

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2A:22A-1 to 2A:22A-7 (Alcoholic beverage-- licensed server-- liability for damage for intoxicated patron)

CHAPTER 152

Laws Of: 1987

Bill No: A2264, A2209, A2211, A1876, A1679, A864, A554

Sponsor(s): Shusted and others

Date Introduced: March 13, 1986

Committee: Assembly: Insurance; Law, Public Safety and Defense

Senate: Labor, Industry and Professions

Amended during passage: Yes ACS (2nd OCR) enacted

Date of Passage: Assembly: June 26, 1987

Senate: December 4, 1986

Date of Approval: June 29, 1987

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes 5-29-86 and 5-8-86

Senate Yes

Fiscal Note: No

Veto Message: Yes

Message on Signing: Yes

Following were printed:

Reports: ~~Yes~~ No

Hearings: Yes

974.90 New Jersey. Legislature. Assembly.
6767 Law, Public Safety and Corrections Committee.
1986 Public hearing on A554, A864...
held 4-4-86. Trenton, 1986.

(Over)

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ALCOHOLIC BEVERAGE
LIABILITY FOR DAMAGE FOR
INTOXICATED PATRON
CHAPTER 152
ASSEMBLY
DECEMBER 4, 1986

Hearings during previous Legislative session on similar bills:

974.90 New Jersey. Commission on Alcoholic Beverage Liability.
L767 Public hearing on social host liability A43, A347 and S2122, held 5-9-85.
1985 Hackensack, 1985.

974.90 New Jersey. Legislature. Assembly. Law, Public Safety and Defense
L767 Committee.
1985a Public hearing on A43 and A347, held 4-4-85.
Trenton, 1985.

974.90 New Jersey. Commission on Alcoholic Beverage Liability.
L767 Final report. September 18, 1985.
1985b Trenton, 1985.

See also newspaper clipping file in New Jersey Reference under "New Jersey-Drunken driving-1985, 1986, 1987".

[SECOND OFFICIAL COPY REPRINT]
 ASSEMBLY COMMITTEE SUBSTITUTE FOR
**ASSEMBLY, Nos. 2264, 2209, 2211, 1876,
 1679, 864 and 554**

STATE OF NEW JERSEY

ADOPTED MAY 8, 1986

By Assemblymen SHUSTED, PENN, Kern, Assemblywoman Cooper,
 Assemblymen Bocchini and Zecker

AN ACT concerning the civil liability of licensed alcoholic beverage servers and supplementing Title 2A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
 2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "New Jersey
 2 Licensed Alcoholic Beverage Server Fair Liability Act."

1 2. The Legislature finds and declares that ****[as a direct conse-**
 2 **quence of the increasing civil liability of persons licensed to sell**
 3 **alcoholic beverages for personal injuries or property damage**
 4 **caused by intoxicated persons who are at or over the legal age to**
 5 **purchase and consume alcoholic beverages, a]** licensed alcoholic**
 6 **beverage ****[server faces]** *servers face***** great difficulty in**
 7 **obtaining liability insurance coverage. Even when insurance cover-**
 8 **age is available, drastic increases in the cost of that insurance have**
 9 **recently taken place, and many licensed alcoholic beverage servers**
 10 **are no longer able to afford liability insurance coverage.**

11 This lack of insurance adversely affects not only the licensed
 12 alcoholic beverage servers themselves, but also ****[innocent]****
 13 ***patrons and***** third persons who suffer personal injury and
 14 property damage as a result of the ****[actions of intoxicated per-**
 14A **sons]** *negligent service of alcoholic beverages by a licensed***
 14B ***alcoholic beverage server***.**

15 In order to make it economically feasible for insurance com-
 16 panies to provide coverage, the incidence of liability should be
 17 more predictable. That predictability may be achieved by defining

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Assembly committee amendments adopted June 9, 1986.**

****—Assembly amendments adopted in accordance with Governor's recommendations January 22, 1987.**

18 the limits of the civil liability of licensed alcoholic beverage
19 servers in order to encourage the development and implementa-
20 tion of risk reduction techniques.

21 This act has been designed to protect the rights of persons
22 who suffer loss as a result of the ****[actions of intoxicated per-**
23 **sons]**** ***negligent service of alcoholic beverages by a licensed*
24 *alcoholic beverage server*** while at the same time providing a
25 balanced and reasonable procedure for allocating responsibility
26 for such losses. It is anticipated that this act may result in the
27 improvement of the alcoholic beverage liability insurance market
28 in this State.

1 3. As used in this act:

2 ****[a.]**** "Alcoholic beverage" means a fluid, or a solid capable of
3 being converted into a fluid, suitable for human consumption and
4 having an alcoholic content of more than one-half of 1% by volume.
5 The term shall include alcohol, beer, lager beer, ale, porter, natu-
6 rally fermented wine, treated wine, blended wine, fortified wine,
7 sparkling wine, distilled liquors, blended distilled liquors and any
8 brewed, fermented or distilled liquors fit for use for beverage
9 purposes, or any mixture of them;

10 ****[b.]**** "Licensed alcoholic beverage server" or "server" means
11 a person who is licensed to sell alcoholic beverages pursuant to
12 R. S. ****[33:1-11 or R. S. 33:1-12]**** ***33:1-1 et seq.*** or who
13 has been issued a permit to sell alcoholic beverages by the Division
14 of Alcoholic Beverage Control in the Department of Law and Public
15 Safety;

16 ***"Minor" means a person under the legal age to purchase and*
17 *consume alcoholic beverages according to P. L. 1972, c. 81 (C.*
18 *9:17B-1 et seq.).***

19 ****[c.]**** "Person" means a natural person ****[at or over the legal**
20 **age to purchase and consume alcoholic beverages according to P. L.**
21 **1972, c. 81 (C. 9:17B-1 et seq.)]****, the estate of a natural person,
22 an association of natural persons, or an association, trust company,
23 partnership, corporation, organization, or the manager, agent,
24 servant, officer or employee of any of them:

25 ****[d.]**** "Visibly intoxicated" means a state of intoxication
26 accompanied by a perceptible act or series of acts which present
27 ****[visible]**** ***clear*** signs of intoxication.

1 4. This act shall be the exclusive civil remedy for personal injury
2 or property damage resulting from the negligent service of alco-
3 holic beverages by a licensed alcoholic beverage server. Nothing
4 contained herein shall be deemed to limit the criminal, quasi-

5 criminal, or regulatory penalties which may be imposed upon a
6 licensed alcoholic beverage server by any other statute, rule or
7 regulation.

1 5. a. A person who sustains personal injury or property damage
2 as a result of the ****[actions of another person who is intoxicated]****
3 ****negligent service of alcoholic beverages by a licensed alcoholic
3A beverage server**** may recover damages from a licensed alcoholic
3B beverage server only if:

4 (1) The server is deemed negligent pursuant to subsection b. of
5 this section; and

6 (2) The ****[intoxication]**** ****injury or damage**** was proxi-
7 mately caused by the negligent service of alcoholic beverages; and

8 (3) The injury or damage was a foreseeable consequence of
9 the negligent service of alcoholic beverages.

