

AN IN-DEPTH ANALYSIS OF THE DEVELOPMENT AND RAMIFICATIONS OF NEW JERSEY'S SOCIAL HOST LIABILITY STATUTE

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I. Introduction

At a time when the nation is struggling to find cures for such killers as AIDS and cancer,¹ the public has made it clear that it will no longer tolerate such unnecessary deaths as those caused by alco-

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¹ 1994 U.S. Bureau of the Census, *Statistical Abstract of the United States* 114 at 139, 143. In 1993, there was approximately 1,170,000 new cases of cancer reported in the United States. *Id.* at 143. Of the 1,170,000 reported cases of cancer in 1993, approximately 600,000 were male and 570,000 were female. *Id.* These reported cases include cancer of the lung, breast, colon, prostate, bladder, rectum, corpus uteri, non-Hodgkin's lymphoma, oral cavity and pharynx, leukemia, melanoma of skin, pancreas, kidney, stomach, ovary and cervix uteri. *Id.*

According to the census, the number of reported cases of Acquired Immunodeficiency Syndrome ("AIDS") has risen from 8,249 in 1985 to 45,472 in 1992. *Id.* at 138. Of the 22,675 deaths caused by AIDS in 1992, over 20,000 were male. *Id.* at 98.

hol-related accidents.² In response to this public outcry, and with recognition of alcohol-related accidents as a leading cause of death in the United States,³ both the federal and state governments have increased their efforts to combat drunk driving.⁴

² B. Drummond Ayres Jr., *Big Gains Are Seen In Battle To Stem Drunken Driving*, N.Y. TIMES, May 22, 1994, at 1. "[D]runken driving has increasingly come to be seen by Americans as unacceptable. In the 1990's, there are grimaces - but few belly laughs - when someone tries to joke about driving home drunk." *Id.* Recent surveys indicate that fewer drivers are drinking, the use of a designated driver has increased, and bars are training their bartenders to notice and cut-off those customers who have had too much to drink, in addition to implementing programs in which designated drivers get free soft drinks. *Id.* at A5. Furthermore, Riley Regan, the director of the New Jersey Advisory Council on Alcoholism, has indicated that "[t]here has been a real change in attitude toward drinking and our responsibilities toward each other, and that is the real key towards the prevention of alcohol abuse." Joseph F. Sullivan, *Jersey Hosts Keeping Drunks From Driving*, N.Y. TIMES, Dec. 29, 1994, at 16. Organizations such as Mothers Against Drunk Driving ("MADD"), Remove Intoxicated Motorists ("RID"), and Students Against Drunk Driving ("SADD") have grown to form a strong lobbyist group for the imposition of liability against drunk drivers and reckless social hosts. Charles G. Popp, *Turn Out the Lights; The Party's Over: An Economic Analysis of Social Host Liability*, 6 N. ILL. U. L. REV. 129, 146 (1986). For example, the Somerset and Hunterdon chapters of MADD, together with police and student groups from the county, launched their ninth annual Red Ribbon Campaign in furtherance of safer and sober driving on Monday, November 13, 1995. Eleanor Barrett, *Tying One On: MADD Chapter Launches Annual Ribbon Campaign Against Drunk Driving*, N.J. STAR LEDGER, Nov. 14, 1995, at 1. The members of the organization wore red ribbons and tied similar ribbons to parked cars "as a reminder to motorists not to drink and drive during the holiday season." *Id.*

³ Ayres, *supra* note 2, at A5. According to the National Highway Traffic Safety Administration, a person dies every thirty minutes from an alcohol-related traffic accident. *Id.* Approximately forty two percent of the forty thousand plus Americans who are killed each year in highway accidents are alcohol-related. *Id.*

⁴ See *id.* For example, on July 17, 1984, former President Ronald Reagan signed a law which stipulated a withholding of fifteen percent of federal highway funds to those states which refuse to raise the minimum drinking age to twenty-one by 1986. 23 U.S.C. § 158 (Supp. IV 1986). Presently, the federal government has elected to withhold federal grants for drunken-driving prevention programs in states that do not lower the Blood Alcohol Concentration requirement (the level at which a tested driver is presumed drunk) from .10 to .08. Steven Coleman, *Effort to Lower Drunken-Driving Rate May Vanish*, N.J. COURIER NEWS (Warren), Oct. 2, 1995, at A1. Thirteen states have already supported the federal governments efforts by lowering the blood alcohol concentration level from .10 to .08. *Id.* at A5. These states include California, Maine, Vermont, Oregon, North Carolina, Utah, New Mexico, Kansas, Florida, New Hampshire, Virginia, Alabama and Hawaii. *Id.* at A5.

Other attempts to deter drunk driving at both the federal and state levels have included "strengthening criminal penalties for driving while intoxicated, raising the legal drinking age to twenty-one, setting up roadblocks to improve chances of catching drinking drivers, and using the media to increase public awareness of the dangers of driving under the influence." Sharon E. Conaway, Comment, *The Continuing Search*

Inspired by the words and wisdom of the late Supreme Court Justice Frankfurter, who stated that "[the judiciary's] goal is to do substantial justice in light of the mores and needs of our modern day life,"⁵ many state courts have joined the legislative effort to curb drunk driving.⁶ These efforts have resulted in the imposition of liability on social hosts⁷ whose inebriated guests cause injuries to a third party.⁸ Those courts which have adopted this concept have traditionally based such liability on one of three theories:⁹ (1) ex-

for *Solutions to the Drinking Driver Tragedy and the Problem of Social Host Liability*, 82 NW. U. L. REV. 403, 404 nn.12-15 (1988).

⁵ *Henslee v. Union Planters Nat'l Bank & Trust Co.*, 335 U.S. 595, 600 (1949), *reh. denied*, 336 U.S. 915 (1949).

⁶ See, e.g., *Kelly v. Gwinnell*, 476 A.2d 1219 (N.J. 1984) (the New Jersey Supreme Court imposed liability on a social host); *Coulter v. Superior Court of San Mateo*, 577 P.2d 669 (Ca. 1978) (the California Supreme Court held that under modern negligence law, a social host who served alcohol to an obviously intoxicated guest, may be held liable to a third party who is harmed by the inebriated guest); *Ross v. Ross*, 200 N.W.2d 149 (Minn. 1972) (the Minnesota Supreme Court held that the state dram shop act could be extended to anyone who served liquor gratuitously which subsequently results in an injury to a third party arising out of the intoxicated guest's negligent conduct); *Williams v. Klenesrud*, 197 N.W.2d 614 (Iowa 1972) (the Iowa Supreme Court held that, under the state dram shop act, a social host could be liable for those injuries caused by an intoxicated person who had received alcoholic beverages from the host); *Weiner v. Gamma Phi Chapter of Alpha Tau Omega Fraternity*, 485 P.2d 18 (Or. 1981) (the Oregon Supreme Court, in reversing summary judgment in favor of defendants, held that where a social host has direct involvement in serving liquor, the host may have a duty to stop a guest from consuming more alcohol).

⁷ See N.J. STAT. ANN. § 2A:15-5.5 (West 1987). New Jersey defines a social host as an individual who, by express or implied invitation, "invites another person onto an unlicensed premises for purposes of hospitality and who is not the holder of a liquor license for the premises . . . , and who legally provides alcoholic beverages to another person who has attained the legal age to purchase and consume alcoholic beverages." *Id.* A broader interpretation, according to *Nichols Drinking/Driving Litigation*, defines a social host as any one of a number of people such as "a friend who shares beer with another, an individual hosting a cocktail party, or even an employer sponsoring a company picnic or Christmas Party." *Nichols Drinking/Driving Lit* § 37:18 (1995).

⁸ See, e.g., *Kelly*, 476 A.2d at 1225-26. The New Jersey Supreme Court indicated that the goal in extending liability to social hosts is to "achieve . . . the fair compensation of victims who are injured as a result of drunken driving." *Id.* at 1226. Furthermore, the court stated that its holding will tend to deter drunk driving, and will tend to increase the likelihood that hosts will "take greater care in serving alcoholic beverages at social gatherings so as to avoid not only the moral responsibility but the economic liability that would occur if the guest were to injure someone as a result of his drunken driving." *Id.*

⁹ Mary M. French, Jim L. Kaput & William R. Wildman, *Social Host Liability for the Negligent Acts of Intoxicated Guests*, 70 CORNELL L. REV. 1058, 1063 (1985). Courts have imposed social host liability under three distinct theories. *Id.*

The first approach to imposing liability on a social host is to use a state dram

tension of a state dram shop act;¹⁰ (2) violation of a state alcoholic beverage control act,¹¹ or (3) application of ordinary principles of common-law negligence.¹²

One state in particular which has demonstrated a concerted effort in both the state legislature and the judiciary to deter drunk driving is New Jersey.¹³ A forerunner in the development of social

shop act. *Id.* Although these dram shop acts have traditionally been used against tavern owners, some plaintiffs have managed to convince the courts that these acts should also be applied to social hosts. *Id.* at 1063-64.

The second approach used by the courts to impose liability on a social host is to find the host in violation of a state alcoholic beverage control act. *Id.* Such a finding is often viewed by the court as presumptive evidence of the host's negligence. *Id.* at 1064.

The final approach traditionally used by courts to hold social hosts liable to third parties is the extension of ordinary common law principles of negligence. *Id.* Usually, the court will find the host to have breached a duty which arises because of a special relationship between the host and the guest. *Id.*

¹⁰ French, *supra* note 9, at 1063. A "dram-shop" is a drinking establishment where people are served liquor to be consumed on the premises. BLACK'S LAW DICTIONARY 342 (6th ed. 1990). Dram shop acts, also known as civil liability acts, are "legislative enactments designed to address civil liability of providers of intoxicating beverages." Nichols, *supra* note 7, at § 38.01. The goals of dram shop acts are generally: (1) to protect the general welfare and health of the public by regulating the liquor industry; (2) to adequately provide compensation for individuals injured as a result of "indiscriminate sales or transfers of alcohol"; and (3) to deter servers of alcohol from violating the act by punishing those who sell alcohol in violation of the act. *Id.*

Dram shop acts differ from state to state and an interpretation of a particular state's dram shop act depends on the judiciary of the state. *Id.* However, although dram shop acts differ from one state to the next, they share certain basic elements: (a) an eligible plaintiff and defendant, (b) alcoholic beverage, (c) provision of that alcoholic beverage, (d) injury resulting from the provision of intoxicating beverages, and (e) damage to the plaintiff. *Id.* at § 38:05. See *infra* notes 34-39 and accompanying text for a brief discussion on New Jersey's dram shop act.

¹¹ French, *supra* note 9, at 1064. Violating a criminal statute, such as a state alcoholic beverage control act, is often regarded by courts as presumptive evidence of negligence. *Id.*

¹² *Id.* See *infra* notes 43-73 and accompanying text for an indepth discussion of the extension of common law liability to social hosts in New Jersey.

