

2A:15-5.5 to 5.8

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2A:15-5.5 to 2A:15-5.8

(Social host liability)

LAWS OF: 1987

CHAPTER: 404

Bill No: S1152/S545

Sponsor(s): Lesniak

Date Introduced: Pre-Filed

Committee: Assembly: Law, Public Safety and Defense

Senate: Law, Public Safety and Defense

Amended during passage: Yes

Date of Passage: Assembly: June 19, 1986 Re-enacted 1-11-87

Senate: May 5, 1986 Re-enacted 12-21-87

Date of Approval: January 14, 1988

Following statements are attached if available:

Sponsor statement: Yes Attached: Senate amendments, adopted 6-26-86 and Assembly amendments, adopted 6-22-87

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: Yes

Message on Signing: No

Following were printed:

Reports: Yes

Hearings: Yes

Report, mentioned in statements:

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

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- 974.90 New Jersey. Legislature. General Assembly. Law,
L767 Public Safety and Defense Committee.
1985a Public hearing on A43 (exempts social hosts), held 4-4-85 and 4-10-85.
Trenton, 1985.
- 974.90 New Jersey. Commission on Alcoholic Beverage Liability
L767 Public hearing on A43 (exempts social hosts), held 4-25-85 and 5-9-85,
Trenton, 1985.

See newspaper clipping file, "N.J. - Drunken driving- 1986-1988" in New Jersey Reference Department.

[THIRD OFFICIAL COPY REPRINT]
 SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1152 and 545

STATE OF NEW JERSEY

ADOPTED MARCH 6, 1986

AN ACT concerning limitations on actions against persons providing alcoholic beverages to others as social hosts ****[or as licensed alcoholic beverage servers]****, supplementing chapter 15 of Title 2A of the New Jersey Statutes, and amending P. L. 1973, c. 146.

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

1 1. (New section) As used in this act:

2 ******[a.]****** "Visibly intoxicated" means a state of intoxi-
 3 cation accompanied by a perceptible act or series of actions which
 4 present clear ******[and convincing]****** signs of intoxication.

5 ******[b.]****** "Social host" means a person who, by expressed
 6 or implied invitation, invites another person onto an unlicensed
 7 premises for purposes of hospitality and who is not the holder of
 8 a liquor license ******for the premises****** and is not required to
 9 hold a liquor license ******for the premises****** under Title 33 of
 10 the Revised Statutes, and who legally provides alcoholic beverages
 11 to another person ******who has attained the legal age to purchase**
 12 **and consume alcoholic beverages******.

13 ******[c.]****** "Social guest" is one who accepts hospitality from
 14 another person who is not the holder of a liquor license and is not
 15 required to hold a liquor license under Title 33 of the Revised
 16 Statutes, and becomes visibly intoxicated from the provision of
 17 alcoholic beverages.]****

18 ******[d.]****** "Vehicle" means a device primarily propelled by
 19 a motor that is used to transport a person or property.

20 ********"Person" means a natural person, the estate of a natural
 21 person, an association of natural persons, or an association, trust

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:

***—Senate amendments adopted April 7, 1986.**

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

*****—Senate amendments adopted June 26, 1986.**

******—Assembly committee amendments adopted June 22, 1987.**

*******—Senate amendments adopted in accordance with Governor's recommendations December 17, 1987.**

22 company, partnership, corporation, organization, or the manager,
23 agent, servant, officer or employee of any of them.*****

1 2. (New section) a. *****[No action at law, either for bodily in-
2 jury or for injury to real or personal property, resulting from the
3 consumption of alcoholic beverages, shall lie against any person
4 who is not the holder of a liquor license and is not required to hold
5 a liquor license under Title 33 of the Revised Statutes, unless
6 the person is a social host who provided alcoholic beverages to a
7 social guest who has attained the legal age for purchasing and con-
8 suming alcoholic beverages, except as set forth in this act.]*****
9 ******This act shall be the exclusive civil remedy for personal in-*
10 *jury or property damage resulting from the negligent provision of*
11 *alcoholic beverages by a social host to a person who has attained*
12 *the legal age to purchase and consume alcoholic beverages.******

13 b. A person who *****[is not a social guest may recover damages
14 for]***** ******sustains****** bodily injury or injury to real or
15 personal property ******as a result of the negligent provision of*
16 *alcoholic beverages by a social host to a person who has attained*
17 *the legal age to purchase and consume alcoholic beverages may*
18 *recover damages****** from a social host ******only if******:

19 (1) *****[When the]***** ******The****** social host willfully
20 and knowingly *****[provides]***** ******provided****** alcoholic
21 beverages either:

22 (a) To a *****[social guest]***** ******person****** who
23 *****[is]***** ******was****** visibly intoxicated in the social
24 social host's presence; or

25 (b) To a *****[social guest]***** ******person****** who
26 *****[is]***** ******was****** visibly intoxicated under cir-
27 cumstances manifesting reckless disregard of the consequences
28 as affecting the life or property of another; and

29 (2) *****[When the]***** ******The****** social host *****[pro-
30 vides]***** ******provided****** alcoholic beverages to *****[a
31 social guest]***** ******the visibly intoxicated person****** under
32 circumstances which *****[create]***** ******created****** an un-
33 reasonable risk of foreseeable harm to *****[others]*****
34 ******the life or property of another****** , and the social host
35 *****[fails]***** ******failed****** to exercise reasonable care
36 and diligence to avoid the foreseeable risk; and

37 (3) *****[When the]***** ******The****** injury *****[a-
38 rises]***** ******arose****** out of an accident caused by the negli-
39 gent operation of a vehicle by *****[a social guest]***** ******the*
40 *visibly intoxicated person****** who was provided alcoholic bever-
41 ages by a social host.