10 b. A licensed alcoholic beverage server shall be deemed to have
11 been negligent only when the server served a ****[person under
12 circumstances where the server knew, or should reasonably have
13 known, that the person was]**** visibly intoxicated ****person, or
13A served a minor, under circumstances where the server knew, or
13B reasonably should have known, that the person served was a
13C minor****.

14 ****[c. A person who becomes intoxicated and sustains personal
15 injury or property damage as a result of his actions while intoxi-
16 cated shall be prohibited from instituting a civil action for
17 damages against a licensed alcoholic beverage server.**

18 d. A person who rides in a motor vehicle which he knows is
19 operated by an intoxicated person and who sustains personal
20 injury or property damage as a result of a motor vehicle accident
21 shall be prohibited from instituting a civil action for damages
22 against a licensed alcoholic beverage server.]**

1 ****6. Damages may be awarded in a civil action under P. L.,
2 c. . . . (C.) (now pending before the Legislature as
3 this bill) subject to the limitations set forth in this section.**

4 a. The provisions of sections 1 and 2 of P. L. 1973, c. 146 (C.
5 2A:15-5.1 and C. 2A:15-5.2) shall apply in all civil actions insti-
6 tuted pursuant to the provisions of this act.

7 b. Notwithstanding the provisions of P. L. 1952, c. 335 (C.
8 2A:53A-1 et seq.), section 3 of P. L. 1973, c. 146 (C. 2A:15-5.3)
9 or any other law to the contrary, in any case where a licensed
10 alcoholic beverage server or any other party to a suit instituted
11 pursuant to the provisions of this act is determined to be a joint
12 tortfeasor, the licensed alcoholic beverage server or other party

13 shall be responsible for no more than that percentage share of the
 14 damages which is equal to the percentage of negligence attributable
 15 to the server or other party.**

1 ***[6.]** Notwithstanding the provisions of P. L. 1952, c. 335 (C.
 2 2A:53A-1 et seq.), a licensed alcoholic beverage server against
 3 whom a civil action is instituted pursuant to the provisions of this
 4 act shall be responsible to pay for not more than that percentage
 5 share of the damages which is equal to the percentage of negligence
 6 attributable to the server during the civil proceedings.]*

1 ***[7.]** ***[*6.*]** ***[*7.*]** The Department of Insurance shall
 2 monitor the alcoholic beverage liability insurance market in the
 3 State following the effective date of this act. The department
 4 shall gather information and statistics on the number of insurers
 5 ***including surplus lines insurers,*** issuing alcoholic beverage in-
 5A surance policies, the number of policies issued, the premiums for
 6 such policies, the number of civil actions filed in accordance with
 7 the provisions of this act, the amounts of damages awarded in civil
 8 actions or the amounts of settlements, and any other information
 9 deemed necessary in order to determine the effect of this act on the
 10 alcoholic beverage liability insurance market. The department
 11 shall issue an initial report on the information obtained to the
 12 Governor and the Legislature and make appropriate recommenda-
 13 tions within two years following the effective date of this act and a
 14 final report within three years following the effective date of this
 15 act. The Commissioner of the Department of Insurance shall
 16 promulgate any rules and regulations pursuant to the "Administra-
 17 tive Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.),
 18 necessary in order to fulfill the requirements of this section.

1 ***[8.]** ***[*7.*]** ***[*8.*]** This act shall take effect on the 90th
 2 day after enactment and shall apply only to personal injury or
 3 property damage which occurs after the effective date.

TORT LIABILITY AND MALPRACTICE

Establishes the exclusive civil remedy for the negligent service of
 alcoholic beverages by a licensed alcoholic beverage server.

ASSEMBLY, No. 2264

STATE OF NEW JERSEY

INTRODUCED MARCH 13, 1986

By Assemblymen SHUSTED and ROCCO

AN ACT concerning the civil liability of licensed alcoholic beverage servers and supplementing Title 2A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. The Legislature finds and declares that as a direct consequence
2 of the increasing civil liability of persons licensed to sell alcoholic
3 beverages for personal injuries or property damage caused by
4 intoxicated persons who are at or over the legal age to purchase
5 and consume alcoholic beverages, a licensed alcoholic beverage
6 server faces great difficulty in obtaining liability insurance cover-
7 age. Even when insurance coverage is available, drastic increases
8 in the cost of that insurance have recently taken place and many
9 licensed alcoholic beverage servers are no longer able to afford
10 liability insurance coverage.

11 This lack of insurance adversely affects not only the licensed
12 alcoholic beverage servers themselves, but also innocent third per-
13 sons who suffer personal injury and property damage as a result
14 of the actions of intoxicated persons.

15 In order to make it economically feasible for insurance com-
16 panies to provide coverage, the incidence of liability should be
17 more predictable. That predictability may be achieved by defining
18 the limits of the civil liability of licensed alcoholic beverage servers
19 in order to encourage the development and implementation of risk
20 reduction techniques.

21 This act has been designed to protect the rights of persons who

22 suffer loss as a result of the actions of intoxicated persons while
23 at the same time providing a balanced and reasonable procedure
24 for allocating responsibility for such losses. It is anticipated that
25 this act may result in the improvement of the alcoholic beverage
26 liability insurance market in this State.

1 2. Except as provided for by the provisions of this act, no action
2 at law shall be instituted against a licensed alcoholic beverage
3 server for personal injury or for damage to real or personal prop-
4 erty resulting from the actions of a person who is at or over the
5 legal age to purchase and consume alcoholic beverages according
6 to P. L. 1972, c. 81 (C. 9:17B-1 et seq.) and who had consumed
7 alcoholic beverages served by the licensed alcoholic beverage
8 server. For the purposes of this act, "licensed alcoholic beverage
9 server" means a person who is licensed to sell alcoholic beverages
10 pursuant to R. S. 33:1-12 or who has been issued a permit to sell
11 alcoholic beverages by the Division of Alcoholic Beverage Control.

1 3. A licensed alcoholic beverage server shall not be liable in a
2 civil action for personal injury or for damage to real or personal
3 property sustained by a person who is at or over the legal age to
4 purchase or consume alcoholic beverages according to P. L. 1972,
5 c. 81 (C. 9:17B-1 et seq.) and who consumed alcoholic beverages
6 served by the licensed alcoholic beverage server.

1 4. a. A person may recover from a licensed alcoholic beverage
2 server in a civil action for personal injury or damage to real or
3 personal property caused by a person who is at or over the legal
4 age to purchase and consume alcoholic beverages and who had
5 consumed alcoholic beverages served by the licensed server only if:

6 (1) The licensed alcoholic beverage server served the person
7 when the server knew, or should reasonably have known, that the
8 person was visibly intoxicated;

9 (2) The intoxication was proximately caused by the service of
10 the alcoholic beverages; and

11 (3) The personal injury or the damage to real or personal prop-
12 erty was a foreseeable consequence of the service to the person.