¹³ See Frank A. Luchak & Deborah I. Hollander, *Dram-Shop Statutes Clarify and Limit Liability*, 134 N.J.L.J. 10, 10 (1993). The New Jersey Supreme Court's decision in *Kelly v. Gwinnell*, 476 A.2d 1219 (N.J. 1984), was the first to extend social host liability for injuries caused by a drunk adult guest. *Id.* Only a few months later, the state legislature established a commission to study the issue of social host liability and recommend legislation to clarify the extent of social host liability which the Supreme Court in *Kelly* had broadly established. *Id.* Two years later in 1987, the New Jersey Legislature adopted two bills on social host liability. *Id.* See *infra* notes 101-133 and accompanying text for insights on this legislation.

host liability,¹⁴ the New Jersey Supreme Court led the promulgation of social host liability¹⁵ with its landmark decision in *Kelly v. Gwinnett*.¹⁶ Following the court's lead, the state legislature created the Commission on Alcoholic Beverage Liability¹⁷ for the purpose of investigating social host liability and recommending legislation to regulate social hosts.¹⁸ After months of public hearings,¹⁹ the commission submitted a summary of its findings to the state legisla-

¹⁴ See *Linn v. Rand*, 356 A.2d 15 (N.J. Super. Ct. App. Div. 1976). In *Linn*, the Appellate Division of New Jersey refused "to follow jurisdictions that had rejected social host liability . . ." and imposed liability on a social host. C. Kent Adams, Note, *Social Host Liability To Third Parties For The Acts Of Intoxicated Guests: Kelly v. Gwinnett*, 38 Sw. L.J. 1297, 1303 (1985). See *infra* notes 51-55 for further discussion of *Linn*.

¹⁵ *Kelly*, 476 A.2d at 1225. The New Jersey Supreme Court acknowledged the "lack of precedent anywhere else in the country. . . ." *Id.*

We therefore hold that a host who serves liquor to an adult social guest knowing both that the guest is intoxicated and 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 an adult guest when such negligence is caused by the intoxication.

Id. at 1224. See also *infra* notes 61-73 and accompanying text.

¹⁶ *Kelly*, 476 A.2d at 1219.

¹⁷ S. Con. Res. 116, 201st Leg., 1st Sess., (1984) [hereinafter S. Con. Res. 116]. The committee was established to "study the duties, responsibilities and liabilities" of private servers of alcoholic beverages and to make certain recommendations in order to reduce alcohol-related accidents and compensate victims. *Id.* See *infra* notes 75-78 and accompanying text for an examination of this resolution.

¹⁸ Commission on Alcoholic Beverage Liability, Report To The General Assembly of 1985, at 1 (1985) (statement of former New Jersey Governor Thomas H. Kean). The Commission on Alcoholic Beverage Liability was established in response to *Kelly v. Gwinnett* for the purpose of holding public hearings to investigate whether legislation should be adopted to define the cause of action available against a social host. *Id.* The Legislature was concerned that the court's decision in *Kelly* "leave[s] the public without any indication of its responsibilities of serving alcoholic beverages to social guest." *Id.* at 5. Although the Legislature agreed with the judiciary's recognition of social host liability, the Commission believed that the enactment of legislation would better inform and clarify exactly what duties and responsibilities were required of a social host. *Id.* at 5-6. "The commission's legislation creates a statute containing reasonable and clear standards of liability for social hosts that can be applied in all situations in which a social host provides alcoholic beverages to his guests." *Id.* at 7. See *infra* notes 75-92 for specific information on the commission and its recommendations.

¹⁹ State of New Jersey, Commission on Alcoholic Beverage Liability, Final Report at 1 (1985). The commission met on several occasions between April 11, 1985 and Sept. 4, 1985. *Id.* On two occasions, April 25, 1985 and May 9, 1985, the commission held public hearings to allow interested parties and experts to discuss issues relevant to social host liability. *Id.* at 1-2. See *infra* notes 80, 82 and accompanying text for information on the public hearings.

ture.²⁰ These findings resulted in the enactment of New Jersey Statute Section 2A:15-5.5-5.8 (1987), which establishes and defines the scope of social host liability.²¹

Since New Jersey's social host liability statute was enacted in 1987,²² the state has seen the number of fatalities caused by drunk driving decrease by over fifty percent.²³ Although it is uncertain exactly to what degree this decrease can be accredited to the social host liability statute, it is clear that the state legislature and judiciary have effectively adapted to the demands and needs of society.²⁴

This note examines the common-law development of social host liability in New Jersey and the subsequent enactment of legislation.²⁵ Section II begins with a brief discussion of New Jersey's dram-shop act and its subsequent repeal,²⁶ and then traces the common-law development of social host liability in New Jersey.²⁷ Section III focuses on the creation of the state's commission on alcoholic beverage liability and its recommendations.²⁸ A careful

²⁰ See *infra* notes 83-92 and accompanying text for a discussion on the various recommendations made by the commission.

²¹ N.J. STAT. ANN. § 2A:15-5.5-5.8 (West 1987). The social host liability statute consists of four sections and is the exclusive civil remedy for a third party who has sustained damages as a result of the negligent acts of an intoxicated adult guest. *Id.* at § 2A:15-5.6. See *infra* notes 101-134 for a detailed look at the enacted statute governing social host liability in New Jersey.

²² N.J. STAT. ANN. § 2A:15-5.5-5.8 (West 1987). The statute was adopted by the state legislature in 1987, and went into effect on January 14, 1988. *Id.*

²³ Coleman, *supra* note 4, at A1. In 1988, the number of drunk-driving fatalities in New Jersey was 263. *Id.* Between 1988 and 1994, New Jersey drunk driving fatalities have steadily decreased to a level of 127 in 1994. *Id.*

²⁴ Ayres, *supra* note 2, at 1. The number of drunk driving incidents has been drastically reduced for a number of reasons: tougher and more innovative laws, the growth of aggressive organizations such as Mothers Against Drunk Driving ("MADD"), and the widespread use of advertisements to promote designated drivers. *Id.* For example, in Somerset and Hunterdon County, the MADD chapter holds an annual campaign in which the members tie red ribbons to parked vehicles in an attempt to increase awareness of the need to deter drunk driving. Barret, *supra* note 2, at 1. Furthermore, not only has government and judicial involvement curtailed drunk driving, but so has the use of peer pressure by friends who insist on designated drivers and the development of techniques by commercial establishments to recognize and cope with drunk customers. Ayres, *supra* note 2, at 1, 24.

²⁵ See N.J. STAT. ANN. § 2A:15-5.5-5.8 (West 1987). See *infra* notes 101-134 and accompanying text for an examination of this codified statute.

²⁶ See *infra* notes 34-42 and accompanying text.

²⁷ See *infra* notes 43-72 and accompanying text for a detailed examination of the development of New Jersey's common law liability for social hosts from 1959 through 1984.

²⁸ See *infra* notes 75-92 and accompanying text for both information on the resolu-

examination of the state's social host liability statute follows, which includes a discussion of the legislature's purpose and goals in enacting the statute.²⁹ Finally, section IV discusses the effects of the statute on the judiciary and potential future litigation.³⁰

II. *Development of New Jersey's Social Host Liability*

A. *Dram Shop Act & Beverage Control Act*

In 1920, the ratification of the Eighteenth Amendment to the United States Constitution marked the beginning of national prohibition in the United States.³¹ Prior to 1920, New Jersey common law did not recognize a third party's right to bring a cause of action against either a social host or a commercial supplier of alcohol³² for injuries caused by an intoxicated guest.³³ However, just two years after the enactment of the Eighteenth Amendment, New Jersey created an exception to the common law rule³⁴ through the

tion creating the commission and a discussion of the proposals suggested by that commission.

²⁹ See *infra* notes 101-133 and accompanying text.

³⁰ See *infra* notes 133-150 and accompanying text for a better understanding of the effects that the enactment of New Jersey's social host liability statute has and will have on the judiciary.

³¹ U.S. CONST. amend. XVIII § 1 (repealed 1933). The amendment consists of three sections. *Id.* The relevant section for purposes of this article is section one, which indicates that "[a]fter one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited." *Id.*

³² See Nichols, *supra* note 7, at § 37:18. A commercial supplier is a licensed vendor or supplier of alcoholic beverages, such as a bar, tavern or distributor. *Id.* See *infra* note 54 and accompanying text for an explanation on the distinction between a social host and a commercial supplier of alcoholic beverages.

³³ See Adams, *supra* note 14, at 1298. The rationale for the common law rule was based on the idea that the voluntary consumption of alcohol, rather than the provision of alcohol, was the proximate cause of the injury. *Id.* In fact, the New Jersey Supreme Court, in referring to how judges elsewhere have previously dealt with a cause of action against a supplier of alcohol, stated that:

The majority took the position that the sale of the liquor was not the 'proximate cause' of the plaintiffs' injuries and cited earlier cases which sought to separate and insulate the selling of the liquor from its consumption, suggesting that the latter and not the former was the proximate cause.

Rappaport v. Nichols, 156 A.2d 1, 4 (N.J. 1959). See *infra* notes 43-49 for a discussion of the *Rappaport* case.

³⁴ See Adams, *supra* note 14, at 1298 (the dram shop act established by the state legislature creates an exception to the common law rule).

enactment of the dram shop act.³⁵

The dram shop act recognized a third party's right to bring a civil action against a furnisher of alcohol for injuries sustained as a result of an intoxicated guest's negligent conduct.³⁶ With the passage of the Twenty-First Amendment and the end of prohibition twelve years later,³⁷ New Jersey repealed the dram shop act³⁸ and replaced it with the Alcoholic Beverage Control Act.³⁹ Although

³⁵ 1922 N.J. Laws ch. 257, at 628-9, repealed 1934.

An Act providing for a right of action to recover damages in cases where injury to person or property, means of support, or otherwise, is caused by any intoxicated person, or by reason of the sale or procuring of intoxicating liquor in violation of law; providing for the survival of such right of action in the event of the death of any person who may have suffered or inflicted such injury, and fixing the method of distribution of damages that are recovered where death results from intoxication or from the sale or procuring of intoxicating liquor in violation of law.

Id. New Jersey's dram shop act "imposed strict liability for compensatory and punitive damages upon unlawful sellers of alcoholic beverages." *Rappaport*, 156 A.2d at 8. The act was subsequently repealed twelve years later following the end of prohibition. *Id.* at 8. See *supra* note 10 and accompanying text for an explanation on both a dram-shop and a dram-shop act.

³⁶ Conaway, *supra* note 4, at 407. Dram shop acts permit a third party to bring a civil action against a server of alcohol for injuries sustained as a result of an intoxicated individual. *Id.* One of the purposes behind the creation of state dram shop acts was to provide an injured party with a "compensatory and remedial scheme" in response to their injuries. Nichols, *supra* note 7, at § 38.01 (1995).

³⁷ U.S. CONST. amend. XXI (1933). This amendment states that "[t]he eighteenth article of amendment to the Constitution of the United States is hereby repealed." *Id.* See *supra* note 31 for an explanation of the Eighteenth Amendment to the United States Constitution.

³⁸ *Rappaport*, 156 A.2d at 8. With the end of prohibition, New Jersey repealed its dram shop act in 1934, along with other miscellaneous liquor laws which were passed in the light of prohibition. *Id.*

³⁹ N.J. STAT. ANN. §§ 33:1-1 to 4-1 (1984). The Beverage Control Act is substantially different from the dram shop act it replaced. French, *supra* note 9, at 1063. Although the act regulates the sale of intoxicating beverages to the public, it does not create a third party cause of action against a social host or seller of alcohol for injuries sustained by a guest's negligent conduct. *Id.* at 1064 n.26-27. Instead, the act only provides criminal action (misdemeanors) against an individual in violation of the act. *Id.* at 1076-77.

