



STATE OF NEW JERSEY

Commission on Alcoholic Beverage Liability

FINAL REPORT

September 18, 1985

Honorable Raymond Lesniak
Chairman

Honorable Joseph L. Bocchini, Jr.
Vice Chairman

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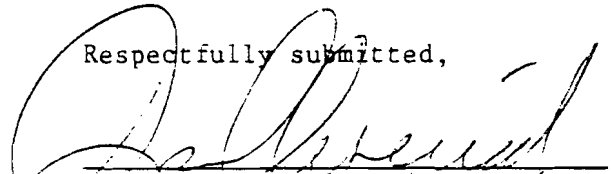
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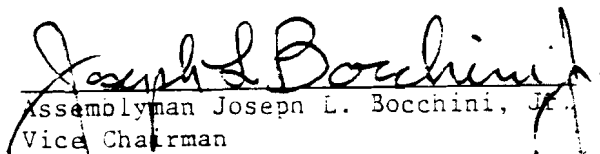
Ladies and Gentlemen:

The Commission on Alcoholic Beverage Liability, created pursuant to Senate Concurrent Resolution No. 116 of 1984 (filed October 19, 1984), herewith respectfully submits its findings and recommendations in compliance with the terms of Senate Concurrent Resolution No. 116 of 1984.

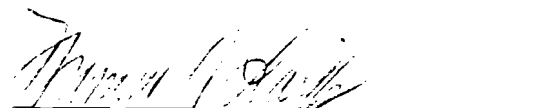
Respectfully submitted,




Senator Raymond Lesniak
Chairman



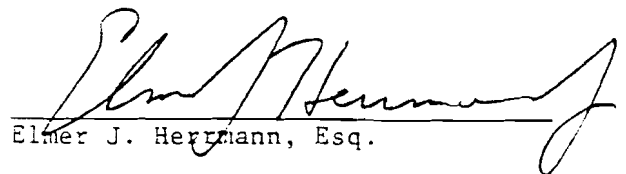
Assemblyman Joseph L. Bocchini, Jr.
Vice Chairman



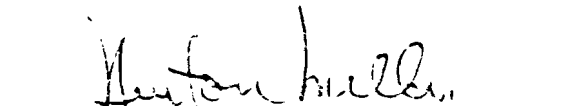
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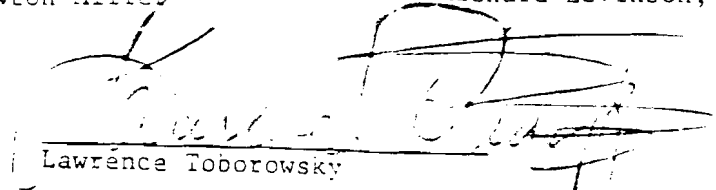
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Research Director

GLENN E. MOORE, III
Assistant Research Director

September 18, 1985

Governor Thomas H. Kean
President of the Senate
Speaker of the General Assembly
Members of the Legislature

Ladies and Gentlemen:

I am extremely pleased to transmit with this letter the final report and recommended legislation of the Commission on Alcoholic Beverage Liability.

The report, which is based upon six months of study by the Commission, represents a thorough investigation of the issue of social host liability. Enactment of the legislation recommended by the report will establish for social hosts who serve alcoholic beverages a clear statutory standard of liability.

The Commission on Alcoholic Beverage Liability was created in response to the New Jersey Supreme Court's decision in Kelly v. Gwinnell, 95 N.J. 538 (1984). In this decision the court held that a social host who serves liquor to an adult social guest, knowing 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 guest's negligent operation of a motor vehicle, if the negligence is caused by the intoxication. After conducting its study of the impact of the Kelly decision, the commission has recommended the enactment of legislation that will define the cause of action against a social host who serves alcoholic beverages. The Commission believes that the proposed legislation will raise the consciousness of the consumers of alcoholic beverages to their responsibilities concerning drunken driving and result in just compensation for the innocent victims of alcohol-related accidents without imposing an excessive social or financial burden on the citizens of the State. Perhaps most important, the Commission

believes that the proposed legislation will alleviate the fear that the court will expand social host liability in an unpredictable manner.