42 c. To determine the liability of a social host under subsection b.
43 of this section, if a test to determine the presence of alcohol in the
44 blood indicates a blood alcohol concentration of:

45 (1) less than 0.10% by weight of alcohol in the blood, there shall
46 be an irrebuttable presumption****[.]**** *that the person*
47 *tested was not visibly intoxicated in the social host's presence and*
48 *that the social host did not provide alcoholic beverages to the*
48A *person under circumstances which manifested reckless disregard of*
49 *the consequences as affecting the life or property of another;*****
50 ***[and]** **or***

51 (2) at least 0.10% but less than 0.15% by weight of alcohol in
52 the blood, there shall be a rebuttable presumption, that the
53 ****[social guest]**** *person***** tested was not visibly
54 intoxicated in the social host's presence and that the social host did
55 not provide alcoholic beverages to the ****[social guest]****
56 *****person***** under circumstances which manifested reckless
57 disregard of the consequences as affecting the life or property of
58 another.

1 3. *(New section)* No social host shall be held liable ****[in
2 any civil action to respond in damages to a social guest or the
3 guest's estate, heirs or assigns,]**** *to a person who has*
4 *attained the legal age to purchase and consume alcoholic bever-*
5 *ages***** for damages suffered as a result of the social host's
6 ****[willful and knowing]**** *negligent***** provision
7 of alcoholic beverages *to that person*****.

7A **[No licensed alcoholic beverage server shall be held liable to a*
7B *person who has attained the legal age to purchase and consume*
7C *alcoholic beverages or the person's estate, heirs, or assigns for*
8 *damages suffered as a result of the licensed alcoholic beverage*
9 *server's willful and knowing service of alcoholic beverages to that*
10 *person. For the purposes of this section, "licensed alcoholic bever-*
11 *age server" means a person who is licensed to sell, as the term*
12 *"sale" is defined in R. S. 33:1-1, alcoholic beverages under R. S.*
13 *33:1-12 or who has been issued a permit to sell alcoholic beverages*
14 *by the Director of the Division of Alcoholic Beverage Control.]**

1 ****[**4. *(New section) Notwithstanding the provisions of P. L.*
2 *1952, c. 335 (C. 2A:53A-1 et seq.), a social host shall be responsible*
3 *for no more than that percentage share of the damages which is*
4 *equal to the percentage of negligence attributable to him in accor-*
5 *dance with P. L. 1973, c. 146 (C. 2A:15-5.1 et seq.).**]*****

1 ***[4.]** ****[**5.**]**** **4.*** Section 2 of P. L. 1973, c. 146
2 (C. 2A:15-5.2) is amended to read as follows:

3 2. In all negligence actions in which the question of liability is in
 4 dispute, including actions in which any person seeks to recover dam-
 5 ages from a social host as defined in section 1 of P. L. , c.
 6 (C.) (now pending before the Legislature as this bill)
 7 for negligence resulting in injury to the person or to real or per-
 8 sonal property, the trier of fact shall make the following as findings
 9 of fact:

10 a. The amount of damages which would be recoverable by the
 11 injured party regardless of any consideration of negligence, that is,
 12 the full value of the injured party's damages*[:]* *.*

13 b. The extent, in the form of a percentage, of each party's
 14 negligence. The percentage of negligence of each party shall be
 15 based on 100% and the total of all percentages of negligence of all
 16 the parties to a suit shall be 100%. *In an action in which a per-
 17 son seeks to recover damages from a social host for negligence
 18 resulting in injury to the person or to real or personal property,
 19 the negligence of *****[the social guest, as defined in section 1 of
 20 P. L. , c. (C.) (now pending before the Legis-
 21 lature as this bill),]***** any person***** in becoming
 22 *****[visibly]***** intoxicated shall be considered by the trier of
 23 fact, and the trier of fact shall allocate a percentage of negligence
 24 to *****[the social guest]***** that person*****.*

25 c. The judge shall mold the judgment from the finding of fact
 26 made by the trier of fact.

1 *****5. (New section) Notwithstanding the provisions of P. L.
 2 1952, c. 335 (C. 2A:53A-1 et seq.), *****section 3 of P. L. 1973, c.
 3 146 (C. 2A:15-5.3) or any other law to the contrary, in any case
 4 where***** a social host *****or any other party to a suit instituted
 5 pursuant to the provisions of this act is determined to be a joint
 6 tortfeasor, the social host or other party***** shall be responsible
 7 for no more than that percentage share of the damages which is
 8 equal to the percentage of negligence attributable to *****[him in
 9 accordance with P. L. 1973, c. 146 (C. 2A:15-5.1 et seq.)]*****
 10 *****the social host or other party*****.*

1 **[5.]** **[*6.**]*** *****[*****5.**]***** *****6.**** This
 2 act shall take effect immediately.