The statute is broad enough, however, to apply to those instances in which drunk drivers cause the accidents. Derry D. Sparlin, *Social Host Liability For Guest Who Drink And Drive: A Closer Look At The Benefits And The Burdens*, 27 WM. & MARY L. REV. 583, 591 (1986). As a criminal statute, the courts have been hesitant to allow a private cause of action to develop out of a violation of the statute. *Id.* However, in *Rappaport v. Nichols*, the New Jersey Supreme Court reasoned that the intent of the legislature in enacting this statute was not only to protect intoxicated parties, but also to protect the general welfare. *Id.* at 592. As such, the court allowed a violation of the statute to

the Alcoholic Beverage Control Act regulated the sale of intoxicating beverages to the public,⁴⁰ it did not establish the right to a civil cause of action previously provided for by the dram shop act.⁴¹ Thus, it invariably left individuals without a statutory basis to impose civil liability on a furnisher of alcohol.⁴²

B. Common Law Liability

In the absence of a dram shop statute, or any other statute allowing for the imposition of civil liability on a furnisher of alcohol, state courts began to develop a third party cause of action based on common law negligence principles.⁴³ In 1959, the New Jersey Supreme Court, in the case of *Rappaport v. Nichols*,⁴⁴ became the first court to set aside the traditional common law rule of non-liability.⁴⁵ In *Rappaport*, the court held that a cause of action lies where the furnishing of alcohol to a minor is the proximate cause of injuries to a third party.⁴⁶

be admitted as evidence in a civil action. *Id.* See *infra* notes 44-49 and accompanying text for a discussion on the *Rappaport* case.

⁴⁰ Nichols, *supra* note 7, at § 38:15 (1995). (the phrase intoxicating liquors incorporates everything from wine to hard liquor).

⁴¹ See *supra* note 36 and accompanying text.

⁴² See French, *supra* note 9, at 1093. See also *infra* notes 43-73 and accompanying text for an examination of the New Jersey Courts response to extending liability to social hosts absent the existence of a dram-shop act.

⁴³ See generally Thomas J. Pryor, *An overview of liquor liability reform*, 126 N.J.L.J. 12 (May/June 1988). The author discusses that the New Jersey courts, in a series of decisions starting in 1959, have turned to common-law negligence principles to develop causes of action in the absence of an existing dram-shop statute. *Id.* at 14.

⁴⁴ 156 A.2d 1 (N.J. 1959). In *Rappaport*, an eighteen year old was negligently served alcohol at the defendant's tavern. *Id.* at 192. As a result of the provision of the alcohol, the minor became intoxicated, drove his car under the influence of alcohol, and collided with a car operated by a third party who subsequently died as a result of the injuries sustained from the accident. *Id.* at 3.

⁴⁵ See *Rappaport*, 156 A.2d 1.

⁴⁶ *Id.* at 9-10. In ruling on this case, the New Jersey Supreme Court acknowledged that judges elsewhere, confronted with similar facts, have failed to extend any common law claims against tavern owners. *Id.* However, the court articulated that when tavern keepers supply an intoxicated person or minor with alcoholic beverages, "the unreasonable risk of harm not only to the minor or the intoxicated person but also to members of the traveling public may readily be recognized and foreseen; this is particularly evident in current times when traveling by car to and from the tavern is so commonplace" *Id.* at 8. Therefore, the court held that the negligent provision of alcohol to the minor may have been the proximate cause of the accident and the subsequent cause of death. *Id.* at 9.

For a long time, courts had rejected the argument that alcoholic beverage control acts were meant to protect the general public or to create private rights of action.

The *Rappaport* decision opened the door for the imposition of liability on commercial suppliers of alcohol.⁴⁷ Justifying the decision, the court maintained that providing an innocent third party with a cause of action against commercial suppliers of alcohol did not place an unreasonable burden on defendants.⁴⁸ The court opined that commercial suppliers of alcohol could simply negate any such claims by exercising due care.⁴⁹ However, the court stressed that although it had extended liability to tavern keepers and commercial suppliers of alcohol, it had not approved the imposition of liability upon individuals who are not engaged in the liquor business or sale of alcohol.⁵⁰

Seventeen years later, in *Linn v. Rand*,⁵¹ the court extended liability to social hosts.⁵² The *Linn* court indicated that the for-

Sparlin, *supra* note 39 at 591. However, the court in *Rappaport* reasoned that it was not the intent of the legislature to solely protect minors and intoxicated guests, but also, to protect the general public. *Id.* Therefore, the court allowed a violation of the alcoholic beverage liability act (a criminal statute) to be admissible evidence of the defendant's negligence in a civil suit. *Id.* See also *supra* note 39 and accompanying text.

⁴⁷ Adams, *supra* note 14, at 1300-01. A number of jurisdictions have subsequently held that the sale of alcoholic beverages by commercial vendors may constitute proximate cause. *Id.* at 1300-01.

⁴⁸ *Rappaport*, 156 A.2d at 10. See *infra* note 49 for further elaboration on the reasoning behind the court's decision.

⁴⁹ *Rappaport*, 156 A.2d at 10. The court articulated that "recognition of the plaintiff's claim will afford a fairer measure of justice to innocent third parties . . . and will not place any unjustifiable burdens upon defendants who can always discharge their civil responsibilities by the exercise of due care." *Id.*

⁵⁰ *Id.* Upon rendering its decision, the court emphasized:

the plaintiff's complaint has no relation to service by persons not engaged in the liquor business or to lawful sales and service by liquor licensees, or to sales by reasonably prudent licensees who do not know or have reason to believe that the patron is a minor or is intoxicated when served; the allegations of the complaint are expressly confined to tavern keepers' sales and service which are unlawful and negligent.

Id.

⁵¹ 356 A.2d 15 (N.J. Super. Ct. App. Div. 1976). In *Linn*, a minor was served excessive amounts of alcoholic beverages while a guest at defendant's home. *Id.* at 16. The minor left defendant's home intoxicated and was subsequently involved in a car accident in which the plaintiff was seriously injured. *Id.* The court was faced with the issue of whether the defendant, who was not a commercial supplier of alcohol but had supplied excessive amounts of alcohol to a minor at a social event, could be held liable for injuries to a third party caused by the intoxicated minor's negligent conduct. *Id.* at 17.

⁵² *Id.* at 19. The court rejected "the view adopted below that the furnishing of alcoholic beverages to a minor, in a social setting, gives immunity to the host for the negligence of his guests which is a proximate cause of injury to an innocent third

ward-looking policy in *Rappaport* was not meant to extend liability to the holders of liquor licenses while absolving social hosts whose conduct results in the same harm.⁵³ The court's decision in *Linn* not only dispensed with the traditional distinction between a commercial supplier or liquor licensee and a social host,⁵⁴ but marked the first time liability was extended without any statutory basis.⁵⁵

In 1982, the court in *Figuly v. Knoll*⁵⁶ addressed the issue of

party." *Id.* The court believed that the plaintiff should be given the opportunity to prove that the defendant knew that the guest was a minor, knew that she was going to drive her car home, and nevertheless, continued to serve her alcoholic beverages, and that, it was reasonably foreseeable that the minor might cause injury to herself and others. *Id.* at 18.

The *Linn* decision was subsequently acknowledged and approved by the New Jersey Supreme Court eight years later in *Kelly v. Guinnell*, where the Supreme Court articulated that "[w]e now approve *Linn* with its extension of this liability to social hosts." 476 A.2d 1219, 1223 (N.J. 1984). See *infra* notes 61-73 for a detailed discussion of the *Kelly* case.

⁵³ *Linn*, 356 A.2d at 17-18. The court read *Rappaport* as having much more of an impact than the mere imposition of liability on commercial suppliers of alcohol: "The forward-looking and far-reaching philosophy expressed in *Rappaport* should also be applicable to negligent social hosts and should not be limited to holders of liquor licenses and their employees." *Id.* The court maintained that, "[i]t makes little sense to say that the licensee in *Rappaport* is under a duty to exercise care, but give immunity to a social host who may be guilty of the same wrongful conduct merely because he is unlicensed." *Id.* at 18.

⁵⁴ See *Kelly*, 476 A.2d 1219, 1233 (N.J. 1984) (Garibaldi, J., dissenting). In her dissent, Justice Garibaldi opined that many problems exist with the majority's refusal to distinguish between a licensee and a social host. *Id.* One of the significant differences between a commercial supplier of alcohol and a social host has to do with the social host's lack of knowledge and education in determining degrees of intoxication. *Id.* Unlike social hosts however, commercial providers of alcohol are involved in the business everyday and often have the experience necessary to recognize and deal with intoxicated customers and guests. *Id.* Another important distinction is the commercial licensee's ability to spread the cost of liability, whereas the social host can not. *Id.* at 1234. A commercial supplier of alcohol can spread the cost of its insurance coverage among its customers, unlike a social host who must carry the entire cost alone. *Id.* Not to mention, many social hosts may be unable to afford the homeowner's insurance to cover the liability that could be imposed on them. *Id.*

⁵⁵ French, *supra* note 9, at 1099. "*Linn* stands as the first New Jersey case extending liability to a social host and the first case extending liability in the absence of an underlying statute or regulation." *Id.* New Jersey's Alcoholic Beverage Control Act did not apply to the *Linn* case because the defendant was a social host, and the act only applies to licensed suppliers of alcohol. *Id.* at 1099 n.313.

⁵⁶ 449 A.2d 564 (N.J. Super. Ct. App. Div. 1982). The facts at trial established that the defendant conducted a party at his apartment in which the co-defendant, an adult, attended. *Id.* at 564. Plaintiff maintains that co-defendant was served intoxicating beverages to the point that he became obviously drunk. *Id.* Defendant acknowledged that he was a bartender and trained at recognizing signs of intoxication, as well

whether the *Linn* decision could be extended to those situations in which the intoxicated guest was an adult rather than a minor.⁵⁷ Determining that there was no legitimate legal basis for limiting the decision in *Linn* to minors,⁵⁸ the *Figuly* court theorized that liability could be extended to any social host who serves alcohol to a guest if such a provision creates a reasonable and foreseeable risk of harm to third parties.⁵⁹ In doing so, the court implicitly removed the theoretical distinction between an intoxicated adult guest and an intoxicated minor guest.⁶⁰

In *Kelly v. Gwinnell*,⁶¹ decided two years later, the New Jersey Supreme Court formally removed the adult/minor distinction.⁶²

as, that he knew the co-defendant to be an alcoholic. *Id.* The co-defendant was subsequently involved in an automobile accident with the plaintiff upon leaving the party. *See id.*

⁵⁷ *Figuly*, 449 A.2d at 565. The court considered defendant's motion for summary judgment. *Id.* The issue before the court was whether a private host could be held liable for injuries sustained by a third party as a result of the negligent operation of a motor vehicle by an adult guest who became intoxicated at the host's party. *Id.*

⁵⁸ *Id.* at 565.

⁵⁹ *Id.* The court clarified that the "law of this State [is] that a social host who furnishes alcoholic beverages to any obviously intoxicated person under circumstances which create a reasonably foreseeable risk of harm to others may be held legally responsible to those third persons who are injured when that harm occurs." *Id.* (citing *Coulter v. Superior Court Of San Mateo City*, 577 P.2d 669 (Cal. 1978) (which was the first court to extend liability to a social host for injuries resulting from an intoxicated guest's negligent conduct)).

⁶⁰ *See Figuly*, 449 A.2d at 565.