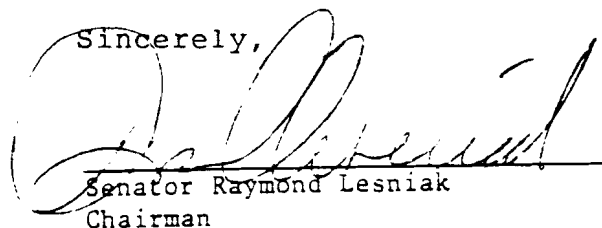
The talented members of the Commission contributed substantial time and effort to developing the recommendations and legislation contained in the report. My colleagues Senator Gerald Cardinale, Assemblyman Joseph L. Bocchini, Jr., and Assemblyman Newton Miller demonstrated their dedication to the Commission by making time in their busy schedules for meetings and public hearings and by offering their expert advice on the issues facing the Commission. The public members of the Commission, Murray A. Laiks, Esq., Elmer J. Herrmann, Esq., Lawrence Toborowsky, and Richard Levinson, Esq., deserve special recognition for bringing to the Commission the benefits of their knowledge and experience in the area of liquor liability.

I would like to thank the Office of Legislative Services for providing staff support. Geraldine Weltman acted as Secretary to the Commission, and Hermine Kelty and Diane Wiacek ably provided efficient clerical service.

The Assembly Minority Office provided able assistance from Beth Schermerhorn, Research Associate. The Assembly Majority Office contributed the services of Peter Guzzo, Senior Policy Analyst, and John Higgins, Assistant to the Speaker. Special thanks are owed to Garry J. Furnari of the Senate Majority Office and to Steven L. Sacks-Wilner of the Senate Minority Office, who functioned as Majority and Minority Counsel to the Commission.

The Commission on Alcoholic Beverage Liability believes that its report and proposed legislation represent a fair and balanced solution to the problem of social host liability created by the Kelly v. Gwinnell decision that will be applicable in every social situation in which liquor is provided.

Sincerely,



Senator Raymond Lesniak
Chairman

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I. INTRODUCTION

A. Creation of the Commission

In June of 1984, the New Jersey Supreme Court, in Kelly v. Gwinnell, 95 N.J. 538, held that a social host who serves liquor to an adult social guest, knowing 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 guest if the negligence is caused by the intoxication.

In response to the court's decision, the Legislature passed Senate Concurrent Resolution No. 116 of 1984, which was filed on October 19, 1984, creating the Commission on Alcoholic Beverage Liability (see Appendix A). The task of the commission, as set forth in the Resolution, was to study the duties, responsibilities, and liabilities of private hosts with regard to the serving of alcoholic beverages to guests and to recommend appropriate, equitable and effective ways to promote the goals of reducing alcohol-related accidents and injuries and to provide just compensation for victims of these accidents.

B. Meetings and Public Hearings

At its organizational meeting, held on April 11, 1985, the commission elected its officers and planned the course of its investigation.

The commission held two other business meetings, on June 17, 1985 and September 4, 1985.

The commission held two public hearings to provide a forum for public discussion of all issues relating to social host liability. The public hearings were held on April 25, 1985, in Linden and on May 9, 1985, in Hackensack. A transcript was made of each hearing.

Approximately twenty speakers made presentations at the public hearings on behalf of a wide variety of groups: the State Department of Insurance, the insurance industry, the legal profession, advocates of strict laws against drunken driving, the liquor and restaurant industries, law enforcement agencies, public safety experts, the State Department of Health, and experts on the effects of alcohol on the human body.

II. SUMMARY OF RECOMMENDATIONS

1. The Legislature should not leave the issue of social host liability in the hands of the court, but 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.

2. The social host liability law enacted by the Legislature pursuant to recommendation #1 should establish reasonable and clear parameters of social host liability in order to prevent the court from expanding that liability and in order to precisely inform social hosts of what is expected of them.

3. The standard of liability for social hosts contained in the law enacted by the Legislature pursuant to recommendation #1 should make it clear that a social host will not be liable for injuries to the person or to real and personal property caused by an intoxicated guest who has attained the legal age for purchasing and consuming alcoholic beverages except as set forth in the law.

The law should establish that a person may recover damages for injury to the person or to real or personal property from a social host:

a. When the social host willfully and knowingly provides alcoholic beverages either:

(1) To a person who is visibly intoxicated in the social host's presence, or

(2) Under circumstances manifesting reckless disregard of the consequences as affecting the life or property of others; and

b. When the host provides alcoholic beverages to a person under circumstances which create a reasonably foreseeable risk of harm to others; and

c. When the injury arises out of an accident caused by the negligent operation of a vehicle by a person who was provided alcoholic beverages by a social host.

4. The word "vehicle" should be defined as a device propelled primarily by a motor that is used to transport a person or property.