ALCOHOLIC BEVERAGES

Establishes a standard under which a social host can be held liable
 for damages caused by a social guest to whom the host has pro-
 vided alcoholic beverages.

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SENATE, No. 1152
STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Senator LESNIAK

AN Act concerning limitations on actions against persons providing alcoholic beverages to others, supplementing chapter 15 of Title 2A of the New Jersey Statutes, and amending P. L. 1973, c. 146.

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

1 1. (New section) As used in this act:

2 a. "Visibly intoxicated" means a state of intoxication accom-
3 panied by a perceptible act or series of actions which present
4 clear and convincing signs of intoxication.

5 b. "Social host" means a person who, by expressed or implied
6 invitation, invites another person onto an unlicensed premises
7 for purposes of hospitality and who is not the holder of a liquor
8 license and is not required to hold a liquor license under Title 33
9 of the Revised Statutes, who legally provides alcoholic beverages
10 to another person.

11 c. "Social guest" is one who accepts hospitality from another
12 person who is not the holder of a liquor license and is not required
13 to hold a liquor license under Title 33 of the Revised Statutes,
14 and becomes visibly intoxicated from the provision of alcoholic
15 beverages.

16 d. "Vehicle" means a device primarily propelled by a motor
17 that is used to transport a person or property.

1 2. (New section) a. No action at law, either for bodily injury
2 or for injury to real or personal property, resulting from the

Matter printed in italics thus is new matter.

Final copy of 1152

3 consumption of alcoholic beverages, shall lie against any person
4 who is not the holder of a liquor license and is not required to
5 hold a liquor license under Title 33 of the Revised Statutes, unless
6 the person is a social host who provided alcoholic beverages to
7 a social guest who has attained the legal age for purchasing and
8 consuming alcoholic beverages, except as set forth in this act.

9 b. A person who is not a social guest may recover damages
10 for bodily injury or injury to real or personal property from a
11 social host:

12 (1) When the social host willfully and knowingly provides
13 alcoholic beverages either:

14 (a) To a social guest who is visibly intoxicated in the
15 social host's presence; or

16 (b) To a social guest who is visibly intoxicated under cir-
17 cumstances manifesting reckless disregard of the conse-
18 quences as affecting the life or property of another; and

19 (2) When the social host provides alcoholic beverages to a
20 social guest under circumstances which create an unreasonable
21 risk of foreseeable harm to others, and the social host fails to
22 exercise reasonable care and diligence to avoid the foreseeable
23 risk; and

24 (3) When the injury arises out of an accident caused by the
25 negligent operation of a vehicle by a social guest who was pro-
26 vided alcoholic beverages by a social host.

27 c. To determine the liability of a social host under subsection b.
28 of this section, if a test to determine the presence of alcohol in
29 the blood indicates a blood alcohol concentration of less than
30 0.15% by weight of alcohol in the blood, there shall be an irre-
31 buttable presumption that the social guest tested was not visibly
32 intoxicated in the social host's presence and that the social host
33 did not provide alcoholic beverages to the social guest under
34 circumstances which manifested reckless disregard of the con-
35 sequences as affecting the life or property of another.

1 3. No social host shall be held liable in any civil action to
2 respond in damages to a social guest or the guest's estate, heirs
3 or assigns, for damages suffered as a result of the social host's
4 willful and knowing provision of alcoholic beverages.

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

3 2. In all negligence actions in which the question of liability
4 is in dispute, including actions in which any person seeks to re-
5 cover damages for a social host as defined in section 1 of P. L.

- 6 , c. (C.) (now pending before the Legis-
 7 lature as this bill) for negligence resulting in injury to the person
 8 or to real or personal property, the trier of fact shall make the
 9 following as findings of fact:
- 10 a. The amount of damages which would be recoverable by the
 11 injured party regardless of any consideration of negligence, that
 12 is, the full value of the injured party's damages;
- 13 b. The extent, in the form of a percentage, of each party's
 14 negligence. The percentage of negligence of each party shall be
 15 based on 100% and the total of all percentages of negligence of
 16 all the parties to a suit shall be 100%.
- 17 c. The judge shall mold the judgment from the finding of fact
 18 made by the trier of fact.
- 1 5. This act shall take effect immediately.

STATEMENT

This bill establishes the circumstances under which a social host can be held liable for damages caused by a social guest to whom the host has provided alcoholic beverages. The bill is based largely upon the recommendations of the Commission on Alcoholic Beverage Liability, established pursuant to Senate Concurrent Resolution No. 116 of 1984. The commission was formed in response to the New Jersey Supreme Court's decision, in *Kelly v. Gwinnell*, 96 N. J. 538 (1984), in which the court held that a social host who serves liquor to an adult social guest knowing both that the guest is intoxicated and that the guest will thereafter be operating a motor vehicle, is liable for injuries inflicted on a third party as a result of the negligent operation of a motor vehicle by the guest if the negligence is caused by the intoxication.

Kelly v. Gwinnell resulted in grave concern on the part of the commission about the lengths to which social hosts would be required to go in order to comply with the duty imposed upon them by the decision. Other areas of concern were the effect of the decision on homeowner's insurance rates, the distinctions that should be made between the duty of social hosts and that of alcoholic beverage licensees, and the effect of the decision on social customs and hospitality. Of paramount importance to the commission was the goal of reducing alcohol-related accidents and injuries and providing just compensation for victims of these accidents.