13 b. In order to determine the liability of a licensed alcoholic bev-
14 erage server under this section, the following presumption shall
15 be applied. If a test to determine the presence of alcohol in the
16 blood at the time of the service of alcoholic beverages indicates a
17 blood alcohol concentration of less than 0.10% by weight, there
18 shall be a rebuttable presumption that the person tested was not
19 visibly intoxicated.

20 c. For the purposes of this act, "visibly intoxicated" means a

21 state of intoxication accompanied by a perceptible act or series of
22 acts which present clear and convincing signs of intoxication.

1 5. Section 2 of P. L. 1973, c. 146 (C. 2A:15-5.2) is amended to
2 read as follows:

3 2. In all negligence actions in which the question of liability is in
4 dispute, *including actions under P. L., c. . . . (C.)*
5 *(now pending before the Legislature as this bill) against licensed*
6 *alcoholic beverages servers*, the trier of fact shall make the follow-
7 ing as findings of fact:

8 a. The amount of damages which would be recoverable by the
9 injured party regardless of any consideration of negligence, that is,
10 the full value of the injured party's damages;

11 b. The extent, in the form of a percentage, of each party's
12 negligence. The percentage of negligence of each party shall be
13 based on 100% and the total of all percentages of negligence of all
14 the parties to a suit shall be 100%.

15 c. The judge shall mold the judgment from the finding of fact
16 made by the trier of fact.

1 6. This act shall take effect immediately.

SPONSOR'S STATEMENT

This bill establishes a standard under which a licensed alcoholic beverage server can be held liable for personal injury or property damage caused by an intoxicated person who is at or over the legal age to purchase or consume alcoholic beverages and who consumed alcoholic beverages served by the licensed server.

ALCOHOLIC BEVERAGES

Establishes standard under which a licensed alcoholic beverage server can be held liable for damages caused by an intoxicated patron who is at or over the legal age to purchase and consume alcoholic beverages.

ASSEMBLY, No. 2209

STATE OF NEW JERSEY

INTRODUCED MARCH 6, 1986

By Assemblymen PENN, KAVANAUGH, KERN, FRANKS,
LOVEYS, CHINNICI and MUZIANI

AN ACT concerning the civil liability of alcoholic beverage servers.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. This act shall be known and may be cited as the "New Jersey
2 Alcoholic Beverage Server Fair Liability Act."

1 2. As used in this act:

2 a. "Adult" means a person at or over the legal age to purchase
3 and consume alcoholic beverages according to P. L. 1972, c. 81
4 (C. 9:17B-1 et seq.);

5 b. "Alcoholic beverage" means a fluid, or a solid capable of
6 being converted into a fluid, suitable for human consumption and
7 having an alcoholic content of more than one-half of 1% by volume.
8 The term shall include alcohol, beer, lager beer, ale, porter, natu-
9 rally fermented wine, treated wine, blended wine, fortified wine,
10 sparkling wine, distilled liquors, blended distilled liquors and any
11 brewed, fermented or distilled liquors fit for use for beverage pur-
12 poses, or any mixture of them;

13 c. "Alcoholic beverage server" or "server" means any person
14 who sells, serves or provides without compensation alcoholic bev-
15 erages including persons licensed under R. S. 33:1-11 or R. S.
16 33:1-12, social hosts, business hosts or any other person furnishing
17 alcoholic beverages.

18 d. "Minor" means a person under the legal age to purchase and
19 consume alcoholic beverages according to P. L. 1972, c. 81 (C.
20 9:17B-1 et seq.);

21 e. "Person" means a natural person, the estate of a natural
 22 person, an association of natural persons, or an association, trust
 23 company, partnership, corporation, organization, or the manager,
 24 agent, servant, officer or employee of any of them.

1 3. This act shall be the exclusive civil remedy for personal in-
 2 jury or property damage resulting from the negligent service of
 3 alcoholic beverages. Nothing contained herein shall not be deemed
 4 to limit the criminal, quasi-criminal, or regulatory penalties which
 5 may be imposed upon an alcoholic beverage server by any other
 6 statute, rule or regulation.

1 4. a. A person who sustains personal injury or property damage
 2 as a result of the actions of another person who is intoxicated may
 3 recover damages from the alcoholic beverage server only if:

4 (1) The server is deemed negligent pursuant to section 5 of
 5 P. L., c. (C.) (now pending before the Legis-
 6 lature as this bill); and

6A (2) The intoxication was proximately caused by the negligent
 6B service of alcoholic beverage; and

7 (3) The injury or damage was a foreseeable consequence of the
 8 negligent service of alcoholic beverages.

9 b. An adult who becomes intoxicated and sustains personal in-
 10 jury or property damage as a result of his actions while intoxicated
 11 shall be prohibited from instituting a civil action for damages
 12 against the alcoholic beverage server.

13 c. An adult passenger who rides in a motor vehicle which he
 14 knows is operated by an intoxicated driver and who sustains per-
 15 sonal injury or property damage as a result of a motor vehicle
 16 accident shall be prohibited from instituting a civil action for
 17 damages against an alcoholic beverage server who negligently
 18 served the intoxicated driver.

19 d. A minor who becomes intoxicated and sustains personal injury
 20 or property damage as a result of his actions while intoxicated
 21 may recover damages from the alcoholic beverage server only if
 22 the minor's intoxication was proximately caused by the negligent
 23 service of alcoholic beverages as defined in this act and the personal
 24 injury or property damage was a foreseeable consequence of such
 25 negligent service.

1 5. An alcoholic beverage server shall be deemed to have been
 2 negligent only when the server:

3 a. Served a minor who was, or who became intoxicated, under
 4 circumstances where the server either knew, or should reasonably
 5 have known, that the person served was a minor; or

6 b. Served an adult under circumstances where the server knew

7 or should reasonably have known that the adult was visibly intoxi-
8 cated.

1 6. Notwithstanding the provisions of P. L. 1952, c. 335 (C.
2 2A:53A-1 et seq.), an alcoholic beverage server shall be responsi-
3 ble for no more than that percentage share of the damages which
4 is equal to the percentage of negligence attributable to him.

1 7. This act shall take effect immediately, but shall apply only
2 as to personal injury or property damage which occurs after the
3 effective date.

STATEMENT

This bill establishes the exclusive civil remedy for personal in-
jury or property damage resulting from the negligent service of
alcoholic beverages by any server.

TORT LIABILITY AND MALPRACTICE

Establishes the exclusive civil remedy for negligent service of
alcohol.

ASSEMBLY, No. 2211
STATE OF NEW JERSEY

INTRODUCED MARCH 6, 1986

By Assemblymen KERN, PENN, KOSCO and SCHUBER

AN ACT concerning the civil liability of licensed alcoholic beverage
servers.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "New Jersey
2 Alcoholic Beverage Server Fair Liability Act."