5. The social host liability law enacted by the Legislature should distinguish between the term "intoxication," as defined by the law against driving while intoxicated (R.S. 39:4-50), and the term "visibly intoxicated." The law should define "visibly intoxicated" as a state of intoxication accompanied by a perceptible act or series of actions which present clear and convincing signs of intoxication. The definition should include a presumption that a person is not visibly intoxicated if a test to determine the presence of alcohol in the blood indicates a blood alcohol concentration of less than 0.15% by weight. The liability of a social host for injuries caused or incurred by guests to whom the host provides alcoholic beverages should be based upon a standard of "visible intoxication," not a standard of "intoxication."

6. The liability of a social host who serves alcoholic beverages to a guest who has not attained the legal age to purchase and consume alcoholic beverages should remain as it was set forth by the court in Linn v. Rand, 140 N.J. Super. 212 (App. Div., 1976).

III. DISCUSSION OF ISSUES

A. Enactment of Legislation

The New Jersey Supreme Court's decision in Kelly v. Gwinnell, 95 N.J. 538 (1984), caused the Legislature and the commission to be gravely concerned. Basing its decision upon the facts of the situation before it, the court held that a social host who serves liquor to an adult guest, knowing both that the guest is intoxicated and that the guest will thereafter be operating a motor vehicle, is liable for injuries inflicted on a third party as a result of the negligent operation of a motor vehicle by a guest if the negligence is caused by the intoxication. The court clearly stated that its decision applied only to the facts before it and should not be taken as applying to other situations, such as large parties at which the host is too busy to personally serve alcoholic beverages to each guest or at which guests serve themselves or each other. "We will face those situations when and if they come before us," Chief Justice Wilentz said (at p. 556).

The commission believes that to allow the court's decision to stand and to take no legislative action would be to leave the public without any indication of its responsibilities in the area of serving alcoholic beverages to social guests. Accordingly, the commission recommends legislation that will clearly establish the circumstances under which

a social host can be held liable for injuries and damages caused by a social guest to whom the host has provided alcoholic beverages (see Appendix B). The commission believes that the enactment of this legislation will prevent the court from expanding social host liability and allay the fears of social hosts by precisely informing them of their duties.

B. Proliferation of Lawsuits

The court's narrowly drawn decision in Kelly v. Gwinell applied only to the facts of that case and refused to speculate on other types of situations involving social host liability that might occur. As a result, the citizens of New Jersey, without advanced warning, were rendered vulnerable to lawsuits seeking to expand social host liability. A social host, acting under a currently acceptable standard of behavior, could be faced with the trauma of a lawsuit and a jury verdict that threatened his assets or was beyond his ability to pay.

In corroboration of its concern that future lawsuits will attempt to expand social host liability as defined in Kelly v. Gwinell, the commission was told by Allstate Insurance Company that all but one of its nine pending social host cases represented attempts to expand the facts and the holding of Kelly v. Gwinell (see Appendix D).

The commission believes that its proposed legislation will alleviate the threat of unpredictably expanding social host liability created by Kelly v. Gwinnell. 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. As a result, the commission believes, social hosts will not need to fear that behavior that is considered to be responsible under the statute will lead to a lawsuit.

C. Foreseeability

The court in Kelly v. Gwinnell did not limit the circumstances under which a social host could be held liable for injuries to a third party caused by an adult guest to whom the host had served liquor. The public policy contained in the legislation recommended by the commission limits social host liability to those who serve alcoholic beverages under circumstances that create a reasonably foreseeable risk of harm to others and to situations in which the injury arises out of an accident caused by the negligent operation of a vehicle by a person who was provided alcoholic beverages by a social host. "Vehicle" is defined to mean a device primarily propelled by a motor that is used to carry a person or property.

The commission believes that its standard of foreseeability is consistent with conventional negligence analysis. As the court held in Rappaport v. Nichols, 31 N.J. 188, 201 (1959), "Negligence 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." The commission believes that the standard of foreseeability contained in its proposed legislation is also fair: by adopting this standard the State will ensure that the innocent victims of reasonably foreseeable accidents involving vehicles propelled in whole or in part by a motor caused by intoxicated guests who are served liquor by negligent hosts will be justly compensated.