Sponsor Statement
 from original bill
 S1152
 (1986)

In its recommendations, the commission attempted to balance these concerns in a fair and equitable manner and to establish for social hosts who serve alcoholic beverages a clear, statutory standard of liability that cannot be expanded or limited except by the Legislature itself.

According to this bill, no action at law for bodily injury or for injury to real or personal property resulting from the consumption of alcoholic beverages, shall lie against a social host for providing alcoholic beverages to a social guest who has attained the legal age for purchasing and consuming alcoholic beverages except as set forth in the bill. The bill provides that a third party may recover damages from a social host when the following three factors are present: a. the social host willfully and knowingly provides alcoholic beverages either (1) to a social guest who is visibly intoxicated in his presence; or (2) to a social guest who is visibly intoxicated under circumstances manifesting reckless disregard of the consequences as affecting the life or property of another; and b. the social host provides alcoholic beverages to a social guest under circumstances that create a reasonably foreseeable risk of harm to others and the host fails to exercise reasonable care and diligence to avoid the foreseeable risk; and c. the injury arises out of an accident caused by the negligent operation of a vehicle by a social guest who was provided alcoholic beverages by a social host.

The bill provides that no social host will be liable for damages to a social guest or the guest's estate, heirs, or assigns suffered as a result of the social host's willfull and knowing provision of alcoholic beverages.

The bill defines "visibly intoxicated" as a state of intoxication accompanied by a perceptible act or series of actions which present clear and convincing signs of intoxication. The bill contains an irrebuttable presumption that a social host will not be liable for injuries if a test to determine the presence of alcohol in the blood of the guest to whom the social host provided alcoholic beverages indicates a blood alcohol concentration of less than .15% by weight.

The bill defines "social host" as a person who, by expressed or implied invitation, invites another person onto an unlicensed premises for purposes of hospitality and who is not the holder of a liquor license and is not required to hold a liquor license under Title 33 of the Revised Statutes, who legally provides alcoholic beverages to another person. "Social guest" is defined

as one who accepts hospitality from another person who is not the holder of a liquor license and is not required to hold a liquor license under Title 33 of the Revised Statutes, and who becomes visibly intoxicated from the provision of alcoholic beverages.

The bill defines "vehicle" as a device, primarily propelled by a motor, that is used to transport a person or property. This definition would include vehicles other than motor vehicles, such as airplanes and motorized boats.

The bill amends the law on comparative negligence by requiring the court to apply the comparative negligence standards to the circumstances involving social hosts and to mold the judgment in accordance with the parties' respective degrees of negligence.

The public policy with regard to the serving of alcoholic beverages to minors by social hosts established in *Linn v. Rand*, 140 *N. J. Super.* 212 (App. Div., 1976) is not affected by this bill.

This bill will result in just compensation for the innocent victims of alcohol-related accidents without imposing an excessive social or financial burden on the citizens of New Jersey. Moreover, it will decrease the number of drunken drivers on the road, and thereby the number of deaths and injuries, the amount of property damage, and the costs of health care and insurance, by raising the consciousness of the consumers of alcoholic beverages to their responsibilities when serving drinks in social situations.

SENATE, No. 545

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

SENATE, No. 2122

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 13, 1984

By Senators CARDINALE, FELDMAN, CONNORS, LASKIN,
HAGEDORN, FORAN, CONTILLO, HURLEY, McMANIMON,
DiFRANCESCO, DORSEY, EWING, DUMONT, BASSANO,
GORMLEY, SAXTON, HIRKALA, BUBBA and GARIBALDI

Referred to Committee on Law, Public Safety and Defense

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-

S545/50122

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.

Sponsor Statement from original bill S545 (1984)

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 limitations 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.

While this decision only speaks in terms of "visible intoxication," the only proof is a level of intoxication measured by a test taken sometime subsequent to the serving of the drinks, a test which ordinarily would only be one given to determine the blood-alcohol level, not the presence of drugs.

Because a social host is not the party at fault for the accident, and because there are other, much more direct avenues of redress for injured parties, it seems grossly unfair to hold hosts responsible except in extreme circumstances where their behavior is egregious and their culpability is manifest.

This bill, therefore, would require, in order to establish liability on the part of a social host, that he willfully and knowingly, manifesting extreme indifference to the rights of others, serve a visibly intoxicated person, knowing in all likelihood that the guest would be driving a car within a reasonable period of time.

The standard for an alcoholic beverage license holder, however, would be substantially less, and it would require license holders to refuse to provide alcoholic beverages to visibly intoxicated persons.

SENATE LAW, PUBLIC SAFETY AND DEFENSE
COMMITTEE

STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1152 and 545

STATE OF NEW JERSEY

DATED: MARCH 6, 1986

The Senate Law, Public Safety and Defense Committee favorably reports a Senate Committee Substitute for Senate Bill No. 1152 and Senate Bill No. 545.