1 2. As used in this act:

2 a. "Adult" means a person at or over the legal age to purchase
3 and consume alcoholic beverages according to P. L. 1972, c. 81 (C.
4 9:17B-1 et seq.);

5 b. "Alcoholic beverage" means a fluid, or a solid capable of being
6 converted into a fluid, suitable for human consumption and having
7 an alcoholic content of more than one-half of 1% by volume. The
8 term shall include alcohol, beer, lager beer, ale, porter, naturally
9 fermented wine, treated wine, blended wine, fortified wine, spar-
10 kling wine, distilled liquors, blended distilled liquors and any
11 brewed, fermented or distilled liquors fit for use for beverage
12 purposes, or any mixture of them;

13 c. "Alcoholic beverage server" or "server" means any person
14 who sells, serves, or provides without compensation alcoholic bev-
15 erages, including persons licensed pursuant to R. S. 33:1-1 et seq.,
16 social hosts, business hosts and the like;

17 d. "Minor" means a person under the legal age to purchase and
18 consume alcoholic beverages according to P. L. 1972, c. 81 (C.
19 9:17B-1 et seq.);

20 e. "Person" means a natural person, the estate of a natural

21 person, an association of natural persons, or an association, trust
 22 company, partnership, corporation, organization, or the manager,
 23 agent, servant, officer, or employee of any of them.

1 3. This act shall be the exclusive civil remedy for personal in-
 2 jury or property damage resulting from the negligent service of
 3 alcoholic beverages. Nothing contained herein shall be deemed to
 4 limit the criminal, quasi-criminal, or regulatory penalties which
 5 may be imposed upon an alcoholic beverage server by any other
 6 statute, rule, or regulation.

1 4. a. A person who sustains personal injury or property damage
 2 as a result of the actions of another person who is intoxicated may
 3 recover damages from the alcoholic beverage server only if the
 4 other person's intoxication was proximately caused by the negli-
 5 gent service of alcoholic beverages as defined in this act and the
 6 personal injury or property damage was a foreseeable consequence
 7 of the negligent service.

8 b. An adult who becomes intoxicated and sustains personal in-
 9 jury or property damage as a result of his actions while intoxicated
 10 shall be prohibited from instituting a civil action for damages
 11 against the alcoholic beverage server.

12 c. An adult passenger who rides in a motor vehicle which the
 13 passenger knows is operated by an intoxicated driver and who
 14 sustains personal injury or property damage as a result of a motor
 15 vehicle accident shall be prohibited from instituting a civil action
 16 for damages against an alcoholic beverage server who allegedly
 17 negligently served the intoxicated driver.

18 d. A minor who becomes intoxicated and sustains personal injury
 19 or property damage as a result of his actions while intoxicated
 20 may recover damages from the alcoholic beverage server only if
 21 the minor's intoxication was proximately caused by the negligent
 22 service of alcoholic beverages as defined in this act and the personal
 23 injury or property damage was a foreseeable consequence of the
 24 negligent service.

1 5. An alcoholic beverage server shall be deemed to have been
 2 negligent only when the server:

3 a. Served a minor who was, or who became intoxicated, under
 4 circumstances where the server knew, or should reasonably have
 5 known, that the person served was a minor;

6 b. Served an adult under circumstances where the server knew,
 7 or should reasonably have known, that the adult was visibly
 8 intoxicated.

1 6. Notwithstanding the provisions of P. L. 1952, c. 335 (C.

2 2A:53A-1 et seq., an alcoholic beverage server shall be resposi-
 3 ble for no more than that percentage share of the damages which
 4 is equal to the percentage of negligence attributable to the server.
 1 7. This act shall take effect immediately, but shall apply only as
 2 to personal injury or property damage which occurs after the
 3 effective date.

STATEMENT

The intent of this bill is to establish an exclusive remedy for personal injury or property damage resulting from the negligent serving of alcoholic beverages, and to limit the liability of an alcoholic beverage server.

Recovery can only be had if the personal injury or property damage was a foreseeable consequence of the negligent service of alcoholic beverages by an alcoholic beverage server.

The alcoholic beverage server exposure is limited to no more than the percentage of the share of the damages which is equal to the percentage of negligence attributed to the server.

TORT LIABILITY AND MALPRACTICE

Establishes the exclusive civil remedy for the negligent service of alcoholic beverages.

ASSEMBLY, No. 1876
STATE OF NEW JERSEY

INTRODUCED FEBRUARY 3, 1986

By Assemblywoman COOPER and Assemblyman KLINE

AN ACT concerning civil actions against persons licensed under Title 33 of the Revised Statutes for selling or furnishing alcoholic beverages and supplementing Title 2A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. a. In any civil action alleging tortious injury to persons or
2 property arising out of an accident involving the operation of a
3 motor vehicle in violation of R. S. 39:4-50 which also alleges that
4 negligent sale of furnishing of alcohol beverages to the operator
5 of that motor vehicle by a person licensed under Title 33 of the
6 Revised Statutes or his employee was a proximate cause or con-
7 tributing factor to that accident, the damages which may be
8 assessed against that person or his employee shall be limited as
9 set forth in subsection b. of this section.

10 b. Damages assessed against a person licensed under Title 33
11 of the Revised Statutes or his employee in an action described in
12 subsection a. of this section shall be limited to the following
13 amounts:

14 (1) an amount or limit of \$150,000.00, exclusive of interest and
15 costs, on account of injury to, or death of, one person, in any one
16 accident; and

17 (2) an amount or limit, subject to such limit for any one person
18 so injured or killed, of \$500,000.00, exclusive of interest and costs,
19 on account of injury to or death of, more than one person, in any
20 one accident; and

21 (3) an amount or limit of \$25,000.00, exclusive of interest and
 22 costs, for damage to property in any one accident.

1 2. This act shall take effect on the 30th day after the date of
 2 enactment and shall apply to accidents occurring on or after the
 3 effective date.

STATEMENT

This bill limits the damages which may be assessed against a person licensed under the alcoholic beverage laws or his employee for negligently selling or furnishing alcoholic beverages where such service or furnishing is alleged to be a proximate cause or contributing factor in an accident arising out of the operation of a motor vehicle by a person under the influence.

The maximum amount recoverable for injury to or the death of one person is \$150,000.00; for all injuries or deaths, \$500,000.00; and for property damage, \$25,000.00. These amounts are exclusive of interest and costs and are the ceilings imposed in any one accident.

The sponsor believes that setting monetary limits for damages to be assessed against alcoholic beverage licensees will assist in limiting the skyrocketing insurance premiums which the hospitality industry is facing and thus ensure that commercial licensees are able to obtain insurance coverage for this purpose.

TORT LIABILITY AND MALPRACTICE

Provides monetary limits for damages that may be assessed against an alcoholic beverage licensee when a customer is involved in a drunk driving accident.

ASSEMBLY, No. 1679

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Assemblymen BOCCHINI, MARSELLA, MARTIN, Assemblywoman COOPER, Assemblymen LOVEYS, KAVANAUGH, PELLY, Assemblywoman KALIK, Assemblymen FOY, CHINNICI, WATSON, VILLANE, HENDRICKSON, SHINN, DORIA, ROCCO, PELLECCCHIA, HUDAK, THOMPSON, MAZUR, SMITH, Assemblywoman GARVIN, Assemblymen PATERNITI, GORMAN, RILEY, LITTELL, HAYTAIAN, MUZIANI, KARCHER, KLINE, PENN, ZECKER, ROONEY, FELICE, MILLER, Assemblywomen MUHLER, OGDEN, Assemblymen KOSCO, KERN, GENOVA, BENNETT and ZANGARI

AN ACT concerning the civil liability of licensed alcoholic beverage servers.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "New Jersey
2 Licensed Alcoholic Beverage Server Liability Act."

