# Social Host Liability and the Distribution of Alcohol and Narcotics: A Survey and Guide

*When someone uses an illegal narcotic and dies as a result, the person who provided the narcotic may face severe criminal penalties. But if the family of the deceased brings a civil action against the narcotics provider, a remedy may not be available. How can a distributor of narcotics be subjected to strict criminal punishment on one hand, and be free from civil liability on the other?*

## I. INTRODUCTION

Social host liability law is an area of tort law governing the duties owed by social hosts to both their guests and the general public.[1] It originated as a common-law negligence doctrine, but has been heavily codified by almost every state legislature in recent years.[2] Under the common law, a social host who provided alcohol to a guest was never liable to the guest or a third party for damages resulting from the guest's intoxication.[3] With the passage of time and the changing of societal values, customs, and public policy, however, both courts and legislatures across the United States have felt it necessary to expand the scope of social host liability.[4] Today, many jurisdictions allow recovery against social hosts who distribute alcohol to minors and visibly intoxicated persons.[5]

In recent years, courts in some jurisdictions have been presented with a new and interesting problem concerning social host liability: how to deal with

1. *See* William J. Bernat, Note, *Party On?: The Excellent Adventures of Social Host Liability in Massachusetts*, 39 SUFFOLK U. L. REV. 981, 984 (2006) (discussing development of social host liability law in United States); Gregory P. Diamantopoulos, Note, *A Look at Social Host and Dram Shop Liability from Pre-Game Tailgating to Post-Game Barhopping*, 4 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 201, 202 (2008) (defining "social host"). A social host is a person or entity other than a licensed vendor of alcohol who distributes alcohol to a guest. *See* Diamantopoulos, *supra*, at 202.

2. Bernat, *supra* note 1, at 984 (explaining common-law origins of social host liability); *see, e.g.*, GA. CODE ANN. § 51-1-40 (2000) (providing liability against social host for persons injured by intoxicated minor or visibly intoxicated person); IDAHO CODE ANN. § 23-808 (2009) (providing liability against social host for persons injured by intoxicated minor or visibly intoxicated person); LA. REV. STAT. ANN. § 9:2800.1 (2009) (limiting social host liability arising from injuries caused by intoxication of adult guests).

3. Bernat, *supra* note 1, at 984 (describing social host liability at common law).

4. *See* McGuiggan v. New England Tel. & Tel. Co., 496 N.E.2d 141, 145-46 (Mass. 1986) (noting trend toward imposing liability in response to greater societal concern for drunk driving).

5. *See, e.g.*, ME. REV. STAT. ANN. tit. 28-A, §§ 2501-2507 (2007) (establishing liability for social hosts who distribute alcohol to minors and visibly intoxicated persons); Nutting v. Zieser, 482 N.W.2d 424, 424-25 (Iowa 1992) (recognizing liability of social hosts who distribute alcohol to minors); *McGuiggan*, 496 N.E.2d at 146 (recognizing liability for social hosts who distribute alcohol to visibly intoxicated persons).

social hosts who distribute not alcohol, but narcotics, to their guests.[6] Surprisingly, the vast majority of jurisdictions are silent on this issue.[7] Whatever the reason for this dearth of case law and statutes, it is an issue that begs to be resolved in order to fully define the rights and responsibilities of social hosts, their guests, and injured third parties.[8]

This Note begins by providing a brief history of social host liability law in the United States.[9] It then provides a comprehensive survey of the current social host liability laws of each state, analyzing the various approaches and the legal theories supporting them.[10] Next, this Note proposes an approach to social host liability that best benefits society, taking into account both the need to deter irresponsible behavior and to protect innocent parties from harm.[11] Finally, this Note argues that a social host who distributes narcotics to a guest violates the duty of reasonable care and should be liable for injuries resulting from the guest's intoxication.[12]