⁶¹ 476 A.2d 1219 (N.J. 1984). The issue before the court was whether a social host is liable for an accident caused by his drunken adult guest after allowing the guest to become drunk at his house before driving home. *Id.* at 1220. It was established at trial that defendant Gwinnell drove defendant, Zak, home. *Id.* When they reached Zak's home, Zak invited Gwinnell into his home for some drinks. *Id.* After spending approximately one to two hours at the Zak's home and consuming an estimated thirteen alcoholic drinks, Gwinnell left the Zak's home in his car. *Id.*

On his way home, Gwinnell was involved in an accident with the plaintiff, Marie Kelly, who was seriously injured as a result. *Id.* Marie Kelly brought an action against Gwinnell and later amended the complaint to include the Zaks. *Id.*

Following a blood alcohol test, it was determined that Gwinnell was heavily intoxicated with a blood alcohol concentration of .286 percent. *Id.* (NJ law stipulates that it is illegal to drive with a BAC of .10 or greater.) *Id.* at 1220 n.1. At trial, an expert concluded that defendant Gwinnell must have been showing obvious signs of intoxication before he left the house. *Id.* at 1220.

⁶² *See Figuly*, 565 A.2d at 565. In *Figuly*, the court was only asked to rule on a motion for summary judgment brought by a defendant who believed that as a social host he could not be found liable for the negligent conduct of his intoxicated adult guest. *Id.* at 564. In denying the motion for summary judgment, the court articulated that there was no reason to limit the *Linn* decision to minors. *Id.* at 565. The court

In a six to one decision,⁶³ the New Jersey Supreme Court held that a host who provides liquor to an adult guest, with knowledge that the guest is both intoxicated and will be operating a motor vehicle thereafter, is liable to a third party for any injuries arising out of the intoxicated guest's negligent operation of the motor vehicle.⁶⁴

interpreted the law of the state to dictate that a social host, who serves alcoholic beverages to an intoxicated person creating a foreseeable risk of harm to others, may be held liable if a third person is injured as a result. *Id.*

⁶³ See *Kelly*, 476 A.2d at 1230 (Garibaldi, J., dissenting). The only dissent was given by Justice Garibaldi, who stated that the "imposition of this liability on a social host places upon every citizen of New Jersey who pours a drink for a friend a heavy burden to monitor and regulate guests," subjecting the host "to potential financial liability that may be far beyond the host's resources." *Id.* Justice Garibaldi also noted the dissimilarities between the degree of knowledge and expertise a commercial supplier of alcohol has with regard to intoxication versus the lack of knowledge on the part of the ordinary social host. *Id.* at 1233 (Garibaldi, J., dissenting). Justice Garibaldi criticized the majority's holding that a social host must be aware that the guest is both intoxicated and is going to drive. *Id.* Such a standard requires a subjective determination of the host's knowledge. *Id.* However, according to Justice Garibaldi, "a close reading of the opinion makes clear that the majority actually is relying on objective evidence." *Id.*

Moreover, Justice Garibaldi was concerned with the ability of a social host to recognize that a particular guest is intoxicated. *Id.* It is often difficult to tell if any one specific person is intoxicated based on the different effects alcohol has on each person. *Id.* Often, the social host is not even in a position to continuously monitor a guest because the host has more than one guest at an event. *Id.* at 1234 (Garibaldi, J., dissenting). In Justice Garibaldi's opinion, the majority's decision will open the door "for all of the speculative and subjective impositions of liability that I fear." *Id.*

Finally, Justice Garibaldi indicates that the decision does not clearly set forth the degree to which a social host must go in order to avoid liability. *Id.* How much force need the host use to stop an intoxicated guest from driving before he is exempted from liability? *Id.* And what happens if the host tries to stop the guest from drinking and driving and fails? *Id.* (Garibaldi, J., dissenting). In concluding, Justice Garibaldi suggested that imaginative legislation on behalf of the state may be the better solution for compensating those individuals injured by drunk drivers and stipulating the duties of a social host. *Id.* at 1235 (Garibaldi, J., dissenting).

⁶⁴ *Kelly*, 476 A.2d at 1224. Notwithstanding the knowledge that never before has any other jurisdiction ever imposed such liability on a social host, the court opined that the objective of their holding was to achieve fair compensation for victims who are injured by drunk drivers. *Id.* at 1226.

We therefore hold that a host who serves liquor to an adult social guest, knowing both that the guest is intoxicated and 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 adult guest when such negligence is caused by the intoxication.

Id. at 1224. In rendering this decision, the court elaborated that the "policy considerations served by [social host liability] far outweigh those asserted in opposition." *Id.* Although the decision may interfere with some social behaviors and the enjoyment and camaraderie that is often present at social events, the court believed that the

The court explained that the decision acknowledges the emerging change in social attitudes towards drinking and driving.⁶⁵ The court further expressed that the crusade against drunk driving did not start with the courts, but rather, with social recognition that something must be done in order to cease the senseless loss of lives caused by drunk drivers.⁶⁶ In this respect, the court believed that the *Kelly* decision was not only a reasonable extension of common law principles of tort liability,⁶⁷ but a response to the demands and

assurance of just compensation to injured parties of drunk driving accidents coupled with the potential deterrent effect of the ruling on drunk driving, outweighs the importance of the benefits derived from social gatherings. *Id.* Furthermore, the court indicated that when an individual makes alcohol available to individuals who will subsequently get behind a wheel, the provider has a duty and obligation to the public to not allow foreseeable and unreasonable risks to the public welfare as a result. *Id.*

The court indicated that the *Kelly* decision only applies in those instances in which a "social host directly serves the guest and continues to do so even after the guest is visibly intoxicated, knowing that the guest will soon be driving home . . ." *Id.* at 1228. The court further articulated that this decision does not consider the situation in which a host has a party with a multitude of guests and numerous distractions, or in a situation in which the guests are serving each other. *Id.* The court maintained that those situations will be dealt with as they develop. *Id.* Therefore, the holding is limited to those instances in which a host directly serves a guest and the injuries sustained by a third party are the result of the intoxicated guest's drunk driving. *Id.* at 1230.

⁶⁵ *Id.* at 1229. "This Court senses that there may be a substantial change occurring in social attitudes and customs concerning drinking, whether at home or in taverns. We believe that this change may be taking place right now in New Jersey and perhaps elsewhere." *Id.* The court went on to state that "[i]t is the upheaval of prior norms by a society that has finally recognized that it must change its habits and do whatever is required, whether it means but a small change or a significant one . . ." *Id.*

⁶⁶ *See id.* at 1222 n.3. A study indicated that between 1978 and 1982, over 2,700 of the 5,755 highway fatalities in New Jersey were alcohol related. *Id.* (citing *New Jersey Division of Motor Vehicles, Safety, Service, Integrity, A Report on the Accomplishments of the New Jersey Division of Motor Vehicles?* at 45 (April 1, 1982 through March 31, 1983)). Of the over 600,000 automobile accident injuries in New Jersey for the same period, 20.5% involved alcohol. *Id.* It was estimated that between 1978 and 1982, the societal cost of New Jersey alcohol-related highway deaths was approximately \$1,149,516,000. *Id.*

⁶⁷ *Kelly*, 476 A.2d at 1228. Imposing liability on social hosts through common-law tort principles can be accomplished primarily in one of two ways. Hilary Ray Weinert, *Social Hosts And Drunken Drivers: A Duty To Intervene?*, 133 U. PA. L. REV. 867, 881 (1985).

First, a social host may have a duty to prevent a guest from causing physical harm to a third party when the host and guest are involved in a "special relationship". *Id.* Courts have recognized such a duty in situations similar to the social host-guest relationship: master-servant relationship, relationship between "a landowner and a person using the owner's land or chattel in the presence of the owner", and a relationship between a person responsible for and in charge of a person with "danger-

needs of society.⁶⁸

Clarifying its position, the court posited that it has traditionally been a function of the courts to determine the scope of liability in negligence cases.⁶⁹ Although the court recognized that other states had left the question of social host liability to the legislature,⁷⁰ it reasoned that in a state with arguably the toughest liquor laws in the country,⁷¹ the imposition of such liability on a social host by the judiciary was both fair and in full accordance with the state's policy.⁷² Ostensibly, the court indicated that if the legislature disagrees with the decision set forth, it had the legislative authority to rectify the court's holding.⁷³ Two months later, the

ous propensities". *Id.* at 881-82. (citing RESTATEMENT (Second) of Torts §§ 317, 318, 319 (1965)).

The second way common-law tort principles can be used to extend liability to a social host is by imposing a duty on the social host to exercise reasonable care to prevent injury anytime the host realizes or should have realized that his action has created an unreasonable risk of injury to a third party. *Id.* at 881. Whenever a social host provides alcohol to a guest, the host must be aware of the potentially dangerous situation which could arise should the guest subsequently operate a motor vehicle. *See id.* at 890 (analogizing social host liability to *Robertson v. LeMaster*, 301 S.E.2d 563 (W. Va. 1983)). In *Robertson*, the employer was liable for injuries to a third party when the employer insisted that an employee work long hours without rest, and then allowed him to leave without providing alternative transportation. *Id.* The exhausted condition of employee was foreseeable to the employer. *Id.*

⁶⁸ *See Kelly*, 476 A.2d at 1229. The court indicated that the liability imposed on social hosts is similar to the liability extended to the owner of a vehicle who loans his car to a person he knows to be intoxicated. *Id.* at 1224. In addition, the court emphasized that the decision should "make it more likely that hosts will take greater care in serving alcoholic beverages at social gatherings so as to avoid not only the moral responsibility but the economic liability that would occur if the guest were to injure someone as a result of his drunk driving." *Id.* at 1226.

⁶⁹ *Id.* at 1226. The court disagreed with the argument that the issue discussed in the case is only appropriate for legislative resolution. *Id.* Such cases as *Rappaport v. Nichols*, *Linn v. Rand*, and *Figuly v. Knoll*, represent the judiciaries continuing involvement over the years in this type of issue. *Id.* The court indicated that there is no legislative activity between 1959 and the present that would suggest that the court's involvement in these matters is inappropriate. *Id.*

⁷⁰ *Id.* at 1231. *See, e.g., Cartwright v. Hyatt Corp.*, 460 F. Supp. 80, 81-82 (D.D.C. 1978); *Miller v. Moran*, 421 N.E.2d 1046, 1049 (Ill. App. Ct. 1981); *Holmes v. Circo*, 244 N.W.2d 65, 70 (Neb. 1976); *Hamm v. Carson City Nugget, Inc.*, 450 P.2d 358, 359 (Nev. 1969); *Manning v. Andy*, 310 A.2d 75, 76 (Pa. 1973).

⁷¹ *Kelly*, 476 A.2d at 1222 (citing Governor Thomas Kean, Governor's Annual Message to the N.J. State Legislature (Jan. 10, 1984)).

⁷² *Id.* The court indicated that the imposition of a duty on social hosts is consistent with the public's goal and desire to reduce the number of drunk driving incidents. *Id.*

⁷³ *Id.* at 1227. The court expressed that the decision appears to be in accordance

legislature invoked such a remedy and enacted legislation to supersede the judicially created common law.⁷⁴

III. The New Jersey Legislature's Response

A. Senate Concurrent Resolution No. 116

Following the *Kelly* decision, both the state legislature and the citizens of New Jersey exhibited signs of apprehension to the court's ruling.⁷⁵ As a result, the legislature created the Commission on Alcoholic Beverage Liability by the passage of Senate Concurrent Resolution No. 116 in 1984.⁷⁶ The Commission's objective

with the desires of the public. *Id.* However, if the legislature disagrees with the decision or feels a need to limit or expand upon the *Kelly* ruling, the legislature may draft and pass its own legislation to supersede the court's holding. *Id.*

⁷⁴ See *infra* notes 75-132 and accompanying text for the development and enactment of legislation which limits the *Kelly* decision by unambiguously stipulating the duties and obligations of a social host in New Jersey.