1 2. As used in this act:

2 a. "Adult" means a person at or over the legal age to purchase
3 and consume alcoholic beverages according to P. L. 1972, c. 81
4 (C. 9:17B-1 et seq.);

5 b. "Alcoholic beverage" means a fluid, or a solid capable of being
6 converted into a fluid, suitable for human consumption and having
7 an alcoholic content of more than one-half of 1% by volume. The
8 term shall include alcohol, beer, lager beer, ale, porter, naturally
9 fermented wine, treated wine, blended wine, fortified wine, spark-
10 ling wine, distilled liquors, blended distilled liquors and any brewed,

11 fermented or distilled liquors fit for use for beverage purposes, or
12 any mixture of them;

13 c. "Licensed alcoholic beverage server" or "server" means a
14 person who is licensed to sell or distribute alcoholic beverages
15 under R. S. 33:1-11 or R. S. 33:1-12, or who has been issued a
16 permit to sell alcoholic beverages by the Director of the Division
17 of Alcoholic Beverage Control;

18 d. "Minor" means a person under the legal age to purchase and
19 consume alcoholic beverages according to P. L. 1972, c. 81 (C.
20 9:17B-1 et seq.);

21 e. "Person" means a natural person, the estate of a natural
22 person, an association of natural persons, or an association, trust
23 company, partnership, corporation, organization, or the manager,
24 agent, servant, officer or employee of any of them;

25 f. "Service of alcoholic beverages" means the same as the defini-
26 tion of the term "sale" in R. S. 33:1-1;

27 g. "Visibly intoxicated" means a degree of intoxication accom-
28 panied by an act, or series of acts, or some other sign of intoxica-
29 tion. If a test to determine the presence of alcohol in the blood at
30 the time the person was served alcoholic beverages indicates a
31 blood alcohol concentration of 0.15% or more by weight of alcohol
32 in the blood, there shall be a presumption that the person tested
33 exhibited visible signs of intoxication at the time of service.

1 3. This act shall be the exclusive civil remedy for personal injury
2 or property damage resulting from the negligent service of alco-
3 holic beverages by a licensed alcoholic beverage server. This act
4 shall not be deemed to limit the criminal, quasi-criminal, or regu-
5 latory penalties which may be imposed against a licensed alcoholic
6 beverage server, nor shall it be construed to apply to the liability
7 of persons other than those defined in section 2 of this act as
8 "licensed alcoholic beverage servers."

1 4. a. A person who sustains personal injury or property damage
2 damage as a result of the actions of another person who is in-
3 toxicated may recover damages from a licensed alcoholic beverage
4 server only if:

5 (1) the server is deemed negligent pursuant to section 5 of
6 P. L. , c. (C.) (now pending before the
7 Legislature as this bill):

8 (2) the other person's intoxication was proximately caused by
9 the negligent service of alcoholic beverages; and

10 (3) the injury or damage was a foreseeable consequence of the
11 negligent service of alcoholic beverages.

12 b. A minor who sustains personal injury or property damage as
 13 a result of his actions while intoxicated may recover damages
 14 from a licensed alcoholic beverage server only if:

15 (1) the server is deemed negligent pursuant to section 5 of
 16 P. L. , c. (C.) (now pending before the
 17 Legislature as this bill);

18 (2) the intoxication was proximately caused by the negligent
 19 service of alcoholic beverage; and

20 (3) the injury or damage was a foreseeable consequence of the
 21 negligent service of alcoholic beverages.

22 c. An adult who sustains personal injury or property damage
 23 as a result of his actions while intoxicated shall be prohibited from
 24 instituting a civil action for damages against a licensed alcoholic
 25 beverage server.

1 5. A licensed alcoholic beverage server shall be deemed to have
 2 been negligent only when the server:

3 a. Served a minor who was, or who became intoxicated, under
 4 circumstances where the server either knew, or should reasonably
 5 have known, that the person served was a minor; or

6 b. Served an adult under circumstances where the server knew
 7 or should reasonably have known that the adult was visibly in-
 8 toxicated.

1 6. Damages may be awarded in a civil action against a licensed
 2 alcoholic beverage server subject to the limitations set forth in
 3 this section.

4 a. In civil actions for damages in which the question of liability
 5 is in dispute, the trier of fact shall make the following findings:

6 (1) The amount of damages which would be recoverable by the
 7 injured party regardless of any consideration of negligence, that
 8 is, the full value of the damages to the injured party.

9 (2) The extent of each parties' negligence in the form of a per-
 10 centage. The percentage of negligence of each party shall be based
 11 on 100% and the total of all percentages of negligence of all the
 12 parties in the civil action shall be 100%.

13 b. The judge shall mold the judgment from the findings made
 14 by the trier of fact.

15 c. Notwithstanding the provisions of P. L. 1952, c. 335 (C.
 16 2A:53A-1 et seq.), a licensed alcoholic beverage server shall be
 17 responsible for no more than that percentage share of the damages
 18 which is equal to the percentage of negligence attributable to the
 19 server. The party recovering in a civil action may recover the full
 20 amount of the molded verdict from any party, other than an

21 alcoholic beverage server, against whom recovery is not otherwise
22 barred. A party who is compelled to pay more than his percentage
23 share of the damage may seek contribution from the other joint
24 tortfeasors.

1 7. This act shall take immediately; but shall apply only as to
2 personal injury or property damage which occurs after the effec-
3 tive date.

STATEMENT

This bill establishes the exclusive civil remedy for personal in-
jury or property damage resulting from the negligent service of
alcoholic beverages by a licensed alcoholic beverage server.

ASSEMBLY, No. 864

Introduced Pending Technical Review by Legislative Counsel
PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Assemblyman ZECKER

ASSEMBLY, No. 3818

STATE OF NEW JERSEY

INTRODUCED JUNE 20, 1985

By Assemblymen ZECKER and MILLER

AN Act concerning limitations on actions against persons providing alcoholic beverages to others and supplementing Title 2A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. As used in this act:

2 "Visibly intoxicated" means a degree of intoxication, accom-
3 panied by an act or series of actions or some other clearly un-
4 mistakable sign of intoxication. Evidence of failure to pass a test
5 to determine the presence of alcohol in the blood or urine shall be
6 insufficient, in the absence of corroborating evidence, of visible
7 intoxication within the meaning of this act.