6. *See* Gipson v. Kasey, 150 P.3d 228, 233 (Ariz. 2007) (holding distributor of narcotics owed duty to decedent based upon negligence per se doctrine); Cook v. Kendrick, 931 So. 2d 420, 427 (La. Ct. App. 2006) (holding social host liable for distributing narcotics under traditional duty-risk analysis); *see also* Commonwealth v. Catalina, 556 N.E.2d 973, 979-80 (Mass. 1990) (holding distribution of heroin wanton and reckless conduct); Bash v. Book, No. WOCV2006-00745-A, slip op. at 5 (Mass. Super. Ct. Oct. 20, 2009) (noting social hosts owe duty of reasonable care to guests). In *Bash*, the court was faced with the question of whether to allow the estate of a deceased university student, who had died as a result of a heroin overdose, to bring a negligence claim against the decedent's boyfriend who had supplied her with the heroin. *Bash*, No. WOCV2006-00745-A, slip op. at 2. The defendant, on a motion for summary judgment, argued that Massachusetts social host liability law bars a person who voluntarily becomes intoxicated from recovering damages from the person who supplied the intoxicant. *Id.* slip op. at 3-4. The court denied the defendant's motion, noting that the previous case law regarding social host liability involved the distribution of alcohol rather than narcotics. *Id.* The court asserted that social hosts, like the rest of the general public, are held to a standard of reasonable care. *See id.* slip op. at 4. The court reasoned that the rationale behind the cases barring a person who is injured as a result of his own voluntary consumption of alcohol from recovering from the person who supplied him is because providing an adult with alcohol is not unreasonable conduct, and, therefore, does not violate the duty of reasonable care. *See id.* slip op. at 3-4. The court then went on to distinguish heroin from alcohol, finding that the "consumption of heroin is inherently dangerous to human life and carries a high probability that death will result." *Id.* slip op. at 4-5; *see also* 21 U.S.C. § 812 (2006) (placing heroin in most dangerous class of narcotics); UNIFORM CONTROLLED SUBSTANCES ACT (1994) §§ 204-212 (placing heroin in Schedule I). The court held that in light of the dangers of heroin and the strong public policy against heroin use, the distribution of heroin creates an unreasonable risk of harm to the recipient and is a violation of the duty of reasonable care. *Bash*, No. WOCV2006-00745-A, slip op. at 5.

7. *See* Michael E. Bronfin, Comment, *"Gram Shop" Liability: Holding Drug Dealers Civilly Liable for Injuries to Third Parties and Underage Purchasers*, 1994 U. CHI. LEGAL F. 345, 345 (1994) (noting "common law, federal statutes, and almost all state laws do not impose civil liability upon drug dealers").

8. *See id.* at 346 (noting failure of law to provide adequate means of recovery to victims of drug dealers).

9. *See infra* Part II (discussing origin of social host liability law in U.S.); Part II.A (discussing common-law view of consumption rather than distribution as sole proximate cause of injury); Part II.B (discussing legislative and judicial changes to common law).

10. *See infra* Part II.C (providing survey of various approaches to social host liability law).

11. *See infra* Part III.B (recommending traditional negligence approach).

12. *See infra* Part III.B.3 (proposing cause of action in favor of consumers of narcotics).

## II. HISTORY

"Social host liability" is a phrase that describes the civil liability of a person who provides an intoxicant to another without remuneration.[13] When a plaintiff seeks to sue a social host for injuries sustained as a result of his or someone else's intoxication, the cause of action is the tort of negligence.[14] The plaintiff has the burden of proving the elements of an ordinary negligence claim: a recognized legal duty, a breach of that duty, causation in fact, proximate causation, and actual harm.[15] When analyzing a negligence claim brought against a social host, courts must determine whether the social host owed his intoxicated guest a duty, and whether the provision of the intoxicant is the proximate cause of the injury.[16]

