

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<sup>73</sup> Note to Innkeeper: Actual notice, such as telling the guest about this policy or having the guest sign a separate acknowledgement, is helpful and encouraged. However, it is not a substitute for strict compliance with these statute requirements. The "Notice to Guest" will be in plain language to inform guests of their obligation to protect their property.

*place from the room occupied by the guest, and the loss is caused by the negligence, gross negligence, or intentional acts of the innkeeper.*

*(f) The innkeeper shall be liable for the full value of the loss or damage of any valuables of a guest in the inn, if:*

*(1) the valuables have been securely deposited in the safe provided by the innkeeper; and*

*(2) the loss is due to the theft or negligence by the innkeeper or any employees of the innkeeper.*

*(g) The innkeeper may, by special arrangement in writing with a guest, accept liability for losses in excess of the sum of three hundred dollars (\$300.00).*

*(h) In all cases of loss, the burden shall be on the guest to prove the amount of loss and that any such loss was caused or contributed to by the negligence of the innkeeper.*

*(i) It is not an affirmative defense of the statute that the guest is a frequent traveler.*

### **Innkeeper's Duty Under the Model Statute**

The second section of the model statute explains the required duties of the innkeeper. First, the duty of the innkeeper is to exercise reasonable care and diligence to protect the property of its guest. Next, the innkeeper is under a duty to employ honest employees to safeguard the property of its guest. Finally, the innkeeper is under a duty to take reasonable precautions to protect the property of its guests. These duties are reasonable expectations of a hotel guest. Thus,

to assert the statutory limitations of liability under the proposed model statute, the innkeeper must fulfill these duties.

### **Posting Requirements of the Model Statute**

In order to claim limited liability, the innkeeper must be in strict compliance with the posting requirements of the proposed model statute. The posting requirements of the proposed model statute include posting the specified notice at the place of registration and inside the entrance door of every guest room. The posting must be an exact replica of the language involved in the proposed model statute. Finally, the notice must be in fourteen-point type. If the innkeeper is in compliance with all of the posting requirements, then each guest staying at an inn will have constructive notice of the statutory limitations of liability. As mentioned in the above case analysis, historically, it has been far more important for the innkeeper to give the guest constructive notice rather than give them actual notice of the limited liability statute. The courts are very clear that strict compliance of the statute is required to give the guest constructive notice of the statute, and that is all that is needed by the innkeeper to get the protection of the limited liability statute. If the innkeeper fails to comply with any of these posting requirements, they will not be shielded by the statutory limitations of liability.

### **Safe Requirements of the Model Statute**

Under the proposed model statute, the innkeeper shall provide a safe in good working order. The safe must be located in a convenient place. Finally, the safe must be able to provide safekeeping for property with which a guest would normally travel. Thus, the safe must be able to accommodate Valuables, as

defined by the statute. If the innkeeper provides such a safe under the proposed model statute, the innkeeper may be able to assert limited liability.

### **Theft or Negligence of Innkeeper or Innkeeper's Employee**

Guests must be able to trust the innkeeper and feel their valuables are protected when they are away from their home. However, the innkeeper is not the insurer of the guests' property.

The proposed model statute does not limit the liability of the innkeeper if the innkeeper or its employee is negligent in protecting the property of the guest. No favorable public policy argument exists to allow innkeepers to escape the full liability of their own negligence.

In the proposed model statute, the innkeeper will not be able to claim limited liability if the loss of the guest's property is due to theft by the innkeeper or its employee. However, if the guest fails to secure a Valuable (*i.e.*, property with a value of over \$300.00 that fits in the safe) in the safe provided and the innkeeper's employee steals the guest's property, the innkeeper would only be liable for the actual value of the property or for \$300.00, whichever is less. Accordingly, the innkeeper would only be subject to liability for the full value of a Valuable under the proposed model statute if it was stolen from the safe. Therefore, only if the innkeeper has accepted property of the guest under the previous conditions mentioned in the proposed model statute, would the innkeeper be fully liable.

### **Monetary Limitations of the Model Statute**

Most of the monetary caps used in innkeeper statutes have not been amended or updated in numerous years. Therefore, in the proposed model statute the monetary value of limits has been raised to an adequate current standard. Currently, in most jurisdictions the limits of liability are less than \$1000.

In the proposed model statute, if the innkeeper complies with all of its requirements, the limit of his or her liability would be \$300.00, in most instances. Further, the value of \$300 has been set for the reasonable value of property the guest is allowed to retain in its room and still be protected by the innkeeper. These amounts would bring the innkeeper liability statutes up to date.

### **Reasonable Amount of Personal Property in the Guest's Room**

In accordance with most jurisdictions, the proposed model statute allows a guest to retain a reasonable amount of personal property in their room. Under the proposed model statute, guests may retain up to \$300 of property in their room and remain protected up to that amount. If property were stolen that is valued at less than \$300, the innkeeper would be liable to that extent.

### **Guest Must Strictly Comply with the Model Statute**

The proposed model statute requires the guest to strictly comply with its requirements. In order for the guest to be protected up to the proposed statutory limitation of \$2500.00, the guest must secure "Valuables" in the safe provided by the innkeeper. This standard of compliance by the guest correlates to the standard required by most jurisdictions.