D. Negligence

The legislation proposed by the commission also modifies the holding in Kelly v. Gwinnell by establishing a standard of liability that can be applied in all situations involving the serving of liquor in a social setting, including the types of situations about which the court refused to speculate until specific cases come before it. The proposed legislation requires that in order for a host to be liable, his behavior must meet not only the foreseeability standard described above but also a negligence standard: the host must have willfully and knowingly provided alcoholic beverages either to an individual who was visibly intoxicated in the host's presence or under circumstances manifesting reckless disregard of the consequences as affecting the life or property of another. The commission believes that this

standard of negligence can be applied to every social situation in which liquor is provided, including large parties at which the host is too busy to serve drinks to his guests personally or at which guests serve themselves or each other. It will also apply if the actual provider of alcoholic beverages is not present, as when a parent furnishes alcoholic beverages for his young adult child to hold a large party at which liquor will be provided in the parents' absence; however, the standard of proof of negligence in this type of situation is a reckless standard, which involves more than normal negligence.

E. Visible Intoxication

One of the most serious problems facing the commission was the development of a standard of behavior for social hosts that would clearly explain to the citizens of the State their responsibilities in serving liquor in a social setting. At its public hearings, the commission heard a great deal of testimony from such experts on alcohol consumption as scientists, law enforcement officers, and health officials stating that it is extremely difficult to determine whether or not a person has consumed enough alcohol to bring his blood-alcohol concentration (BAC) to .10%, the level at which a person is legally intoxicated for the purposes of the offense of driving while intoxicated. Witnesses further stated before the commission 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

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slurred speech, boisterousness, and inability to walk normally, that his guest is intoxicated. Witnesses and members of the commission expressed the fear that if an intoxicated guest's BAC were tested at between .10% and .15%, a jury might determine that the host negligently served the guest while he was intoxicated, even though visible signs of intoxication were not actually present at the time the host served the guest. Given this testimony, the commission believes that it is necessary to develop a definition of "visibly intoxicated" that will be distinct from the definition of "intoxicated" in the law against driving while intoxicated. Only by making this distinction can the commission provide social hosts with a means of avoiding liability that they are capable of both understanding and satisfying.

The definition of "visibly intoxicated" in the commission's proposed legislation will, together with the legislation's standards of foreseeability and negligence, give citizens of New Jersey a clear idea of how they can behave responsibly. The legislation defines "visibly intoxicated" as a state of intoxication accompanied by a perceptible act or series of actions which present clear and convincing signs of intoxication. The definition also includes a presumption, which may be rebutted, that the guest was not intoxicated if his BAC is less than .15%.

F. Homeowners' Insurance

In conducting its investigation, the commission attempted not only to develop a clear standard of responsibility for social hosts but also to ascertain the impact of such a standard on the State.

In her dissenting opinion to Kelly v. Gwinnell, Justice Garibaldi identified the impact of social host liability on homeowners' insurance as one issue about which too little was known. The commission has looked into the question of homeowners' insurance thoroughly and concludes that the impact of its proposed legislation on homeowners' insurance will be minimal.

Representatives of the State's Department of Insurance, insurance companies operating in New Jersey, and insurance trade organizations stated at the commission's public hearings that homeowners' insurance policies do cover social host liability, because they cover all situations not specifically excluded in the policy. The same individuals also testified that because the Department of Insurance regulates homeowners' insurance, any changes in homeowners' insurance rates or the forms of coverage of such policies must be approved by the department before a company can impose them on its policyholders. The department's responsibility is to see that rates are not raised unless an insurance company demonstrates that it has paid out claims and therefore needs an increase. (It is important to note that, unlike homeowners' insurance, tavern owners' insurance is not regulated by the department. This lack

of regulation is one of the factors contributing to the current crisis in the availability of reasonably priced insurance for tavern owners.)

According to the Department of Insurance, the holding in Kelly v. Gwinnell can have no impact on homeowners' insurance rates for at least three years from the date of the decision, or until 1986. The department would not approve an increase in rates based on less than three years' worth of data on losses and claims paid. The commission assumes that the impact of its proposed legislation would be similarly delayed. Testimony received from various insurance companies indicated that at this time there are no plans on their part to change either the rates or the forms of homeowners' insurance in the State. The companies that spoke to the commission indicated that they had only a few pending cases touching on social host liability. (Prupac indicated that it has no pending social host liability cases; Allstate indicated that it has 9.)

The commission believes that even if homeowners' insurance rates increase as a result of its proposed legislation, the increase will be minimal, unlike the increasing rates affecting tavern owners' insurance at the present time. The pool of homeowners' insurance policyholders in the State is so large that any increase in rates will be minimal. In contrast, the pool of tavern owners' insurance policyholders is small, and consequently the amount of any rate increase based upon claims paid is greater for each policyholder.