This bill establishes the circumstances under which a social host can be held liable for damages caused by a social guest to whom the host has provided alcoholic beverages. The bill is based largely upon the recommendations of the Commission on Alcoholic Beverage Liability, established pursuant to Senate Concurrent Resolution No. 116 of 1984. The commission was formed in response to the New Jersey Supreme Court's decision, in *Kelly v. Gwinnell*, 96 N. J. 538 (1984), in which the court held that a social host who serves liquor to an adult social guest knowing both that the guest is intoxicated and that the guest will thereafter be operating a motor vehicle, is liable for injuries inflicted on a third party as a result of the negligent operation of a motor vehicle by the guest if the negligence is caused by the intoxication. It was the intention of the commission as expressed in its final report to establish for social hosts who serve alcoholic beverages a clear, statutory standard of liability that cannot be expanded or limited except by the Legislature itself.

According to this bill, no action at law for bodily injury or for injury to real or personal property resulting from the consumption of alcoholic beverages, shall lie against a social host for providing alcoholic beverages to a social guest who has attained the legal age for purchasing and consuming alcoholic beverages except as set forth in the bill. The bill provides that a third party may recover damages from a social host when the following three factors are present: a. the social host willfully and knowingly provides alcoholic beverages either (1) to a social guest who is visibly intoxicated in his presence; or (2) to a social guest who is visibly intoxicated under circumstances manifesting reckless disregard of the consequences as affecting the life or property of another; and b. the social host provides alcoholic beverages to a social guest under circumstances that create a reasonably foreseeable risk

of harm to others and the host fails to exercise reasonable care and diligence to avoid the foreseeable risk; and c. the injury arises out of an accident caused by the negligent operation of a vehicle by a social guest who was provided alcoholic beverages by a social host.

The bill provides that no social host will be liable for damages to a social guest or the guest's estate heirs, or assigns suffered as a result of the social host's willful and knowing provision of alcoholic beverages.

The bill also provides that no licensed alcoholic beverage server shall be held liable to a person who has attained the legal age to purchase and consume alcoholic beverages or the person's estate, heirs, or assigns for damages suffered as a result of the server's willful and knowing service of alcoholic beverages to that person. "Licensed alcoholic beverage server" means a person who is licensed to sell alcoholic beverages under R. S. 33:1-12 or who has been issued a permit to sell alcoholic beverages by the Director of the Division of Alcoholic Beverage Control. This provision was not recommended by the Commission on Alcoholic Beverage Liability.

The bill defines "visibly intoxicated" as a state of intoxication accompanied by a perceptible act or series of actions which present clear and convincing signs of intoxication. The bill contains an irrebuttable presumption that a social host will not be liable for injuries if a test to determine the presence of alcohol in the blood of the guest to whom the social host provided alcoholic beverages indicates a blood alcohol concentration of less than .10% by weight. The bill also contains a rebuttable presumption that a social host will not be liable for injuries if a test to determine the presence of alcohol in the blood of the guest to whom the social host provided alcoholic beverages indicates a blood alcohol concentration of at least .10% but less than .15% by weight.

The bill defines "social host" as a person who, by expressed or implied invitation, invites another person onto an unlicensed premises for purposes of hospitality and who is not the holder of a liquor license and is not required to hold a liquor license under Title 33 of the Revised Statutes, who legally provides alcoholic beverages to another person. "Social guest" is defined as one who accepts hospitality from another person who is not the holder of a liquor license and is not required to hold a liquor license under Title 33 of the Revised Statutes, and who becomes visibly intoxicated from the provision of alcoholic beverages.

The bill defines "vehicle" as a device, primarily propelled by a motor, that is used to transport a person or property. This definition would include vehicles other than motor vehicles, such as airplanes and motorized boats.

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ASSEMBLY LAW, PUBLIC SAFETY, DEFENSE AND
CORRECTIONS COMMITTEE

STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1152 and 545
with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 9, 1986

The Assembly Law, Public Safety, Defense and Corrections Committee favorably reports the Senate Committee Substitute for Senate Bill Nos. 1152 and 545 with amendments.

As amended, this bill establishes the circumstances under which a social host can be held liable for damages caused by a social guest to whom the host has provided alcoholic beverages. The bill is based largely upon the recommendations of the Commission on Alcoholic Beverage Liability, established pursuant to Senate Concurrent Resolution No. 116 of 1984.

According to this bill, no action at law for bodily injury or for injury to real or personal property resulting from the consumption of alcoholic beverages, shall lie against a social host for providing alcoholic beverages to a social guest who has attained the legal age for purchasing and consuming alcoholic beverages except as set forth in the bill. The bill provides that a third party may recover damages from a social host when the following three factors are present: a. the social host willfully and knowingly provides alcoholic beverages either (1) to a social guest who is visibly intoxicated in his presence; or (2) to a social guest who is visibly intoxicated under circumstances manifesting reckless disregard of the consequences as affecting the life or property of another; and b. the social host provides alcoholic beverages to a social guest under circumstances that create a reasonably foreseeable risk of harm to others and the host fails to exercise reasonable care and diligence to avoid the foreseeable risk; and c. the injury arises out of an accident caused by the negligent operation of a vehicle by a social guest who was provided alcoholic beverages by a social host.

The bill provides that no social host will be liable for damages to a social guest, or the guest's estate, heirs, or assigns sustained as a result of the social host's willful and knowing provision of alcoholic beverages.