## **Special Arrangements Between Innkeeper and Guest**

Under the proposed model statute, the innkeeper is allowed to waive and make special arrangements with a guest regarding the limitations of liability. This ability allows the guest and the innkeeper to contract away the statutory limitations of liability. There is strong precedence in most jurisdictions to allow parties to contract out of protections given by statutes, and thus, the proposed model statute incorporates that capability.

## **“Frequent Traveler” Defense Abolished**

The proposed statute removes the applicability of the frequent traveler defense. It is not a defense to a claim by a guest that the guest was a frequent traveler. Allowing such a defense to exist would contradict the principle that the innkeeper must strictly comply with the requirements of the statute in order to assert its protection.

## **Conclusion**

The proposed model statute properly balances the legitimate interests of innkeepers and of guests. An adoption of this model statute would allow the courts to have a model innkeeper’s limitation of liability statute to apply. Further, this model statute assists hotel companies and their insurance companies to know the extent of the liability of an innkeeper regardless of the state the hotel is located. Moreover, hotel guests know the innkeeper’s liability limits regardless of the state where the hotel is located. Finally, most of the statutes currently in force are outdated and have not been amended in numerous years. Therefore, we propose that this model statute be adopted by all fifty states.

**Appendix A. Limitation of Liability Statutes**  
*(current as of May 2007)*

## Appendix A. Limitation of Liability Statutes

ALA. CODE § 34-15-13 (2007)  
ALASKA STAT. §§ 08.56.050 & 08.56.060 (2007)  
ARIZ. REV. STAT. ANN. § 33-302 (2007)  
ARK. CODE ANN. § 20-26-302 (2007)  
CAL. CIV. CODE §§ 1859 & 1860 (Deering 2007)  
COLO. REV. STAT. §§ 12-44-105 & 12-44-106 (2006)  
CONN. GEN. STAT. § 44-1 (2007)  
DEL. CODE ANN. tit. 24, § 1502 (2007)  
FLA. STAT. § 509.111 (2007)  
GA. CODE ANN. § 43-21-11 (2007)  
HAWAII REV. STAT. §§ 486K-4 & -5 (2007)  
IDAHO CODE ANN. § 39-1804 (2007)  
740 ILL. COMP. STAT. 90/1 (2007)  
IND. CODE § 32-33-7-2 (2006)  
IOWA CODE § 671.1 (2007)  
KAN. STAT. ANN. §§ 36-402 & -403 (2006)  
KY. REV. STAT. ANN. §§ 306.020 & -.030 (LexisNexis 2006)  
LA. CIV. CODE ANN. art. 2945 (2007)  
ME. REV. STAT. ANN. tit. 30, § 3851 (2006)  
MD. CODE ANN., BUS. REG. § 15-103 (LexisNexis 2006)  
MASS. GEN. LAWS ch. 140, §§ 10 & 11 (2007)  
MICH. COMP. LAWS § 427.101 (2007)  
MINN. STAT. § 327.71 (2006)  
MISS. CODE ANN. §§ 75-73-5 & -7 (2007)  
MO. REV. STAT. §§ 419.010 to -.030 (2007)  
MONT. CODE ANN. §§ 70-6-501 & 70-6-504 (2005)  
NEB. REV. STAT. § 41-211 (2007)  
NEV. REV. STAT. § 651.010 (2007)  
N.H. REV. STAT. ANN. § 353:1 (2007)  
N.J. STAT. ANN. §§ 29:2-2 to -4 (West 2007)  
N.M. STAT. §57-6-1 (2007)  
N.Y. GEN. BUS. LAW §§ 200 & 201 (Consol. 2007)  
N.C. GEN. STAT §§ 72-1 to -7 (2007)  
N.D. CENT. CODE §§ 60-01-28 to -33 (2007)  
OHIO REV. CODE ANN. §§ 4721.01 to -.03 (LexisNexis 2007)  
OKLA. STAT. tit. 15, § 503a (2006)  
OR. REV. STAT. §§ 699.010 to -.040 (2005)  
37 PA. CONS. STAT. §§ 61 to 64 (2006)  
R.I. GEN. LAWS § 5-14-1 (2007)  
S.C. CODE ANN. § 45-1-40 (2006)  
S.D. CODIFIED LAWS § 43-40-1 (2007)  
TENN. CODE ANN. § 62-7-103 (2007)  
TEX. OCC. CODE ANN. § 2155.052 (Vernon 2006)



UTAH CODE ANN. §§ 29-1-1 to -3 (2007)  
VT. STAT. ANN. tit. 9, §§ 3141 & 3142 (2007)  
VA. CODE ANN. § 35.1-28 (2007)  
WASH. REV. CODE §§ 19.48.030 & .070 (2007)  
W. VA. CODE §16-6-22 (2007)  
WIS. STAT. § 254.80 (2006)  
WYO. STAT. ANN. §§ 33-17-101, 33-17-102 (2006)  
D.C. CODE § 30-101 (2007)  
GUAM CODE ANN. tit. 18, §§ 41401 & 41402 (2006)  
P.R. LAW ANN. tit. 10, §§ 711 to 714 (2006)  
V.I. CODE ANN. tit. 27, §§ 402 & 403 (2007)

## **Appendix B. Model Innkeepers Statute Flowchart**

## Appendix B. Model Innkeepers Statute Flowchart