Information received by the commission from the State of Oregon bears out the commission's assessment that the impact of its proposed legislation on homeowners' insurance rates will be minimal. Since 1979, Oregon has had a social host liability statute which states:

No private host is liable for damages incurred or caused by an intoxicated social guest unless the private host has served or provided alcoholic beverages to a social guest when such guest was visibly intoxicated.
(Oregon Revised Statutes 30.955;
Oregon Laws of 1979, c.801, §2)

According to an official in the Oregon Division of Insurance, homeowners' insurance policies in Oregon, like those in New Jersey, cover social host liability. Despite the fact that Oregon does not regulate homeowners' insurance, however, that state has experienced no apparent rise in the liability portion of homeowners' insurance rates since 1979.

The Oregon statute does not limit social host liability to situations in which the host knows the guest will drive a car; nevertheless the Oregon Division of Insurance stated that there has not been an overabundance of social host liability suits filed.

The information received by the commission from Oregon increases in significance with consideration of the fact that Oregon does not regulate homeowners' insurance rates or forms of coverage. At the present time, Oregon is experiencing the same crisis in the availability of reasonably priced tavern owners' insurance that New Jersey is experiencing; yet, though it has been living under a social host

liability statute since 1979, Oregon has experienced no crisis in homeowners' insurance rates, availability, or forms of coverage.

The commission believes that, as suggested by testimony offered at its public hearings and as experienced by the State of Oregon, the establishment of social host liability by Kelly v. Gwinnell and the enactment of the commission's proposed legislation will have a minimal impact upon homeowners' insurance in the State.

G. Automobile Insurance

The commission believes that the innocent victims of intoxicated persons should be justly compensated for their injuries. Without a clearly defined, equitable statute establishing social host liability, there is a greater chance that victims will not be justly compensated.

The commission heard testimony that the State's no fault automobile insurance program will provide compensation to victims in most cases (unless the victim was an uninsured driver injured by an uninsured, judgment-proof driver); however, the minimum amounts of insurance required by law are insufficient to compensate a victim whose injuries require a lifetime of care.

H. Public Policy Objectives

The commission's goals were to study the duties, responsibilities and liabilities of hosts who serve alcoholic beverages, to recommend appropriate, equitable and effective

ways to reduce alcohol-related accidents and injuries, and to provide just compensation for the victims of intoxicated persons. In testimony presented at its public hearings, the commission heard it stated that the Kelly v. Gwinnell decision already has resulted in more care on the part of hosts who provide their guests with alcoholic beverages.

The commission believes that its proposed legislation, by establishing reasonable and clear parameters of social host liability, will continue to encourage social hosts to take care when they serve drinks in a social setting.

To the extent that the commission's proposed legislation cuts down on the number of drunken drivers who are on the road, it will benefit the citizens of the State by contributing to a decrease in the number of deaths and injuries and the amount of property damage caused by drunken driving, as well as a decrease in health care costs, insurance costs and court costs. The commission believes that the impact of such a law on homeowners' insurance rates will be minimal. The commission further believes 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.

Finally, the commission believes that by placing into the statutes reasonable and clear parameters of social host liability that can be applied in all situations involving the serving of liquor in a social setting, including those

situations about which the court refused to speculate in Kelly v. Gwinnell, its proposed legislation will cut down on the number of lawsuits filed with the intention of expanding social host liability.

[OFFICIAL COPY REPRINT]
SENATE CONCURRENT RESOLUTION No. 116

STATE OF NEW JERSEY

INTRODUCED JULY 30, 1984

By Senator ORECCHIO

Referred to Committee on Natural Resources and Agriculture

A CONCURRENT RESOLUTION establishing a commission to study the duties, responsibilities and liabilities of private [and licensed] servers of alcoholic beverages and to make certain recommendations.

1 WHEREAS, The New Jersey Supreme Court has ruled that a private
2 host who serves alcoholic beverages to a guest, knowing that
3 the guest is intoxicated and will thereafter operate a motor
4 vehicle, is liable for injuries inflicted on a third party as a result
5 of the negligent operation of the motor vehicle by the intoxicated
6 guest (*Kelly v. Gummell*, N. J. (1984)); and

7 WHEREAS, This decision, which is without precedent anywhere in
8 the nation, raises numerous issues and questions for legislative
9 study and resolution, including such matters as: the ability of
10 private hosts to discern intoxicated behavior; the lengths to which
11 a host has to go to monitor and restrain the behavior of a guest;
12 the costs and extent of coverage of homeowner's and renter's
13 insurance for this liability; and any distinctions between the
14 duties, responsibilities and liabilities imposed on private hosts
15 as compared to those imposed on alcoholic beverage licensees;
16 and

17 WHEREAS, It is in the public interest in light of this decision to study
18 and recommend appropriate, equitable and effective ways to
19 promote the goals of reducing alcohol-related accidents and in-
20 juries and to provide just compensation for victims of these
21 accidents; now, therefore,

1 BE IT RESOLVED by the Senate of the State of New Jersey, the
2 General Assembly concurring):

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

Matter printed in italics here is new matter.