The bill defines "visibly intoxicated" as a state of intoxication accompanied by a perceptible act or series of actions which present clear and convincing signs of intoxication. The bill contains an irrebuttable presumption that a social host will not be liable for injuries if a test to determine the presence of alcohol in the blood of the guest to whom the social host provided alcoholic beverages indicates a blood alcohol concentration of less than 0.10% by weight. The bill also contains a rebuttable presumption that a social host will not be liable for injuries if a test to determine the presence of alcohol in the blood of the guest to whom the social host provided alcoholic beverages indicates a blood alcohol concentration of at least 0.10% but less than 0.15% by weight.

The bill defines "social host" as a person who, by expressed or implied invitation, invites another person onto an unlicensed premises for purposes of hospitality; who is not the holder of a liquor license and is not required to hold a liquor license under Title 33 of the Revised Statutes; and who legally provides alcoholic beverages to another person. "Social guest" is defined as one who accepts hospitality from another person who is not the holder of a liquor license and is not required to hold a liquor license under Title 33 of the Revised Statutes, and who becomes visibly intoxicated from the provision of alcoholic beverages.

The bill amends the law on comparative negligence by requiring the court to apply the comparative negligence standards to the circumstances involving social hosts and to mold the judgment in accordance with the parties' respective degrees of negligence. In addition, the comparative negligence law is amended to require that in an action in which a person seeks to recover damages from a social host for negligence resulting in injury to the person or to real or personal property, the negligence of the social guest in becoming visibly intoxicated shall be considered by the trier of fact. These amendments require further that the trier of fact allocate a percentage of negligence to the social guest.

The public policy with regard to the serving of alcoholic beverages to minors by social hosts established in *Linn v. Rand*, 140 N. J. Super. 212 (App. Div., 1976) is not affected by this bill.

The committee amended the bill to create a new section 4 which provides an exemption to the doctrine of joint and several liability for social hosts.

As released by the committee, this bill is identical to the Assembly Committee Substitute for Assembly Bill No. 2294 and Assembly Bill No. 1681.

The bill amends the law on comparative negligence by requiring the court to apply the comparative negligence standards to the circumstances involving social hosts and to mold the judgment in accordance with the parties' respective degrees of negligence.

The public policy with regard to the serving of alcoholic beverages to minors by social hosts established in *Linn v. Rand*, 140 N. J. Super. 212 (App. Div., 1976) is not affected by this bill.

06/22/87asz

LP0076

SR LP0064

TR LP0092

Assembly Amendments
proposed by Assemblyman Miller 6/22/87

to

Senate Committee Substitute for
Senate Bills No. 1152 and 545 2nd OCR
sponsored by Senator Lesniak,
Assemblyman Miller

RECEIVED
JUN 22 1987

Amend:

Page Sec. Line

3 after 4 after 25 Insert new section 5 as follows:

"5. (New section) Notwithstanding the provisions of P.L. 1952, c. 335 (C. 2A:53A-1 et seq.), a social host shall be responsible for no more than that percentage share of the damages which is equal to the percentage of negligence attributable to him in accordance with P.L. 1973, c. 146 (C. 2A:15-5.1 et seq.)."

3 5 1 Omit "5." insert "6."

STATEMENT

This amendment puts back into this social host liability bill the provision that would limit a social host's responsibility to only that percentage share of the damage award which is equal to the percentage of negligence attributable to him by the trier of fact in accordance with the comparative negligence law (P.L. 1973, c. 146; C. 2A:15-5.1 et seq.).

This provision was removed from this Senate committee substitute by Senate amendments adopted on June 26, 1986.

JUN 26 1986

Senate Amendments
proposed by Senator Lesniak 6/26/86
to

Senate Bill No. 1152 and 545
SCS SaAca

by Senator Lesniak

Amend:

Page

Sec.

Line

3

4

1-5

Omit in entirety

3

5

1

Omit "5." insert "4."

3

6

1

Omit "6." insert "5."

STATEMENT

This bill provides for an exemption to the doctrine of joint and several liability for social hosts. The doctrine of joint and several liability, which is applicable in all negligence actions, permits one of several negligent parties in an action to be held responsible for paying the entire amount of the damages, regardless of the percentage of each party's negligence, in order to ensure that the victim is fully compensated. The party responsible for the damages then can file an action against the other negligent parties to recover their share of the damages.

Senate Amendments
proposed by Senator Lesniak 6/26/86
to

Senate Bill No. 1152 and 545
SCS SaAca

by Senator Lesniak

Amend:
Page

Sec. Line

Section 4 of the bill creates an exemption to this doctrine by stating that a social host can be held responsible for no more than a percentage of the damages that is equal to the percentage of negligence attributable to him by the trier of the fact during court proceedings.

These amendments remove section 4 from the bill to ensure that social hosts will not be exempt from the doctrine of joint and several liability.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

November 9, 1987

SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL NOS. 1152 and 545

[Assembly Reprint]

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Senate Committee Substitute for Senate Bill Nos. 1152 and 545 [Assembly Reprint] with my objections, for reconsideration.