1 2. No action at law, either for injury to the person or for injury
2 to real or personal property, arising out of a motor vehicle accident
3 caused by the negligent or otherwise illegal operation of a vehicle
4 resulting from the excessive consumption of alcoholic beverages,
5 shall lie against any person, or the estate of any person, for having
6 provided alcoholic beverages to any driver at or over the autho-
7 rized age for the purchase and consumption of alcoholic beverages,
8 except where:

9 a. The person furnished the alcoholic beverages as a licensee
10 or as the employee of a licensee under Title 33 of the Revised
11 Statutes, and knew or had reasonable cause to know that the pur-
12 chaser was visibly intoxicated and knew or should have known
13 that the person would operate a motor vehicle reasonably soon
14 thereafter; or

15 b. Where the person is not a licensee or employee of a licensee
16 under Title 33 of the Revised Statutes, the person willfully and
17 knowingly, manifesting extreme indifference to the rights of others,
18 served the alcoholic beverages to a person who was visibly intoxi-
19 cated in his presence, and who he knew or should have known
20 would operate a motor vehicle reasonably soon thereafter.

1 3. This act shall take effect immediately.

STATEMENT

This bill would substantially limit the scope of host liability recently created by the New Jersey Supreme Court in *Kelly v. Gwinnet*, A-96/97 (1984), in which the court extended liability for injuries arising out of a motor vehicle accident caused by an intoxicated driver to a social host who served drinks to the driver prior to the accident. That case was and is without precedent anywhere in the country.

In opening the door to social host liability the court utilized ordinary standards of negligence and placed no limitation on the amount of a potential recovery. Thus, the way is clear for the court to easily extend this liability far beyond the particular circumstances of this case. The consequences of such a decision require immediate legislative action.

First, the decision will create an immediate climate of fear and uncertainty with the general public. Homeowners' and apartment-dwellers' insurance rates will inevitably rise. And they will rise for those who do not serve alcoholic beverages and those who serve alcoholic beverages responsibly, as well as for those who serve alcoholic beverages in an irresponsible manner. Many apartment dwellers do not carry insurance and thus would be subject to unlimited individual liability. And if they cannot afford it, they surely would be financially ruined by an unlimited liability lawsuit.

Secondly, the decision will subject individuals to unlimited liability situations where they may bear only marginal, or at best partial responsibility, but because of limitations of proof of independent or intervening factors they will be forced to shoulder the burden. For instance, a social host has no effective way of proving that a guest did not drink immediately before leaving his home. Nor could he prove if the guest ingested any form of drugs in addition to the alcohol he had served. Social guests do not ordinarily announce how many drinks they have had on arrival, and many problem drinkers are quite effective at masking their level of consumption, thus further complicating the situations of proof in these cases.

ASSEMBLY, No. 554

Introduced Pending Technical Review by Legislative Counsel
PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Assemblyman PENN

ASSEMBLY, No. 3756

STATE OF NEW JERSEY

INTRODUCED JUNE 20, 1985

By Assemblymen PENN, ZECKER, MILLER, KOSCO, KLINE,
LOVEYS, BENNETT, Assemblywoman COOPER and Assembly-
man BOCCHINI

AN ACT concerning actions against persons who sell or furnish
alcoholic beverages and supplementing Titles 2A and 2C of the
New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. A person is guilty of a disorderly persons offense if that
2 person sells or furnishes, or causes to be sold or furnished, any
3 alcoholic beverage to a person who is obviously intoxicated and
4 who is at or over the age at which a person is authorized to pur-
5 chase or consume alcoholic beverages.

6 As used in this section, "obviously intoxicated" means a degree
7 of intoxication, accompanied by an act, or series of actions, or
8 some other clearly unmistakable sign of intoxication.

1 2. A person who sells or furnishes, or causes to be sold or fur-
2 nished, any alcoholic beverage to a person at or over the age at
3 which a person is authorized to purchase or consume alcoholic
4 beverages shall not be held liable in a civil action for personal
5 injury, death or property damage caused by the consumer while
6 under the influence of alcoholic beverages.

7 It is the public policy of this State that the consumption of
8 alcoholic beverages rather than the serving of them shall be a
9 proximate cause of personal injury, death or property damage
10 caused by a consumer while under the influence of alcoholic bever-
11 ages. This section shall be interpreted in light of this public policy.

1 3. This act shall take effect immediately but section 2 shall apply
2 only to events occurring after the effective date of this act.

A554.

A554.

STATEMENT

This bill states that it is the public policy of this State that the consumption of alcoholic beverages rather than the serving of them shall be the proximate cause of personal injury, death and property damage caused by a person while under the influence of alcoholic beverages. Therefore, a person who sells or furnishes any alcoholic beverage to a person who is 21 years of age or over shall not be liable in a civil action for personal injury, death or property damage caused by the consumer while he is under the influence of alcoholic beverages.

In addition, this bill makes it a disorderly persons offense to sell or furnish alcoholic beverages to an obviously intoxicated person.

ASSEMBLY LAW, PUBLIC SAFETY, DEFENSE AND CORRECTIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE for
Assembly Bills 2264, 2209, 2211, 1876,
1679, 864 and 554May 8, 1986

The Assembly Law, Public Safety, Defense and Corrections Committee favorably reports the Assembly Committee Substitute for Assembly Bills 2264, 2209, 2211, 1876, 1679, 864 and 554.

The Assembly Committee Substitute establishes the exclusive civil remedy for personal injury or property damage resulting from the negligent service of alcoholic beverages by a licensed alcoholic beverage server. This bill is a result of a public hearing held by this committee on April 4, 1986.

In brief, the bill contains the following provisions:

Section 1 sets forth the title as the "New Jersey Licensed Alcoholic Beverage Server Fair Liability Act."

Section 2 sets forth the legislative intent and purpose for the bill.

Section 3 is the definitional section.

Section 4 states that the bill is the exclusive civil remedy for personal injury or property damage resulting from the negligent service of alcoholic beverages by a licensed alcoholic beverage server.

Section 5 sets forth the circumstances under which a person who sustains personal injury or property damage can recover from a licensed alcoholic beverage server. Specifically, the bill establishes a three prong level of proof; prohibits an intoxicated person from suing for injuries or damage which he sustains as a result of his own actions; and prohibits a passenger in a car operated by an intoxicated person from suing a licensed server.

Section 6 creates an exemption to joint and several liability for licensed alcoholic beverage servers.

Section 7 requires the Department of Insurance to study the alcoholic beverage liability market and to issue a report to the Governor and the Legislature on the effectiveness of the bill.

Section 8 sets forth the bill's effective date.

- -

The bill applies only to alcoholic beverage servers licensed under Title 33 of the Revised Statutes, the New Jersey alcoholic beverage statutes. The bill does not apply to social hosts because separate social host legislation is currently pending before the Legislature.

ASSEMBLY INSURANCE COMMITTEE
STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
**ASSEMBLY, Nos. 2264, 2209, 2211, 1876,
1679, 864 and 554**

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 29, 1986

This bill provides a limitation on recovering damages for personal injury from licensed beverage servers. Recovery would be permitted only if the server served a person under circumstances where the server knew that the person was visibly intoxicated, that the injury or damage was proximately caused by the negligent service of alcoholic beverages, and that the injury or damage was a foreseeable consequence of the negligent service of alcoholic beverages.