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

*—Assembly amendments adopted September 13, 1984.

1 1. There is established the Commission on Alcoholic Beverage
2 Liability. The commission shall consist of 8 members to be ap-
3 pointed as follows: two members of the Senate, who shall be of
4 different political parties, and two members of the public to be
5 appointed by the President of the Senate, and two members of the
6 General Assembly, who shall be of different political parties, and
7 two members of the public to be appointed by the Speaker of the
8 General Assembly. The members of the commission shall serve
9 without compensation, but shall be eligible for reimbursement for
10 expenses incurred in the performance of official commission busi-
11 ness. A vacancy shall be filled in the same manner as the original
12 appointment.

1 2. The members of the commission shall select a chairman and
2 vice-chairman from among the members and a secretary who need
3 not be a member. The commission shall organize as soon as possible
4 after the appointment of its members and shall expire upon iss-
5 uance of its report.

1 3. It shall be the duty of the commission to study the duties,
2 responsibilities and liabilities of private hosts *~~and alcoholic bev-~~
3 ~~erage licensees]~~* with regard to the serving of alcoholic beverages
4 to guests *~~and customers]~~* and recommend appropriate, equitable
5 and effective ways to promote the goals of reducing alcohol-related
6 accidents and injuries and to provide just compensation for victims
7 of these accidents.

1 4. The commission shall be entitled to the assistance and services
2 of the employees of any State, county or municipal department,
3 board, bureau, commission or agency as it may require and as may
4 be available to it, and to employ stenographic and clerical assistance
5 and incur expenses for traveling and other miscellaneous expenses
6 necessary to perform its duties, within the limits of funds appro-
7 priated or otherwise made available to it for its purposes.

1 5. The commission may meet and hold hearings at the place or
2 places it designates and shall report its findings and recommenda-
3 tions to the Legislature and the Governor within six months after
4 adoption of this resolution.

APPENDIX B:

RECOMMENDED LEGISLATION

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

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

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

a. "Visibly intoxicated" means a state of intoxication accompanied by a perceptible act or series of actions which present clear and convincing signs of intoxication. If a test to determine the presence of alcohol in the blood indicates a blood alcohol concentration of less than 0.15% by weight of alcohol in the blood, there shall be a presumption that the individual tested was not visibly intoxicated.

b. "Social host" means a person, or his estate, who, by expressed or implied invitation, invites another person onto an unlicensed premises for purposes of hospitality and who is neither a licensee nor an agent of a licensee and is not required to be a licensee under Title 33 of the Revised Statutes, who legally provides alcoholic beverages to another person.

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

2. (New section) a. No action at law, either for injury to the person or for injury to real or personal property, shall lie against a social host who provided alcoholic beverages to a person who has attained the legal age for purchasing and consuming alcoholic beverages, except as set forth in this act.

b. A person may recover damages for injury to the person or to real or personal property from a social host:

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

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

(b) Under circumstances manifesting reckless disregard of the consequences as affecting the life or property of another; and

(2) When the social host provides alcoholic beverages to a person under circumstances which create a reasonably foreseeable risk of harm to others; and

(3) When the injury arises out of an accident caused by the negligent operation of a vehicle by a person who was provided alcoholic beverages by a social host.

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

2. In all negligence actions in which the question of liability is in dispute, including actions in which any person seeks to recover damages from a social host for negligence resulting in injury to the person or to real or personal property, the trier of fact shall make the following as findings of

fact:

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

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

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

4. This act shall take effect immediately.

STATEMENT

This bill establishes the circumstances under which a social host can be held liable for damages caused by a social guest to whom the host has provided alcoholic beverages.

The recommendations of the Commission on Alcoholic Beverage Liability, established pursuant to Senate Concurrent Resolution No. 116 of 1984, are embodied in this bill. The commission was formed in response to the New Jersey Supreme Court's decision, in Kelly v. Gwinnell,

96 N.J. 538 (1984), in which the court held that a social host who serves liquor to an adult social guest knowing both that the guest is intoxicated and that the guest will thereafter be operating a motor vehicle, is liable for injuries inflicted on a third party as a result of the negligent operation of a motor vehicle by the guest if the negligence is caused by the intoxication.