This Senate Committee Substitute establishes limits on the expansion of liability in cases involving social hosts who provide alcoholic beverages to their guests. The bill also sets forth the conduct expected of social hosts, and the legal principles that shall be applied in lawsuits involving the provision of alcoholic beverages by social hosts. While I support the efforts of the Legislature to enact legislation addressing these issues, I am compelled to return this bill to the Legislature because I believe certain technical amendments must be made to the bill to achieve the laudable intent of the Legislature.

The legislative history of the Senate Committee Substitute indicates a clear legislative intent to establish an exclusive civil remedy for the negligent provision of alcoholic beverages by a social host serving a guest who has attained the legal age to purchase and consume alcoholic beverages. The legislative history further indicates that this bill is not intended to affect the current law regarding social hosts who serve individuals under the legal age to purchase and consume alcoholic beverages. Despite this intention, apparently due to errors in drafting, the bill has just the opposite effect.

Section 2a. of this bill provides that, except as set forth in the bill, no action at law shall lie against a person not required to have an Alcoholic Beverage Control license, unless the person is a social host who serves a guest who has attained the legal age for purchasing and consuming alcoholic beverages. The remainder of the bill fails to specify any rules which apply when a host serves an underaged individual. Based on this provision of this bill, neither an underaged individual served by a social host nor a person injured by an underaged guest would ever be able to bring an action to recover damages against the social host. I do not believe that this result was intended by the Legislature. Therefore, I recommend amending Section 2a. of the bill to

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clarify that this bill is intended to be the exclusive civil remedy for the negligent provision of alcoholic beverages only in cases where a social host provides alcoholic beverages to an individual who has attained the legal age to purchase and consume alcoholic beverages.

I recommend that the definition of "social guest" and the use of the term throughout the bill be eliminated because it is unnecessary and causes confusion throughout the bill. Even though the term social guest is defined as someone who is visibly intoxicated, there are references throughout the bill to "a social guest who is visibly intoxicated." This is both redundant and confusing. Even more confusing is the use of the negative term "a person who is not a social guest" to refer to those who may recover from a social host.

The use of the term "a person who is not a social guest" in Section 2b., combined with Section 3., preclude recovery by a visibly intoxicated guest in all cases, even where the visibly intoxicated guest sustains injury as a result of a motor vehicle accident caused by another visibly intoxicated guest. For example, if a visibly intoxicated guest is seated in the passenger seat of a motor vehicle operated by a sober guest, perhaps a "designated driver," and another guest who is visibly intoxicated drives into the sober guest's vehicle, under the provisions of this bill, only the sober driver would be able to recover from the social host.

I do not believe the Legislature intended to preclude the intoxicated guest from recovery in this instance and, in any event, do not support such a policy decision. Because the injuries caused to both individuals in the above example arise out of another guest's intoxicated operation of a motor vehicle, there is no reason to preclude the intoxicated passenger from recovery, while at the same time permitting the sober driver to recover. I therefore recommend amendments to Sections 2b. and 3. of the bill, and recommend eliminating the definition of "social guest" and the use of the term throughout the bill. These amendments will permit all guests, whether they be intoxicated or sober, to recover from social hosts for injuries sustained as a result of the negligent provisions of alcoholic beverages to another guest. Moreover, these amendments will clearly set forth that the social guest will not be able to recover from a social host for injuries suffered as the result of alcoholic beverages provided by the social host to that particular social guest.

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I also recommend technical amendments to the definitions of "visibly intoxicated" and "social host." I recommend amending the definition of "visibly intoxicated" to conform this definition to the definition of visibly intoxicated in the "New Jersey Licensed Alcoholic Beverage Server Liability Act." I recommend amending the definition of "social host" to ensure that alcoholic beverage licensees entertaining guests in their homes are afforded the protections contained in this bill.

As one of the stated purposes of this legislation is to clearly set forth the conduct expected of the social host, and the legal principles to be applied in these cases, I believe it is necessary to make technical amendments to Section 2c. As presently drafted, this section does not clearly specify the irrebuttable presumption which shall arise when there is evidence of a blood-alcohol concentration level below .10%. The clarifying amendment which I recommend will more clearly set forth the law which is intended to apply in these cases.

I also recommend amending Section 4. of the bill to provide that the negligent conduct of any party in becoming intoxicated will be considered by the trier of fact. As presently drafted, this section provides that the negligent conduct of the social guest in becoming visibly intoxicated shall be considered by the trier of fact in determining liability. I am not aware of any reason to limit the evidence presented to the trier of fact in these cases to the conduct of a guest in becoming visibly intoxicated. In these lawsuits there are often several persons alleged to have been intoxicated at the time of the accident and the jury should be permitted to consider all of this evidence in determining liability, including evidence indicating intoxication that may not have been visible.

This Senate Committee Substitute also provides the social host with relief from the inequitable application of the law of joint and several liability in these cases. The law of joint and several liability clearly causes unpredictable and inequitable liability in these and all other tort cases. This doctrine provides that when you have more than one culpable defendant, any one of them may be held liable for the full measure of damages, regardless of the degree of their responsibility for injuries suffered. Perhaps the most unfair application

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of this principle occurs when a truly negligent party escapes paying its share of damages and the State or a municipality, in other words, the taxpayer, pays the damages.