The bill provides that a person who became intoxicated and sustains personal injury or property damage as a result of his actions while intoxicated would be prohibited from instituting a civil action for damages against a licensed alcoholic beverage server. Persons who ride in a motor vehicle which they know is operated by an intoxicated person and who sustain personal injury or property damage as a result of a motor vehicle accident would be prohibited from instituting a civil action for damages against a licensed alcoholic beverage server.

The bill requires the Department of Insurance to monitor the alcoholic beverage liability insurance market in the State and to collect statistics on the loss experience of insurers who sell liquor liability coverage. The commissioner would be required to make a report to the Legislature two years after the effective date of the act on the information which was collected in accordance with the act.

The Assembly Insurance Committee has amended the bill to delete the provision regarding joint and several liability, because a more comprehensive joint and several liability provision is to be found in Assembly Bill No. 2401, which was reported by the committee at the same time.

Liquor law liability insurance has been increasingly difficult to obtain and premiums have risen significantly for it over the past two years. In part this is due to an increasing frequency and severity of insurance claims; licensed alcoholic beverage servers are often named in personal injury suits which are filed in connection with automobile accidents involving drunken driving. As the case law has evolved, beverage servers are generally held liable, whether or not the person causing the accident actually became intoxicated on the servers' premises. This bill limits the liability of beverage servers, holding servers liable on the basis of their actual negligence.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
**ASSEMBLY, Nos. 2264, 2209, 2211, 1876,
1679, 864 and 554**

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: OCTOBER 20, 1986

This bill, designated the "New Jersey Licensed Alcoholic Beverage Server Fair Liability Act," provides the exclusive civil remedy for personal injury or property damage resulting from the negligent service of alcoholic beverages by a licensed alcoholic beverage server. The bill provides a limitation on recovering damages for personal injury from licensed beverage servers. Recovery would be permitted only if the server served a person under circumstances where the server knew that the person was visibly intoxicated, that the injury or damage was proximately caused by the negligent service of alcoholic beverages, and that the injury or damage was a foreseeable consequence of the negligent service of alcoholic beverages.

The bill provides that a person who became intoxicated and sustains personal injury or property damage as a result of his actions while intoxicated would be prohibited from instituting a civil action for damages against a licensed alcoholic beverage server. Persons who ride a motor vehicle which they know is operated by an intoxicated person and who sustain personal injury or property damage as a result of a motor vehicle accident would be prohibited from instituting a civil action for damages against a licensed alcoholic beverage server.

The bill requires the Department of Insurance to monitor the alcoholic beverage liability insurance market in the State and to collect statistics on the loss experience of insurers who sell liquor liability coverage. The commissioner would be required to make an initial report, containing appropriate recommendations, to the Governor and the Legislature two years after the effective date of the act on the information which was collected in accordance with the act. A final report would be due the following year.

January 22, 1987

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY BILL NOS. 2264

2209, 2211, 1876, 1679, 864 and 554 (OCR)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Assembly Committee Substitute for Assembly Bill Nos. 2264, 2209, 2211, 1876, 1679, 864 and 554 (OCR) with my objections, for reconsideration.

The Assembly Committee Substitute establishes the exclusive civil remedy for the negligent service of alcoholic beverages by a licensed alcoholic beverage server. The Assembly Committee Substitute currently provides that under no circumstances shall a licensed alcoholic beverage server be liable to an adult patron who, as a result of intoxication, injures himself or his property. The Assembly Committee Substitute further provides that the licensed alcoholic beverage server shall not be liable to an adult who suffers injury or damage as a result of riding in a motor vehicle which the adult knows is operated by an intoxicated adult. The Assembly Committee Substitute also provides the exclusive circumstances under which an adult, not falling within the above-referenced categories, may recover from a licensed alcoholic beverage server for the negligent service of alcoholic beverages.

I fully recognize and appreciate the current liability insurance crisis generally, and the difficulties that licensed alcoholic beverage servers are having finding affordable insurance specifically. Moreover, I fully support the efforts of the Legislature to enact legislation addressing this problem. However, I am compelled to return this bill to the Legislature because I believe there is a more comprehensive and balanced approach to this issue.

In responding to the current liability insurance crisis, I advocate the enactment of reasonable modifications to our civil justice system, rather than the total elimination of certain injured parties' rights to institute a civil action for damages against one who unlawfully violates a regulatory duty of care not to serve visibly intoxicated adults. By eliminating licensed alcoholic beverage server liability to the adult patron and the adult who rides in a motor vehicle knowing that the motor vehicle is operated by an intoxicated adult, this bill contravenes current Alcoholic Beverage Control policy and a logical and consistent system of laws. I cannot support legislation that

eliminates the licensee's civil duty of care to visibly intoxicated adults and third parties who ride in motor vehicles with an intoxicated driver. I believe there are more reasonable tort reform measures that are much less harsh to injured victims of negligence. Moreover, I believe that the enactment of modifications to our civil justice system which affect all potential claimants will provide licensees with greater predictability of their liability than the enactment of this bill, which affects only a fraction of potential claimants.

Despite the fact that the bill specifically states that it shall be the exclusive civil remedy for the negligent service of alcoholic beverages by a licensee, neither the bill nor the legislative history mention the effect of this bill on the current case law regarding the civil liability of licensees to individuals under the legal age to consume alcoholic beverages and persons injured by them. It is unclear whether the common law with respect to minors and persons injured by them is intended to survive the enactment of this bill. The undesirable result is that the bill does not provide a definitive statement of the law regarding to whom and under what circumstances a licensee may be civilly liable.

A comprehensive statute, addressing the various standards of care to be given all potential claimants, is imperative if legislative action is to give licensees and their insurers any meaningful measure of predictability of the incidence of claims. I recommend legislation that recognizes the differing duties of care owed by licensees to minor patrons and to adult patrons. However, I believe all other provisions of any legislation in this area should apply equally to minors and intoxicated adults, and all persons injured by them. To do otherwise would retain the anomalous situations created by this bill where one set of rules apply in the case of a party who is, or is injured by, a minor, and another set of rules apply in the case of a party who is, or is injured by, an adult.

I recommend that the common law civil duty of care owed by licensees to individuals under the legal age to consume alcoholic beverages be codified. This bill should provide that licensees have a civil duty not to serve minors, under circumstances where the server knows, or reasonably should know, that the person being served is a minor. In addition, I recommend that a definition of

"minor" be included in the bill and that the definition of "person" be amended to include all natural persons, irrespective of age. These recommendations will ensure a comprehensive statute addressing both standards of care and the law to be applied to all potential claimants.

The proximate cause section of this bill is incorrectly drafted. The bill requires that intoxication must be proximately caused by the negligent service of alcoholic beverages. This is inconsistent with existing case law which requires, as an element of a cause of action against an alcoholic beverage server, that the negligent service of alcoholic beverages proximately cause injury or damage. I therefore recommend that the bill be amended to specify that the negligent service of alcoholic beverages proximately cause injury or damage, rather than intoxication.