⁷⁵ See *Componile v. Maybee*, 641 A.2d 1143, 1146 (N.J. Super. Ct. Law Div. 1994) (the court, in reference to the opinion in *Kelly*, stated that "it was the [Kelly] court's comments regarding the potential contentions and implications of their decision which prompted the Legislature to create a commission to study the question of host liability.") *Id.*

See also Luchak, *supra* note 13, at 10. "Popular reaction to the *Kelly* decision was widespread and hostile." *Id.* It was argued by many that the courts decision in *Kelly* failed to consider various significant policy issues. *Id.* For instance, some argued that the court's emphasis on extending liability to the social host or server of alcohol negates or reduces the liability and responsibility of the intoxicated guest or patron. *Id.* at 10 n.4. (citing New Jersey Assembly, Public Safety and Corrections Committee on Assembly Bill Nos. 554, 864, 1679, 2209, 2211, 2264, April 4, 1986 at 22, 27, 46) (testimony given by representatives of the restaurant industry and various citizens of New Jersey)).

The New Jersey State Legislature was concerned that the court's holding in *Kelly* was only the beginning of the extension of liability to social hosts. See State of New Jersey, Commission on Alcoholic Beverage Liability, Final Report (Sept. 18, 1985). Given the potential impact that such liability could have on the citizens of New Jersey, the Legislature felt that it would be appropriate to investigate host liability and to create legislation that would both limit the *Kelly* decision, and unambiguously articulate the duties and responsibilities of a social host. *Id.* Furthermore, the legislature believed that the *Kelly* decision raised numerous issues that needed to be resolved, such as:

the ability of private hosts to discern intoxicated behavior; the lengths to which a host has to go to monitor and restrain the behavior of a guest; the costs and extent of coverage of homeowner's and renter's insurance for this liability; and any distinctions between the duties, responsibilities and liabilities imposed on private hosts as compared to those imposed on alcoholic beverage licensees; and

S. Con. Res. 116, *supra* note 17.

⁷⁶ S. Con. Res. 116, *supra* note 17. "A Concurrent Resolution establishing a com-

was to study the issue of social host liability established by the New Jersey Supreme Court in *Kelly*, and to make recommendations on the codification of social host liability.⁷⁷ Specifically, the Commission was to recommend legislation which would facilitate a reduction in alcohol-related accidents, as well as provide adequate compensation for the innocent victims of those accidents.⁷⁸

Before submitting its recommendations to the legislature,⁷⁹ the Commission held public hearings to promote discussion on those issues pertaining to social host liability.⁸⁰ The potential in-

mission to study the duties, responsibilities and liabilities of private [] servers of alcoholic beverages and to make certain recommendations." *Id.* According to the resolution, the commission was to consist of eight appointed members: two members from both the General Assembly and the Senate, with the only requirement being that no two members from similar chambers be of the same political party, and four members from the public (two of which will be appointed by the Speaker of the General Assembly and two by the Senate President). *Id.* Furthermore, the resolution dictated that the commission members would not be compensated for their service, but, would be eligible for reimbursement should they incur any expenses in performing the duties required by the commission. *Id.*

Members of the Commission consisted of: Honorable Raymond Lesniak, Senator, 20th District (Chairman); Honorable Joseph L. Bocchini, Jr., Assemblyman, 14th District (Vice Chairman); Honorable Gerald Cardinale, Senator, 39th District (D.D.S.); Honorable Newton Miller, Assemblyman, 34th District; Murray A. Laiks, Esquire; Elmer J. Herrmann, Esquire; Lawrence Toborowsky, Esquire and Richard Levinson, Esquire. Final Report 1985, *supra* note 74, at iii.

⁷⁷ S. Con. Res. 116, *supra* note 17. The Commission was formed largely in response to the *Kelly* decision. *Id.* The resolution directly identifies the *Kelly* decision as being "without precedent anywhere in the nation, [and that the decision] raises numerous issues and questions for legislative study and resolution . . ." *Id.* The resolution specifically identifies those issues and questions to be considered by the Legislature as:

the ability of private hosts to discern intoxicated behavior; the lengths to which a host has to go to monitor and restrain the behavior of a guest; the costs and extent of coverage of homeowner's and renter's insurance for this liability; and any distinctions between the duties, responsibilities and liabilities imposed on private hosts as compared to those imposed on alcoholic beverage licensees

Id.

⁷⁸ *Id.*

⁷⁹ See *id.* The commission shall "report its findings and recommendations to the Legislature and the Governor within six months after adoption of this resolution." *Id.*

⁸⁰ Final Report, *supra* note 75, at 2. On April 25, 1985, the first of the two public hearings was held in Linden, New Jersey. *Id.* Those present at the hearing were: Senator Raymond Lesniak (Chairman), Assemblyman Joseph L. Bocchini (Vice Chairman), Senator Gerald Cardinale, Assemblyman Newton E. Miller, Murray A. Laiks, Esq., Elmer J. Herrman, Esq., Lawrence Toborowsky, Esq., Richard Levinson and Geraldine Waltman of the Office of Legislative Services. PUBLIC HEARINGS: COMMISSION ON ALCOHOLIC BEVERAGE LIABILITY at 1 (1985). The Committee heard testimony from

crease in the number of lawsuits and the possibility of the expansion of *Kelly* drew particular attention during the hearings.⁸¹ Other issues concerned the standard of behavior required of a social host⁸² and the effects of social host legislation on homeowners' insurance.⁸³

Apprehensive about the ramifications regarding social host lia-

Dr. David Lester (Rutgers University Alcohol Studies Program), Dave Evans, Esq., (New Jersey Dept. of Health, Division on Alcoholism), Lt. Fred Lane and Capt. Ed Marinelli (Division of State Police Breath Testing Unit), Byron Kath (Northeastern Public Safety Institute), Donna Ferrante (Mothers Against Drunk Driving), Carmen Giletto and Wilbur Smith (New Jersey Licensed Beverage Association), and Nancy VanCourt (President of Remove Intoxicated Drivers). *Id.* at 2, 22, 36, 42, 49, 55, 56, 59. Less than one month later, on May 9, 1985, the second public hearing was held in Hackensack, New Jersey. *Id.*

⁸¹ Final Report, *supra* note 75, at 6-7. The court in *Kelly* emphasized that the decision only applied to the facts of that particular case before the court, and was not to be interpreted as applying to all questions of social host liability. *Kelly*, 96 N.J. at 556. The court specifically stated that "we decide *only* that where the social host directly serves the guest and continues to do so even after the guest is visibly intoxicated, knowing that the guest will soon be driving home, the social host may be liable for the consequences of the drunken driving". (emphasis added). *Id.*

As a result of this narrowly drawn decision, there is a concern that future lawsuits will aim at expanding social host liability. Final Report, *supra* note 75, at 6. For instance, at the hearings, Allstate Insurance testified that of the ten pending social host cases that it is involved in, nine of them are based on attempts to expand the holding of *Kelly*. *Id.*

⁸² Final Report, *supra* note 75, at 9. At the public hearings, various experts testified that it is extremely difficult for a social host to determine whether a guest or patron is intoxicated to the point of being legally drunk. (BAC of greater than .10%). *Id.* These experts maintained that "it is not until a person's BAC is .15% or more that someone else will be able to determine, based on behavior such as slurred speech, boisterousness, and inability to walk normally, that his guest is intoxicated." *Id.* at 9-10. As a result of this testimony, many feared that a social host could be held liable for a guest's negligent conduct if the guest had a BAC of between .10 and .15, even though the guest was not showing any of the visible signs of intoxication which are common only once the BAC level rises above .15%. *Id.* at 10.

⁸³ *Id.* at 11-14. Following an investigation as to the effect that social host liability could potentially have on homeowner's insurance, the commission determined that such an impact will be minimal. *Id.* at 11. It was confirmed by representatives of the State's Department of Insurance, insurance trade organizations, and insurance companies, that homeowner's insurance policies are interpreted as covering "all situations not specifically excluded in the policy", and therefore, would cover social host liability. *Id.* However, regulation of homeowner's insurance prevent insurance companies from imposing arbitrary or blanket surcharges to all homeowners. *Id.*

Testimony from the Department of Insurance indicated that it would not approve of any increase in rates on a homeowner's policy until three years have passed from the date of *Kelly* and until insurance companies have proven that they have paid out claims as a result of the decision. *Id.* at 11-12. In addition, the commission concluded from the testimony at the hearings that even if the rates on the homeowner's

bility, the Commission concluded that the duty to impose liability should not be left to the courts.⁸⁴ Instead, it recommended that legislation be enacted to prevent the courts' extension of *Kelly*,⁸⁵ and to clarify the duties and obligations of a social host.⁸⁶ Therefore, the Commission proposed the following recommendations for legislative action:⁸⁷ (1) a social host would not be liable for injuries sustained by the intoxicated adult guest who is injured as a result of his intoxication;⁸⁸ (2) a social host would only be liable for damages to a third party if: (a) the social host knowingly serves alcohol to a visibly intoxicated guest or does so in reckless disregard to the safety of others,⁸⁹ (b) the serving of alcohol creates a

policies did increase, such an increase would be minimal because of the great numbers of people in the state that maintain such a policy. *Id.* at 12.

The commission justified any increase on homeowner's policies that might result from the legislation by indicating that "spreading any increased cost of compensating the innocent victim among homeowners' insurance policyholders is an effective way to ensure that the victim is compensated without imposing an excessive burden on any one person or group." *Id.* at 15.

⁸⁴ *Id.* at 3. "The Legislature . . . should enact a law to establish that, under certain limited circumstances, social hosts are liable for deaths or injuries caused or incurred by their intoxicated guests." *Id.*

⁸⁵ *Id.* The commission maintained that the legislation will "alleviate the threat of unpredictably expanding social host liability created by *Kelly v. Gwinnett*." *Id.* at 7. It was the commission's intention to establish a statutory standard of liability for social hosts, that could not be expanded or limited except by the Legislature itself. *Id.* The commission was under the belief that "the enactment of this legislation will prevent the court from expanding social host liability" *Id.* at 6.

The reason for the Legislature's concern that the judicially created social host liability will be broadly imposed, stems from the court's dicta in *Kelly*. See *Kelly* 476 A.2d at 1230.

⁸⁶ Final Report, *supra* note 74, at 7. The commission did not want the citizens of New Jersey to fear every time they hosted a party that they could be susceptible to a lawsuit even if they act in what appears to be a safe and responsible manner. *Id.* The commission believed that based on its recommendations, the Legislature could adopt legislation which would present "reasonable and clear standards of liability" for private hosts who serve alcoholic beverages to their guests. *Id.*

⁸⁷ S. Con. Res. 116, *supra* note 17 and accompanying text. S. Con. Res. 116 mandated that at the conclusion of the Commission's study, the Commission submit its findings to both the Legislature and Governor Kean for review. S. Con. Res. 116, *supra* note 17.

⁸⁸ Final Report, *supra* note 75, at 3. However, if the social host serves alcohol to a minor, and the minor is injured as a result of his intoxication, then the social host is still liable under the traditional rules established in *Linn v. Rand*. *Id.* at 4. See *supra* notes 51-55 for a review of the *Linn* case.