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

This bill represents the commission's attempt to balance these concerns in a fair and equitable manner and to establish for social hosts who serve alcoholic beverages a clear, statutory standard of liability that cannot be expanded or limited except by the Legislature itself.

According to the bill, no action at law for injury to the person or to real or personal property, shall lie against a social host or against his estate for providing

alcoholic beverages to a person who has attained the legal age for purchasing and consuming alcoholic beverages except as set forth in the bill. The bill provides that a person may recover damages from a social host: a. when the social host willfully and knowingly provides alcoholic beverages either (1) to an individual who is visibly intoxicated in his presence; or (2) under circumstances manifesting reckless disregard of the consequences as affecting the life or property of another; and b. when circumstances create a reasonably foreseeable risk of harm to others; and c. when the injury arises out of an accident caused by the negligent operation of a vehicle by a person who was provided alcoholic beverages by a social host.

The bill defines "visibly intoxicated" as a state of intoxication accompanied by a perceptible act or series of actions which present clear and convincing signs of intoxication. The definition also contains a presumption that if a test indicates that a person's blood alcohol concentration is less than .15% by weight, the person tested was not visibly intoxicated.

The bill defines "social host" as a person who, by expressed or implied invitation, invites another person onto an unlicensed premises for purposes of hospitality and who is neither a licensee nor the agent of a licensee and is not required to be a licensee under Title 33 of the Revised Statutes, who legally provides alcoholic beverages to another person.

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

Section 3 of the bill amends the law on comparative negligence by requiring the court to apply the comparative negligence standards to the circumstances involving social hosts and to mold the judgment in accordance with the parties' respective degrees of negligence.

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

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

APPENDIX C:

ACTION ON SOCIAL HOST LIABILITY IN OTHER STATES

A number of other jurisdictions have considered the issue of social host liability for serving alcoholic beverages to adults.

California

In Coulter v. Superior Court of San Mateo, 21 Cal. 3rd, 144 (1979), the California Supreme Court held that under modern negligence law, "a social host who furnishes alcoholic beverages to an obviously intoxicated person, under circumstances which create a reasonably foreseeable risk of harm to others, may be held legally accountable to those third parties who are injured when that harm occurs." Id. at 147.

Shortly after Coulter, however, the California Legislature expressly abrogated this holding by enacting Section 1714 of the California Civil Code. Paragraph (c) of this section provides that "no social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by such person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of such beverages."

Minnesota

In Ross v. Ross, 200 N.W. 2d 149 (1972), the Minnesota Supreme Court held that the state's "Dramshop Act" or "Civil Damage Act" imposed liability on any person furnishing liquor in violation of the law, including those who are not commercial vendors but who merely provide liquor gratuitously as an act of hospitality, if injury occurs to a third person as a result of intoxication of the illegally supplied recipient.

The statute upon which the court based its decision in Ross permitted an action against a person who illegally sold, bartered, or gave liquor. In 1977, the Minnesota Legislature amended the statute to remove the phrase "or giving" (Minn. Stat. § 340.95).

In Cody v. Coleman, 315 N.W. 2d 593 (1982), the Minnesota Supreme Court stated:

"The legislature's intent to restrict liability only to commercial vendors is sufficiently clear from its deletion from the Act of the word "giving." "Any person" who sells or barter liquor means a person in the business of providing liquor, and not a social host who happens to receive some consideration from his guests in return for drinks he provides." (at 596)

Iowa

In Williams v. Klemesrud, 197 N.W. 2d 614 (1972), the Iowa Supreme Court held that under Iowa's "Dram Shop Law" a social host could be held liable for injuries caused by an intoxicated person served alcoholic beverages by the host.

Subsequent to the court's decision in Williams, the Iowa Legislature changed the wording of its statute from "any person" to "any licensee or permittee," in order to exclude social hosts from liability. (Iowa Statutes § 123.92).

In March of 1985, however, the Iowa Supreme Court, in Clark v. Mincks, 364 N.W. 2d 226, held a social host liable for injuries caused by a guest to whom the host served alcoholic beverages while the guest was intoxicated. Four of the five justices dissented, arguing that the Iowa Legislature had intended to limit liability to licensees and permittees and that the court should defer to the Legislature in matters of social policy.