In order to protect licensees and clearly demonstrate the type of conduct for which the licensee may be civilly liable to adults and persons injured by intoxicated adults, I recommend that the current common law negligence standard pertaining to adult patrons be modified. I recommend a standard of care that depends on whether the adult patron was visibly intoxicated when served, rather than whether the server knew or reasonably should have known that the adult patron was actually or apparently intoxicated when served. I further recommend that the term "visibly intoxicated" be defined as a state of intoxication accompanied by a perceptible act or series of acts which present clear signs of intoxication. Based on these recommendations, the licensee would be civilly responsible for foreseeable injury or damage proximately caused by the service of alcoholic beverages to intoxicated adults who display clear signs of intoxication. Adoption of these amendments will hold the licensee liable only when it can be objectively demonstrated that he violated a reasonable duty of care. However, unlike the current legislation, the licensee will not be absolutely immune from liability to a patron served while visibly intoxicated.

Rather than wholly eliminating liability to adult patrons and certain third party motor vehicle passengers, I believe that a better public policy would be to temper the licensee's liability to all potential claimants by applying comparative negligence principles where the injured party had the capacity to engage in self-protective measures. The fact that comparative

negligence principles do not currently apply in an action by a patron against a licensee, but do apply in action by an injured third party against a licensee, causes an inequitable allocation of losses where the injured party had the capacity to engage in self-protective measures. In light of current principles of comparative negligence, I know of no reason to insulate a patron from any responsibility while at the same time assessing fault against a third party who may be possibly the most innocent of all involved in such tragic incidents.

Similarly, the elimination of the doctrine of joint and several liability in these cases is much less harsh to injured victims of negligence than the complete elimination of licensee liability to certain classes of individuals, and the protection of those who unlawfully violate the regulatory duty of care not to serve visibly intoxicated adults. The doctrine of joint and several liability clearly causes unpredictable and inequitable liability in these cases and all other tort cases. I therefore recommend that the doctrine of joint and several liability be eliminated in these cases.

Finally, I recommend an amendment to the provisions of the bill dealing with the monitoring role of the Department of Insurance. I believe the bill should clearly state that the Department of Insurance shall gather information and statistics on the activity of surplus lines insurers in this market, as well as admitted companies.

Accordingly, I return Assembly Committee Substitute for Assembly Bill Nos. 2264, 2209, 2211, 1876, 1679, 864 and 554 (OCR) and recommend that it be amended as follows:

Page 1, Section 2, Line 1: Omit "as a direct conse-"

Page 1, Section 2, Lines 2-4: Omit in entirety

Page 1, Section 2, Line 5: Omit "purchase and consume alcoholic beverages, a"

Page 1, Section 2, Line 6: Omit "server faces" and Insert "servers face"

Page 1, Section 2, Line 12: Omit "innocent" and Insert "patrons and"

Page 1, Section 2, Line 14: Omit "actions of intoxicated persons" and Insert "negligent service of alcoholic beverages by a licensed alcoholic beverage server"

Page 2, Section 2, Line 22: Omit "actions of intoxicated persons" and Insert "negligent service of alcoholic beverages by a licensed alcoholic beverage server"

Page 2, Section 3, Line 2: Omit "a."

Page 2, Section 3, Line 10: Omit "b."

Page 2, Section 3, Line 12: Omit "33:1-11 or R.S. 33:1-12" and Insert "33:1-1 et seq."

Page 2, Section 3, After Line 14: Insert new section as follows: "'Minor' means a person under the legal age to purchase and consume alcoholic beverages according to P.L. 1972, c. 81 (C. 9:17B-1 et seq.)."

Page 2, Section 3, Line 15: Omit "c." and Omit "at or over the legal age to"

Page 2, Section 3, Line 16: Omit in entirety

Page 2, Section 3, Line 17: Omit "c. 81 (C. 9:17B-1 et seq.)"

Page 2, Section 3, Line 21: Omit "d."

Page 2, Section 3, Line 22: Omit "visible" and Insert "clear"

Page 2, Section 5, Line 2: Omit "actions of another person who is intoxicated" and Insert "negligent service of alcoholic beverages by a licensed alcoholic beverage server"

Page 2, Section 5, Line 6: Omit "intoxication" and Insert "injury or damage"

Page 3, Section 5, Line 11: Omit "person under circum-"

Page 3, Section 5, Line 12: Omit in entirety

Page 3, Section 5, Line 13: Omit "that the person was" and After "intoxicated" Insert "person, or served a minor, under circumstances where the server knew, or reasonably should have known, that the person served was a minor"

Page 3, Section 5, Lines 14-22: Omit in entirety

Page 3, Section 5, After Line 22: Insert new section as follows: "6. Damages may be awarded in a civil action under P.L. , c. (C.) (now pending before the Legislature as this bill) subject to the limitations set forth in this section."

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

6

a. The provisions of sections 1 and 2 of P.L. 1973, c. 146 (C. 2A:15-5.1 and C. 2A:15-5.2) shall apply in all civil actions instituted pursuant to the provisions of this act.

b. Notwithstanding the provisions of P.L. 1952, c. 335 (C. 2A:53A-1 et seq.), section 3 of P.L. 1973, c. 146 (C. 2A:15-5.3) or any other law to the contrary, in any case where a licensed alcoholic beverage server or any other party to a suit instituted pursuant to the provisions of this act is determined to be a joint tortfeasor, the licensed alcoholic beverage server or other party shall be responsible for no more than that percentage share of the damages which is equal to the percentage of negligence attributable to the server or other party.

Page 3, Section 6, Line 1: Omit "6" Insert "7"

Page 3, Section 6, Line 4: After "insurers" Insert "including surplus lines insurers,"

Page 3, Section 7, Line 1: Omit "7" and Insert "8"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ Michael R. Cole

Chief Counsel



OFFICE OF THE GOVERNOR

NEWS RELEASE

CN-001

Contact: JOHN SAMERJAN
609-292-8956 OR 292-6000 EXT. 207

TRENTON, N.J. 08625

Release: FRI., JUNE 26, 1987

Governor Thomas H. Kean today signed the "New Jersey Licensed Alcoholic Beverage Server Fair Liability Act" after the Legislature concurred in the Governor's conditional veto of the original legislation.

"This legislation," Governor Kean stated, "relieves licensees and others of the uncertainty of the law of joint and several liability that clearly has caused unpredictable, and blatantly unfair, judgements."

"Those bearing little of the blame for injury should not be liable for huge settlements in injury cases. The time has now come for the legislature to extend this same protection to public entities and private individuals and businesses so that our citizens can enjoy the same benefits that we have extended to the licensed alcohol beverage servers."

"I commend the sponsors of this bill, Assemblyman John Rocco, R-Camden, Assemblyman Thomas Shusted, R-Camden and Senator Chris Jackman, D-Hudson. This comprehensive statute gives tavern owners, restaurateurs, package store operators and their insurers a clear measure of predicability in judging future claims."

The legislation, A-2264, 2209, 2211, 1876, 1679, 864, 554 is effective on the 90th day after signing.

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