⁸⁹ Final Report, *supra* note 75, at 3. The first part of the test established by the commission is that the social host "willfully and knowingly provide[] alcoholic beverages either: (1) [t]o a person who is visibly intoxicated in the social host's presence,

foreseeable risk of harm to others,⁹⁰ and (c) the intoxicated guest's negligent operation of a motor vehicle was the proximate cause of the third party's injuries;⁹¹ and (3) the legislation should not be applied in those situations in which a social host serves alcoholic beverages to a minor.⁹²

B. Governor Kean's Recommendations

The Commission's efforts were immediately rewarded by the swift adoption of a bill codifying social host liability.⁹³ The bill was submitted to Governor Thomas Kean who responded with less fervor than the legislature.⁹⁴ Governor Kean rejected the legislation and returned it to the legislature with various recommendations.⁹⁵

or (2) [u]nder circumstances manifesting reckless disregard of the consequences as affecting the life or property of others; . . ." Final Report, *supra* note 75, at 3. The commission maintained that the legislation should indicate that a guest is not visibly intoxicated unless there are either "clear and convincing signs of intoxication" or the guest has a BAC level of .15%. Final Report, *supra* note 75, at 4.

⁹⁰ *Id.* It was the commission's belief that this standard of foreseeability is consistent with the New Jersey Supreme Court's decision in *Rappaport v. Nichols*, where the court held that "[n]egligence is tested by whether the reasonably prudent person at the time and place should recognize and foresee an unreasonable risk or likelihood of harm or danger to others." *Rappaport*, 156 A.2d at 8.

⁹¹ Final Report, *supra* note 75, at 4. Vehicle is defined to include any device that carries people or property and is propelled by a motor. *Id.*

⁹² *Id.* at 4. Instead, the Commission felt that the courts ruling in *Linn v. Rand* should remain the applicable rule for assigning liability to a social host who negligently provides alcoholic beverages to a minor. *Id.* See *supra* notes 51-55 and accompanying text for an explanation of the *Linn* decision.

⁹³ See S. 1152 and 545, 202d Cong., 1st Sess. (1986) and Gen. Assembly 2294 and 1681, 202d Cong., 1st Sess. (1986) [hereinafter Senate Nos. 1152 and 545]. The bills were sponsored by Senator Lesniak in the Senate and by Assemblymen Miller and Bocchini in the General Assembly. General Assembly Nos. 2294 and 1681 (1986) at 1. The Legislature's purpose was to "establish[] 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." Senate Nos. 1152 and 545 (1986) at 1.

⁹⁴ See *infra* note 95 and accompanying text.

⁹⁵ See GOVERNOR'S RECONSIDERATION AND RECOMMENDATION STATEMENT FOR S. Nos. 1152 and 545 (original Bill for N.J. STAT. ANN. 2A:15-5.2-5.8) [Hereinafter GOVERNOR'S RECONSIDERATION AND RECOMMENDATION STATEMENT]. Governor Kean indicated that his authority to object to the bill and return it to the Legislature was derived from Article V, Section I, Paragraph 14 of the New Jersey State Constitution. *Id.* Before listing his objections and recommendations for amendments to the bill, the Governor indicated that he supported the efforts of the legislature to address the issue of social host liability, however, he believed that there were a few technical mistakes that needed to be corrected. *Id.* See *infra* notes 96-99 and accompanying text for a review of the suggestions made by Governor Kean. See Luchak, *supra* note 13, at 10.

In the Governor's Reconsideration and Recommendation Statement, Governor Kean advised the Senate that although he supported their efforts, several flaws in the bill's language prevented him from signing it.⁹⁶ The first issue addressed by Governor Kean was the absence of any indication in the bill that the current law governing the provision of alcohol to minors by social hosts would remain unaffected with the enactment of the bill.⁹⁷ A second recommendation sought to clarify the definition of a social guest by removing inconsistent language from the bill.⁹⁸ In addition, the Governor suggested that language be incorporated into

⁹⁶ GOVERNOR'S RECONSIDERATION AND RECOMMENDATION STATEMENT, *supra* note 95. The Governor set forth what he believed to be the intent of the Legislature in adopting the legislation, and then went ahead to point out provisions in the proposed bill that appeared to be contrary to this intent. *Id.* See *infra* notes 97-100 and accompanying text.

⁹⁷ GOVERNOR'S RECONSIDERATION AND RECOMMENDATION STATEMENT, *supra* note 95. The proposed bill indicated that no cause of action is available to an injured party unless a social host had provided alcoholic beverages to a social guest who had attained the legal drinking age. *Id.* The bill purported to deny a person injured by an underaged guest the opportunity to bring a cause of action. *Id.* Governor Kean did not believe that this was the Legislature's intent and therefore recommended amending the bill to indicate that the "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." *Id.* Thus leaving other remedies available if the social guest is a minor. See also Luchak, *supra* note 13, at 10 ("[i]n drafting this provision, the Legislature specifically intended that social hosts who served minors were to remain outside the protection of the statute and subject to full liability under common law standards").

⁹⁸ GOVERNOR'S RECONSIDERATION AND RECOMMENDATION STATEMENT, *supra* note 95. Governor Kean believed that the term "social guest" and "a person who is not a social guest" were both confusing and unnecessary. *Id.* Furthermore, the Governor maintained that the provision that a "person who is not a social guest" precludes all visibly intoxicated guests from having a right of action against another visibly intoxicated guest under the bill. *Id.* Such absolute denial is not proper given the possibility of certain situations in which an intoxicated social guest could be the innocent victim. *Id.* The governor gave the following example:

[I]f 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.

Id. Because it does not appear to be the intent of the Legislature to preclude such an intoxicated guest from bringing a cause of action in such a scenario, Governor Kean felt that it was necessary to remove the provision: "a person who is not a social guest." *Id.* Such an amendment to the bill will allow "all guests, whether intoxicated or sober, to recover from social hosts for injuries sustained as a result of the negligent provisions of alcoholic beverages to another guest." *Id.*

the bill which would establish an irrebutable presumption against signs of visible intoxication for any social guest with a BAC⁹⁹ under .10%.¹⁰⁰

C. *Enactment of N.J. STAT. ANN. §§ 2A:15-5.5-5.8 (1987)*

Incorporating Governor Kean's recommendations,¹⁰¹ the Senate and General Assembly passed the amended bill.¹⁰² The bill was signed into law by Governor Kean on January 14, 1988.¹⁰³

The statute effectively limits the scope of social host liability articulated in *Kelly*.¹⁰⁴ For example, in section 2A:15-5.5, the legis-

⁹⁹ BLACK'S LAW DICTIONARY 118 (6th ed. 1991). Blood Alcohol Count refers to the "standard measure for legal intoxication under state DWI laws." *Id.* Most state laws indicate that a person found with a BAC of .10 or greater, can be charged with drunk driving. *Id.* But see Coleman, *supra* note 4, and accompanying text in which the author indicates that many states have been pressured into lowering the BAC lever to .08% if they hope to continue receiving federal funding.

¹⁰⁰ GOVERNOR'S RECONSIDERATION AND RECOMMENDATION STATEMENT, *supra* note 95. The Governor recognized that one of the stated purposes of the bill is to unambiguously set forth the conduct expected of a social host. *Id.* The commission itself addressed this problem during the public hearings when it listened to various experts indicate the extreme difficulty a social host would have in determining whether a guest, with such a BAC level, is actually intoxicated. See Final Report, *supra* note 75 and accompanying text. By not granting such an irrebutable presumption, the Legislature would defeat this purpose by allowing a discretionary finding that the host was aware of the guest's intoxication that would be very difficult to determine at such a BAC level. *Id.*

¹⁰¹ See Luchak, *supra* note 13, at 10. It was the Legislature's belief that "this bill [would] 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." Final Report, *supra* note 75, at 24.

¹⁰² See N.J. STAT. ANN. §§ 2A:15-5.5-5.8 (West 1987).

¹⁰³ See *Finer v. Talbot*, 552 A.2d 626, 627 (N.J. Super. Ct. App. Div. 1988). The bill was to take effect immediately. *Id.* See also N.J. STAT. ANN. §§ 2A:15-5.5-5.8 (West 1987); L. 1987, c.404, eff. Jan. 14, 1988. The statute was intended to limit common law liability established by the courts and to minimize the liability extended to a social host. Luchak, *supra* note 13, at 10.

¹⁰⁴ See Final Report, *supra* note 75, at 6. The Legislature maintained that the enactment of this legislation serves to prevent the court from expanding social host liability and to better inform social hosts of their obligations and duties. *Id.*

See also *Finer v. Talbot*, 552 A.2d at 627 (where the court stated that "[a]s a result of *Kelly v. Gwinnett*, the legislature considered the social host problem and enacted legislation which modified the judicially created rule and restricted its liability"); *Componile v. Maybee*, 641 A.2d 1143, 1146 (N.J. Super. Ct. Law Div. 1994) (the court maintained that "[t]he legislation which evolved from the commission's recommendations limited host liability to automobile accidents and only where specific criteria have been met").

lature stringently defines terms¹⁰⁵ so as to limit the applicability of the statute to a specific set of circumstances.¹⁰⁶ Moreover, section 2A:15-5.6(a) posits that the statute is the exclusive remedy for a third party injured as a result of the negligent operation of a motor vehicle by an intoxicated adult guest.¹⁰⁷ Thus preventing the possibility that a social host would be subject to common law action in those instances in which an intoxicated guest injures a third party

¹⁰⁵ N.J. STAT. ANN. § 2A:15-5.5. *See also* Luchak, *supra* note 13, at 10. The statute defines "visible intoxication" in stringent language to clarify that a social host could only be liable for serving alcohol to an intoxicated guest in the "clearest cases". *Id.* "Visibly intoxicated" is defined as "a state of intoxication accompanied by a perceptible act or series of actions which present clear signs of intoxication." N.J. STAT. ANN. § 2A:15-5.5. Such language is "more precise than 'obvious' or 'apparent intoxication' and requires that a person behave in a clearly intoxicated manner before liability may be found." Luchak, *supra* note 13, at 10.

Furthermore, the statute only provides for protection against a "social host," who expressly or impliedly:

invites another person onto an unlicense premises for purposes of hospitality and who is not the holder of a liquor license for the premises and is not required to hold a liquor license . . . and who legally provides alcoholic beverages to another person who has attained the legal age to purchase and consume alcoholic beverages.

N.J. STAT. ANN. § 2A:15-5.5. In addition, the statute defines "vehicle" as "a device primarily propelled by a motor that is used to transport a person or property." *Id.* A "Person" is defined as "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." *Id.*

The statute does not define "Social Guest" as recommended and suggested by Governor Thomas Kean. *Id.* Compare with GOVERNOR'S RECONSIDERATION AND RECOMMENDATION STATEMENT, *supra* notes 95 and 98 for a brief review of Governor Kean's position on the use of "social guest" in the legislation.

¹⁰⁶ Luchak, *supra* note 13, at 10. "[O]ne interpretation [of the statute] is that the Legislature sought to restrict the statute's protections primarily to homeowners and preclude reliance upon it by 'commercial hosts' and their business invitees or by hosts who in some way provide alcoholic beverages outside their premises." *Id.*

For example, in *Componile v. Maybee*, 641 A.2d 1143 (N.J. Super. Ct. Law Div. 1994), the court suggested that social hosts may only be "directly liable to minors and third persons injured in automobile accidents." *Id.* at 1146 (citing N.J. STAT. ANN. § 2A:15-5.6). A social host is not liable to any other person injured as a result of the social host's provision of alcoholic beverages to an adult guest. *Componile*, 641 A.2d at 1146.