Recently, the Legislature passed, and I signed into law, a bill that provides licensed alcoholic beverage servers and all other individuals brought together through the fortuity of a lawsuit relief from the unfairness of the law of joint and several liability in cases brought under the "New Jersey Licensed Alcoholic Beverage Server Fair Liability Act." I support the Legislature's recognition of the harshness of this doctrine that requires those sharing little of the blame for injury to pay huge settlements in court judgments. Enactment of this bill reaffirms the principle of individual responsibility for one's own act. However, I believe that all other parties to a suit instituted under the provisions of this bill should also be relieved from the application of this doctrine. In order to prevent the inequitable result that the protection offered to the social host by this bill might unfavorably impact on the liability of another defendant who is minimally responsible for the cause of an accident, I am recommending that the bill be amended to eliminate the law of joint and several liability for all parties brought together in a lawsuit under this bill.

Finally, now that the Legislature has agreed to relieve licensed purveyors of alcohol, and homeowners who serve alcoholic beverages, from the unfairness of joint and several liability, I call upon the Legislature to enact separate legislation to give the same relief to public entities, and homeowners and businesses not involved in serving alcoholic beverages. I believe that municipalities and private businesses, such as day care centers, are as deserving of this relief as servers of alcoholic beverages.

Accordingly, I return Senate Committee Substitute for Senate Bill Nos. 1152 and 545 [Assembly Reprint] and recommend that it be amended as follows:

Page 1, Section 1, Line 2: Omit "a."

Page 1, Section 1, Line 4: Omit "and convincing"

Page 1, Section 1, Line 5: Omit "b."

Page 1, Section 1, Line 7: After "license" insert "for the premises"

Page 1, Section 1, Line 8: After "license" insert "for the premises"

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Page 1, Section 1, Line 10: After "person" insert "who has attained the legal age to purchase and consume alcoholic beverages"

Page 1, Section 1, Lines 11-15: Omit in entirety

Page 1, Section 1, Line 16: Omit "d."

Page 1, Section 1, After Line 17: Insert "'Person' means a natural person, the estate of a natural person, an association of natural persons, or an association, trust company, partnership, corporation, organization, or the manager, agent, servant, officer or employee of any of them."

Pages 1 and 2, Section 2, Lines 1-8: After "a." Omit in entirety and insert as follows: "This act shall be the exclusive civil remedy for personal injury or property damage resulting from the negligent provision of alcoholic beverages by a social host to a person who has attained the legal age to purchase and consume alcoholic beverages."

Page 2, Section 2, Line 9: Omit "is not a social guest may recover damages for" insert "sustains"

Page 2, Section 2, Line 10: After "property" insert "as a result of the negligent provision of alcoholic beverages by a social host to a person who has attained the legal age to purchase and consume alcoholic beverages may recover damages"

Page 2, Section 2, Line 11: After "host" insert "only if"

Page 2, Section 2, Line 12: Omit "When the" insert "The" omit "provides" insert "provided"

Page 2, Section 2, Line 14: Omit "social guest" insert "person" omit "is" insert "was"

Page 2, Section 2, Line 16: Omit "social guest" insert "person" omit "is" insert "was"

Page 2, Section 2, Line 19: Omit "When the" insert "The" omit "provides" insert "provided" Omit "a social"

Page 2, Section 2, Line 20: Omit "guest" insert "the visibly intoxicated person" omit "create" insert "created"

Page 2, Section 2, Line 21: Omit "others" insert "the life or property of another" omit "fails" insert "failed"

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Page 2, Section 2, Line 23: Omit "When the" insert "The" omit "arises"
insert "arose"

Page 2, Section 2, Line 24: Omit "a social guest" insert "the visibly
intoxicated person"

Page 2, Section 2, Line 30: Omit "," insert "that the person tested was
not visibly intoxicated in the social host's presence and that the social host
did not provide alcoholic beverages to the person under circumstances which
manifested reckless disregard of the consequences as affecting the life or
property of another;"

Page 2, Section 2, Lines 32-33: Omit "social guest" insert "person"

Page 2, Section 2, Line 35: Omit "social guest" insert "person"

Page 2, Section 3, Line 1: Omit "in any"

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

Page 2, Section 3, Line 3: Omit "estate, heirs or assigns," insert "to a
person who has attained the legal age to purchase and consume alcoholic beverages"

Page 2, Section 3, Line 4: Omit "willful and knowing" insert "negligent"
after "beverages" insert "to that person"

Page 3, Section 4, Line 19: Omit "the social guest, as defined in section
1 of P.L."

Page 3, Section 4, Line 20: Omit in entirety

Page 3, Section 4, Line 21: Omit "as this bill)," insert "any person"
omit "visibly"

Page 3, Section 4, Line 23: Omit "the social guest" insert "that person"

Page 3, Section 5, Line 2: Before "a social host" insert "section 3 of
P.L. 1973, c. 146 (C. 2A:15-5.3) or any other law to the contrary, in any case
where" after "a social host" insert "or any other party to a suit instituted
pursuant to the provisions of this act is determined to be a joint tortfeasor,
the social host or other party"

Page 3, Section 5, Line 4: Omit "him in accor-"

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Page 3, Section 5, Line 5: Omit "dance with P.L. 1973, c. 146 (C. 2A:15-5.1 et seq.)" insert "the social host or other party"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ Michael R. Cole

Chief Counsel