Oregon

In Weiner v. Gamma Phi Chapter of Alapha Tau Omega Fraternity, 258 Or. 632 (1981), the Oregon Supreme Court held that "there might be circumstances in which the host would have a duty to deny his guest further access to alcohol." The court went on to describe examples of such circumstances, such as when the guest is severely intoxicated or extremely young. The case itself, however, dealt with a host who had served a minor, not an adult.

In 1979 the Oregon Legislature enacted a statute that defined the possible causes of action against a social host. Oregon Statutes § 30.955 states:

No private host is liable for damages incurred or caused by an intoxicated social guest unless the private host has served or provided alcoholic beverages to a social guest when such guest was visibly intoxicated.

Indiana

In Ashlock v. Norris, 475 NE 2d 1167 (1985) an Indiana Appellate Court held that a person who buys drinks in a bar for another person who is visibly intoxicated is liable for damage caused by the intoxicated person's drunken driving.

APPENDIX D

Allstate Plaza
Northbrook, Illinois 60062

Michael J. Velotta, CPCU
Counsel
312 291-7110

June 3, 1985

The Honorable Raymond Lesniak
New Jersey Senate
60 Prince Street
Elizabeth, New Jersey 07208

Re: Commission on Alcoholic Beverage Liability

Dear Senator Lesniak:

I appreciated the opportunity to appear before the Commission earlier this month at your hearing in the Bergen County Courthouse. During the course of my testimony, you asked a couple of questions to which I did not know the answers. I would like to provide you with this supplemental information.

You inquired into Allstate's number of homeowners policies in New Jersey. The last data I have available, as of June, 1984, Allstate had around 232,600 policies in force in New Jersey. We are the largest homeowners insurer, with around 13% of that market.

Someone from the Commission also asked me about the factual situations that we are encountering in our litigation coming under the Kelly v. Gwinell decision. I indicated in my statement before the Commission that Allstate had about 14 cases of the Kelly nature. However, we currently have nine Kelly-type cases still pending. I thought it might be helpful to give the Commission an idea of the types of factual settings where liability is alleged to have arisen under the Kelly rationale. The cases pending are as follows:

1. Allstate's insured purchased beer at a football game for himself and several friends. On the way home from the game, one of these friends was driving our insured's car and was involved in an accident with another vehicle, injuring the driver of that car.

The Honorable Raymond Lesniak
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2. Our insured's adult son purchased liquor for a party held away from the insured's residence. A friend attending the party subsequently drove his own auto toward home, but was involved in an auto accident which killed the driver of the second car.

3. Our insured owns a home with a swimming pool. He allowed guests to bring their own liquor on the premises for a party. During the party, one guest was injured by another guest. The injured person alleges that our insured failed to supervise the actions of his guests.

4. Claimant purchased his own liquor enroute to a party at our insured's home and consumed it on the premises. The claimant subsequent by drove himself away from the party and was injured.

5. Dispute among the three claimants and our insured about the state of sobriety of the three guests at the home of our insured. The three claimants allege that they became intoxicated at the home of our insured's. Our insured, on the other hand, claims that his three friends were already intoxicated when they arrived at his home. All three claimants were injured in an auto accident after leaving our insured.

6. Our insured purchased beer with a group of his friends, all of whom subsequently drove around in a car drinking the beer. Our insured was a passenger in the car which eventually struck another car and injured its driver. Plaintiff alleges that our insured was "serving" the beer.

7. Insured called a plumber to do work on his home. The insured had to leave the house, but told the plumber that the refrigerator was full of beer and invited him to help himself. After the work was completed, the plumber was driving home and became involved in a fatal accident.

8. Our insured purchased beer for himself and a friend. The friend thereafter drove his car, with our insured as a passenger, and was involved in an accident with another car, causing injuries in the second car.

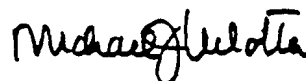
9. Our insured rented a Knights of Columbus hall for a party. A guest was injured leaving the party.

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As a final note, I would like to advise the Commission that we have not paid any claims under the Kelly v. Gwinnell decision of last June. However, I think that it is significant to note that almost all of the cases noted above (with the possible exception of #5) are expansions of the facts and holding of Kelly. As I indicated in my testimony it is the expansion of Kelly as exemplified in the suits we are currently defending that causes Allstate concern.

If there is any further information that Allstate can provide to the Commission, please let me know.

Very truly yours,



Michael J. Velotta

MJV:pb

cc: Geraldine Weltman ✓