¹⁰⁷ N.J. STAT. ANN. § 2A:15-5.6(a). This provision effectuates the Legislature's intention to make the statute applicable only to adult guests who have reached the legal age to consume alcohol. *Id.* The policy for assigning liability to a social host who has provided alcohol to a minor guest shall continue to be governed by the test established in *Linn v. Rand*, 356 A.2d 15 (N.J. Super. Ct. App. Div. 1976). *See* Senate Nos. 1152 and 545, *supra* note 93, at 2.

in an automobile accident.¹⁰⁸

In limiting the possibility for common law action, section 2A:15-5.6¹⁰⁹ incorporates both the recommendations made by the commission¹¹⁰ and the amendments suggested by Governor Kean,¹¹¹ to create a three part test for establishing social host liability in subsection (b) of the statute:¹¹² (1) The host must have willfully and knowingly served alcohol to either: (a) a visibly intoxicated guest who was in the presence of the host, or (b) to a visibly intoxicated guest with reckless disregard to the safety of others;¹¹³ (2) The host served alcohol to a visibly intoxicated guest creating a foreseeable risk of harm to others and failed to exercise reasonable care to prevent such foreseeable harm from occurring;¹¹⁴ and (3) The damages caused to the third party must have

¹⁰⁸ Senate Nos. 1152 and 545, *supra* note 93, at 1-2. See also *supra* note 106 and accompanying text. One of the purposes of the enactment of social host liability was to eliminate the expansion of common law and to provide hosts with a reasonably clear set of rules for determining acceptable conduct and behavior in hosting a party. Final Report, *supra* note 75, at 5-6.

¹⁰⁹ N.J. STAT. ANN. § 2A:15-5.6. This section includes three separate provisions. *Id.* Part (a) stipulates that this is the exclusive civil remedy for a third party cause of action against a social host for injuries arising out of the negligent operation of a motor vehicle by an intoxicated adult guest. *Id.* at § 2A:15-5.6(a). The second provision sets forth a three part test for determining whether a social host is liable for the negligent conduct of the intoxicated adult guest. *Id.* at § 2A:15-5.6(b). Finally, the third and final provision of this section discusses the distinction between various BAC levels of the inebriated adult guest, and the impact this has on determining the liability of the social host. *Id.* at § 2A:15-5.6(c).

¹¹⁰ See Final Report, *supra* notes 75-92, for a detailed discussion of the recommendations made by the commission and the rationale behind such suggestions. Compare with N.J.S.A. § 2A:15-5.6(b) for an illustration of the legislature's adoption of the test recommended by the commission. See also *supra* notes 84-86 for the actual recommendations made by the commission.

¹¹¹ N.J. STAT. ANN. § 2A:15-5.6. A reading of section 2A:15-5.6(c) establishes that this is the irrebuttable presumption section that Governor Kean suggested the Legislature include. *Id.* See also *supra* note 100 for a discussion on the Governor's reasoning for wanting this irrebuttable presumption included in the enacted statute.

¹¹² N.J. STAT. ANN. § 2A:15-5.6(b).

¹¹³ *Id.* Specifically, this section of the statute stipulates that:

(1) The social host willfully and knowingly provided alcoholic beverages either:

(a) To a person who was visibly intoxicated in the social host's presence; or

(b) To a person who was visibly intoxicated under circumstances manifesting reckless disregard of the consequences as affecting the life or property of another;

Id.

¹¹⁴ *Id.* "(2) The social host provided alcoholic beverages to the visibly intoxicated

resulted from the inebriated guest's negligent operation of a motor vehicle.¹¹⁵ Although this test, if satisfied, provides for the extension of liability to social hosts,¹¹⁶ it also makes it more difficult to find evidence of a causal relationship between the social host's provision of alcohol and the subsequent injuries to a third party.¹¹⁷

In section 2A:15-5.6(c), the legislature not only answered Governor Kean's concerns as to what constitutes "visible intoxication",¹¹⁸ but also established an irrebuttable presumption¹¹⁹ that

person under circumstances which created an unreasonable risk of foreseeable harm to the life or property of another, and the social host failed to exercise reasonable care and diligence to avoid the foreseeable risk" *Id.*

¹¹⁵ *Id.* "(3) The injury arose out of an accident caused by the negligent operation of a vehicle by the visibly intoxicated person who was provided alcoholic beverages by a social host." *Id.*

¹¹⁶ N.J. STAT. ANN. § 2A:15-5.6(b). The statute clearly articulates that any third party, who has suffered injuries as a direct result of an inebriated guest's negligent operation of a motor vehicle, may recover damages from a social host if all three prongs of the test set forth are met. *Id.*

¹¹⁷ Luckak, *supra* note 13, at 33. One reading of the social host liability statute reveals restrictions limiting proximate cause. *Id.* The negligent provision of alcohol to a drunken guest will only result in liability to the social host if injuries arise out of drunken driving. *Id.* "The Legislature further restricted the cause of action, requiring that a guest be visibly intoxicated in the presence of a social host, at the time additional liquor is provided, or that there be outrageous circumstances under which the social host could be held negligent." *Id.* (citing N.J. STAT. ANN. § 2A:15-5.6(b)(3)).

¹¹⁸ N.J. STAT. ANN. § 2A:15-5.6(c). This particular section of the statute establishes an irrebuttable presumption that if a guest has a BAC level of below .10%, the guest could not have been visibly intoxicated. *Id.* Specifically, this section provides that if the BAC of the intoxicated guest is:

less than 0.10% by weight of alcohol in the blood, there shall be an irrebuttable presumption 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;

Id. Such a provision is precisely what Governor Kean suggested in his statement to the Senate. See Governor's Reconsideration And Recommendation Statement, *supra* note 95. Governor Kean believed that the intent of the legislation was to be fair in extending liability to social hosts. *Id.* By not including such an irrebuttable presumption in the statute, the statute would fail to recognize the extreme difficulty that a social host would have in determining the degree of intoxication of a guest with a BAC level of .10% or less. *Id.* See also Final Report, *supra* note 75, at 9-10 (where the commission indicates that experts testified at the public hearings that if an adult social guest had a BAC level of below .10%, it would be extremely difficult to determine whether the social host was aware of the guest's intoxication).

¹¹⁹ N.J. STAT. ANN. § 2A:15-5.6(c). Also known as a "conclusive presumption", an irrebuttable presumption is "one in which proof of basic fact renders the existence of

the social host was unaware of the guest's intoxication if the BAC of an adult guest is below .10%.¹²⁰ However, if the guest has a BAC of between .10% and .15%, the irrebuttable presumption is replaced by a rebuttable presumption¹²¹ that the guest was not showing any signs of visible intoxication at the time of serving.¹²²

The remaining two sections of the social host liability statute address the applicability of social host liability,¹²³ and the extent to which a social host could be held liable for injuries to a third party.¹²⁴ Specifically, section 2A:15-5.7 precludes an intoxicated adult guest from recovering from a social host.¹²⁵ However, at the insistence of Governor Kean, an exception provides that when two visibly intoxicated guests are served alcohol by a social host and leave the party together, the passenger guest may sue the social host to recover damages arising from an accident caused by the drunk driving, even though he is an intoxicated adult guest.¹²⁶

the presumed fact conclusive and irrebuttable." BLACK'S LAW DICTIONARY 712 (6th ed. 1991).

¹²⁰ N.J. STAT. ANN. § 2A:15-5.6(c)(1).

¹²¹ N.J. STAT. ANN. 2A:15-5.6(c)(2). Unlike an irrebuttable presumption, a rebuttable presumption "can be overturned upon the showing of sufficient proof." BLACKS LAW DICTIONARY 712 (6th ed. 1991).

¹²² N.J. STAT. ANN. 2A:15-5.6(c)(2): This particular provision of the social host liability statute specifically provides that if the BAC of the intoxicated guest is: at least 0.10% but less than 0.15% by weight of alcohol in the blood, there shall be a rebuttable presumption, 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.

Id.

¹²³ See N.J. STAT. ANN. § 2A:15-5.7. Section 2A:15-5.7 establishes that a social host is not liable for the damages suffered by the intoxicated guest. *Id.*

¹²⁴ See N.J. STAT. ANN. § 2A:15-5.8. See *infra* note 127 and accompanying text.

¹²⁵ N.J. STAT. ANN.. 2A:15-5.7. "No social host shall be held liable to a person who has attained the legal age to purchase and consume alcoholic beverages for damages suffered as a result of the social host's negligent provision of alcoholic beverages to that person." *Id.*

¹²⁶ GOVERNOR'S RECONSIDERATION AND RECOMMENDATION STATEMENT, *supra* note 95 and accompanying text. *Id.* Governor Kean emphasized that the use of the provision, "a person who is not a social guest" in section 2A:15-5.6, would in such a situation, "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." *Id.* It was the Governor's opinion that this was not the intent of the Legislature, and therefore, this section should be amended. *Id.* See *supra* note 125; see also Luchak, *supra* note 13, at 33. Due to the insistence of Governor Kean, an exception to this provision was added. *Id.* It states: "If a social host serves

Section 2A:15-5.8 addresses the degree to which a social host will be held liable for the damages incurred by a third party.¹²⁷ The purpose of this section is to effectuate the legislature's intent to limit the liability of the social host.¹²⁸ By holding that social hosts are only liable to the extent that they are negligent, the legislature places a cap on the liability of a host.¹²⁹ Such a provision not only appears to be fair in light of the negligence of the inebriated guest, but also enables the social host to acquire insurance coverage with greater ease.¹³⁰

In sum, the enactment of New Jersey's Social Host Liability statute by the New Jersey legislature appears to greatly limit the court's ruling in *Kelly*.¹³¹ Nonetheless, it represents the first time that a state legislature did not reverse a state court recognition of social host liability.¹³²

two people while they are visibly intoxicated and they drive off together and are injured in an accident, the passenger, but not the driver, can sue the social host." *Id.*

¹²⁷ N.J. STAT. ANN. § 2A:15-5.8. This particular provision specifically states that "in any case where a social host . . . is determined to be a joint tortfeasor, the 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 the social host or other party." *Id.*

¹²⁸ N.J. STAT. ANN. § 2A:15-5.8. See *infra* notes 129-131 for further elaboration on this point.

¹²⁹ N.J. STAT. ANN. § 2A:15-5.8. Specifically, the statute effectively requires an analysis to be made comparing the degree to which defendant's negligence played a role in the resulting injury and the amount of damages defendant is to be held accountable for. *Id.* See *supra* note 127 for a look at the exact wording of the statute.

¹³⁰ See Luchak, *supra* note 13, at 10. Where the author indicates that this provision of the social host liability statute was designed to "reduce overall liability of the [social host], to make insurance more readily available, and to ensure that the [host] did not end up having to assume payment for the liability of the often impecunious drunken driver." *Id.*

¹³¹ See Final Report, *supra* note 75, at 5-6. The *Kelly* decision was broad and without finality. See *id.* at 5. The decision gravely concerned the Legislature, and as a result, the Legislature enacted the state social host liability act to prevent the common law expansion of social host liability and to unambiguously inform social hosts of the duties required of them. *Id.* at 5-6.

¹³² See Luchak, *supra* note 13, at 33. In each of the few instances in which a state court has recognized a form of social host liability, the state legislature has subsequently reversed the decisions. *Id.* For example, in *Coulter v. Superior Court of San Mateo County*, 577 P.2d 669 (Ca. 1978), the court articulated that a host who serves alcoholic beverages to an obviously intoxicated guest may be liable to a third party where such harm is reasonably foreseeable. *Id.* at 674. Shortly thereafter, the California legislature adopted West's Cal. Ann. Cov. Code § 1714(b) which reversed *Coulter*, and provided that a social host is not liable for furnishing alcoholic beverages. Luchak, *supra* note 13, at 33.

IV. The Court's New Role in Social Host Liability Cases

With the codification of social host liability,¹³³ the New Jersey State Courts have assumed a new role in resolving issues of social host liability.¹³⁴ Rather than relying on the judicially created common law to determine the liability of a social host, the courts now look to legislative enactment to determine such liability.¹³⁵ A requirement which will inevitably give rise to the need for judicial interpretation as to the applicability and parameters of the statute.¹³⁶

Recent cases demonstrate the court's application of the legislative enactment.¹³⁷ In *Componile v. Maybee*,¹³⁸ the court articulated that common law theories of liability have been replaced by legislative enactment, and therefore this court must look to New Jersey's social host liability statute to determine liability.¹³⁹ Interpreting

¹³³ See N.J. STAT. ANN. §§ 2A:15-5.5-5.8. See also *supra* notes 101-132 for a complete discussion of the provisions that make up New Jersey's Social Host Liability statute.

¹³⁴ See *Componile v. Maybee*, 641 A.2d 1143 (N.J. Super. Ct. App. Div. 1994), *Dower v. Gamba*, 647 A.2d 1364 (N.J. Super. Ct. App. Div. 1994), *infra* notes 138-50 and accompanying text for an examination of these cases and the new role of the New Jersey judiciary in reviewing cases dealing with social host liability.

¹³⁵ N.J. STAT. ANN. § 2A:15-5.6(a). The statute explicitly states that this act is the "exclusive remedy" under which a third party can sue a social host for damages sustained as a result of the negligent operation of a motor vehicle by an intoxicated adult guest. *Id.* As of January 14, 1988, the common law rules applicable to determining the liability of a social host when a third party is injured as a result of the negligent operation of a motor vehicle by an intoxicated guest are superseded by legislative enactment. See N.J. STAT. ANN. § 2A:15-5.5-5.8.

¹³⁶ See *infra* notes 138-150 for a brief examination of the courts new role in interpreting and applying the social host liability statute. N.J. STAT. ANN. § 2A:15-5.5-5.8.

¹³⁷ See *infra* notes 138-50 and accompanying text for a discussion of *Componile v. Maybee*, 641 A.2d 1143 (N.J. Super. Ct. Law Div. 1994) and *Dower v. Gamba*, 647 A.2d 1364 (N.J. Super. Ct. App. Div. 1994).

¹³⁸ *Componile*, 641 A.2d at 1146. In *Componile*, plaintiff was an adult guest at a party thrown by the social host. *Id.* at 1144. Approximately twenty to thirty guests attended the party, including the adult defendant. *Id.* Plaintiff claimed that he recognized that the defendant had become intoxicated at the party when the defendant began acting loud and aggressive. *Id.* Plaintiff further alleged that while outside the host's house, the defendant grabbed him causing him to slip on the wet leaves and fall to the ground. *Id.* Once on the ground, plaintiff testified that the defendant proceeded to punch and kick him, causing the plaintiff to incur injuries. *Id.*

Plaintiff sued both the defendant and the social host. *Id.* The plaintiff theorized that the social host was liable for damages because the host negligently provided the defendant alcoholic beverages which caused the defendant to subsequently assault him. *Id.* The defendants brought a motion to dismiss. *Id.*

¹³⁹ *Id.* at 1146. The court referred to the judiciaries' development of common law on social host liability. *Id.* However, the court indicated that the enactment of subse-

the statute, the court maintained that sections 2A:15-5.6 and 2A:15-5.7 limit the liability of social hosts to minors and third parties who are injured as the result of an automobile accident.¹⁴⁰ Therefore, the court concluded that the social host was not liable to the plaintiff because his injuries were wholly unrelated to an automobile accident.¹⁴¹

In *Dower v. Gamba*,¹⁴² the situation compelled the court to interpret the meaning of the word "provide"¹⁴³ in section 2A:15-5.6(b) of the statute.¹⁴⁴ Reflecting the intention of the legislature in drafting section 2A:15-5.6(b),¹⁴⁵ the court opined that the legislature never intended for a host to escape liability merely by avoid-

quent legislation superseded the common law in this area. *Id.* Therefore, the court addressed the applicability of New Jersey's Social Host Liability statute to the present case. *Id.*

This was not the only issue the court addressed. *Id.* at 1147 n.1. Plaintiff also claimed that the social host was liable to him because there was a dangerous condition present on the premises, namely the wet leaves, and as an invitee, the host should have warned him of this condition. *Id.* at 1147. The court rejected this argument and ruled that the wet leaves did not constitute a dangerous condition. *Id.*

¹⁴⁰ *Id.* at 1147. "A social host may only be directly liable to minors and third persons injured in automobile accidents. A social host is not liable to anyone else injured as a result of the social host's serving of intoxicating beverages to a guest." *Id.*

¹⁴¹ *Id.*

¹⁴² 647 A.2d 1364 (N.J. Super. Ct. App. Div. 1994). In *Dower*, plaintiffs (both minors), attended a party hosted by the Gamba brothers on May 31, 1988. *Id.* at 1365. Plaintiffs left the party with defendant Kohaut who was to drive them home. *Id.* On the way home, defendant collided with a tree, causing the plaintiffs to incur personal injuries. *Id.* Plaintiff's allege that defendant Kohaut was drinking heavily at the party, and that the Gamba brothers were aware of his intoxication, yet let him leave the party knowing that he would be driving home. *Id.* at 1365-66. Plaintiff's also alleged that although defendant Kohaut brought his own beer to the party, the Gamba brothers had supplied beer for the guests at the party. *Id.* at 1366. As such, the plaintiff's sued the Gambas, alleging that they were negligently liable under the social host liability statute. *Id.*

The Gambas claimed that they never served alcohol to any of their guests. *Id.* They claim that the guests brought their own alcohol and that they never supplied or provided alcohol as required by the statute. *Id.*

The complaint was dismissed at the trial level because of the plaintiff's failure to prove that the Gambas had actually served alcohol to Kohaut. *Id.*; see also *infra* notes 145-150 (discussing the appellate court's interpretation of the statute).

¹⁴³ See N.J. STAT. ANN. § 2A:15-5.6(b)(1). The statute states: "The social host willfully and knowingly provided alcoholic beverages" *Id.* (emphasis added).

¹⁴⁴ *Dower*, 647 A.2d at 1365.

¹⁴⁵ *Id.* at 1367. In referring to the meaning of section 2A:15-5.6(b), the court stated that the true test in interpreting the various provisions of the social host liability statute, is to determine what the legislature's intention was in enacting that particular section. *Id.*

ing direct service of alcohol to the guests.¹⁴⁶ Thus, the court reversed summary judgment and held that a determination of the word "provide" requires a factual finding as to whether or not a host willfully and knowingly provides alcoholic beverages.¹⁴⁷ The court maintained, however, that the plaintiff's failure to prove that the host directly handed alcohol to a guest did not automatically exempt the host from liability under section 2A:15-5.6(b).¹⁴⁸ Rather, the court implied that liability could be imposed even where it is found that the host disregarded a foreseeable risk by indirectly¹⁴⁹ providing alcohol to a guest whom was known to be intoxicated.¹⁵⁰

V. Conclusion

The development of social host liability in New Jersey represents a concerted effort by both the state judiciary and legislature to cease the senseless loss of lives caused each year by drunk driving.¹⁵¹ Although the state has enacted legislation to limit the scope

¹⁴⁶ *Id.* at 1368. "The proposition that the Legislature intended that a social host may escape responsibility for the negligent provision of alcoholic beverages to an obviously intoxicated person merely 'by placing the booze on the table' and walking away clearly contravenes the duty carefully spelled out in the statute." *Id.* The court further indicated that such an interpretation "drastically diminishes the important goal of the Legislature when it established the conduct of social hosts." *Id.* It was never an intention of the Legislature to require a plaintiff to prove that the social host directly provided alcohol to the guest. *Id.*

¹⁴⁷ *Id.* at 1368-69.

¹⁴⁸ *Id.* at 1369. See *supra* notes 112-116 and accompanying text for a review of section 2A:15-5.6(b).

¹⁴⁹ *Dower*, 647 A.2d at 1368. The court maintained that if a social host placed alcoholic beverages on a table, and then walked away from the table, the social host could still be liable for the provision of the alcohol to the guest even though the host did not directly serve the guest. *Id.* To find otherwise, the court stated, would "clearly contraven[e] the duty carefully spelled out in the statute". *Id.* (citing N.J. STAT. ANN. § 2A:15-5.6(b)).

¹⁵⁰ *Id.* The court emphasized that one of the duties placed on a social host is to avoid making alcoholic beverages available to a person who was visibly drunk either in the presence of the host or in circumstances creating a foreseeable and unreasonable risk of harm to others. *Id.* (citing N.J. STAT. ANN. 2A:15-5.6 (1)(a) & (b)). Furthermore, the court added that "[t]he Legislature further intensified the test of liability by adding the requirement that it be proved that 'the social host failed to exercise reasonable care and diligence to avoid the foreseeable risk.'" *Id.* at 1368.

¹⁵¹ See *supra* note 3 and accompanying text for statistics on the number of lives lost each year to alcohol-related accidents.

of social host liability,¹⁵² the duty of the courts is unending.¹⁵³ With the increasing frequency of litigation, the judiciary will be consistently called upon to apply and redefine the parameters of the statute.¹⁵⁴ Moreover, the courts will likely find an increasing number of suits being filed in the future which propose to establish new theories on liquor liability.¹⁵⁵

With careful consideration, the New Jersey Social Host Liability statute strikes a delicate balance between its remedial purposes and the potential impact on social attitudes and customs. Therefore, it can be said that the statute reflects a successful joint effort between the state judiciary and the legislature to respond to the demands of society.

¹⁵² See *supra* notes 43-72 and accompanying text for a review of the development of New Jersey's common law liability for social hosts; see also *infra* note 153.

¹⁵³ *Final Report*, *supra* note 75, at 5. The state legislature created the legislation out of grave concern for the possible impact that the *Kelly* decision could have on future litigation of social host liability. *Id.* The court in *Kelly* made it clear that that the court's holding pertained solely to the particular set of circumstances before the court, and that as other issues involving social host liability arise, they will be dealt with accordingly. *Kelly*, 476 A.2d at 1228.

¹⁵⁴ See *supra* notes 133-150 and accompanying text for an analysis of *Dower v. Gamba* and *Compton v. Maybee*, two cases which have come before the New Jersey judiciary since the enactment of the state's social host liability statute.

¹⁵⁵ See, e.g., *Daniels v. State Dept. of Transportation*, 571 A.2d 1329 (N.J. Super. Ct. App. Div. 1990); *Wagner v. Shlue*, 605 A.2d 294 (N.J. Super. Ct. Law Div. 1992). In *Daniels*, the court held that it may be possible to extend liability to a local or state government for the damages incurred by a third party as a result of poorly designed roads which were insufficient to protect innocent drivers from being harmed by drunk drivers. *Daniels*, 571 A.2d at 1334. In *Wagner*, the court allowed a woman to bring an action against her husband who had allowed her to drive drunk. *Wagner*, 605 A.2d at 295-96.