### *A. Social Host Liability Under the Common Law*

At common law, a licensed vendor of alcoholic beverages could not be held liable for selling alcoholic beverages to a person who, after voluntarily becoming intoxicated, injured himself or a third party.[17] Similarly, a social host who served intoxicating liquors to a guest could not be found liable for injuries resulting from the guest's voluntary intoxication.[18] The rationale for shielding both licensed vendors and social hosts from civil liability lay in the legal fiction of proximate causation.[19] It was believed that the voluntary consumption of an intoxicant, rather than its dissemination, served as the sole proximate cause of any resulting injuries.[20]

13. Looby v. Local 13 Prods., 751 A.2d 220, 222 (Pa. Super. Ct. 2000) (defining phrase "social host liability").

14. *See* Bernat, *supra* note 1, at 984 (explaining common-law origins of social host liability); *see also* DAN B. DOBBS ET AL., TORTS AND COMPENSATION: PERSONAL ACCOUNTABILITY AND SOCIAL RESPONSIBILITY FOR INJURY 186 (6th ed. 2009) (formulating scope of risk principle with respect to proximate causation).

15. *See* Coughlin v. Titus & Bean Graphics, Inc., 767 N.E.2d 106, 110-11 (Mass. App. Ct. 2002) (reciting elements of negligence cause of action).

16. *See* Shea v. Matassa, 918 A.2d 1090, 1097 (Del. 2007) (recognizing consumption of alcohol as sole proximate cause of injury); Hamilton v. Ganias, 632 N.E.2d 407, 407 (Mass. 1994) (holding social host has no duty to underage guest who voluntary consumes alcohol).

17. *See, e.g.*, Wright v. Moffitt, 437 A.2d 554, 554-55 (Del. 1981) (refraining from creating common-law rule allowing suit against tavern owner for injury to patron or third person); Holmes v. Circo, 244 N.W.2d 65, 68 (Neb. 1976) (noting lack of redress under common law against persons selling, giving, or furnishing intoxicating liquor); McClelland v. Harvie Kothe-Ed Rieman, Post No. 1201, Veterans of Foreign Wars of U.S., Inc., 770 P.2d 569, 571-72 (Okla. 1989) (explaining common-law rule exempting tavern owners from civil liability).

18. *See* Battles v. Cough, 947 P.2d 600, 602 (Okla. Civ. App. 1997) (holding common-law rule exempting alcoholic beverage vendors from civil liability applies to social hosts).

19. *See infra* note 20 and accompanying text (explaining common-law rationale for exempting licensed vendors and social hosts from civil liability).

20. *See, e.g.*, Bennett v. Godfather's Pizza, Inc., 570 So. 2d 1351, 1353 (Fla. Dist. Ct. App. 1990) (restating common-law rule that voluntary drinking of alcohol is proximate cause of injury); Wright v. Sue & Charles, Inc., 749 A.2d 241, 243 (Md. Ct. Spec. App. 2000) (noting selling alcohol too remote to be proximate cause of injury under common law); Williamson v. Old Brogue, Inc., 350 S.E.2d 621, 623 (Va. 1986) (noting

### *B. Legislative and Judicial Abrogation of the Common-Law Rule*

With the advent of new transportation technologies in the twentieth century—namely the invention and widespread use of the automobile—society's views regarding the liabilities of licensed vendors of alcoholic beverages and social hosts began to change.[21] In contrast to the horse-and-buggy days during which the common law developed, the age of the automobile presented new and startling dangers to travelers on the roads and highways of the United States.[22] As society began to appreciate the dangerous and often deadly results of drunk driving, both state legislatures and courts began to rethink the public policy behind exempting licensed vendors and social hosts from liability.[23]

#### *1. Legislative Enactments in the Realm of Social Host Liability Law*

In order to provide the public with a right of recovery for injuries suffered as a result of the negligent provision of alcohol, many state legislatures adopted what are known as dram shop statutes.[24] Dram shop statutes, although varying in scope from state to state, abrogated the common-law rule of nonliability in particular circumstances.[25] Initially, state legislatures were more inclined to

common law considers consumption, not furnishing, of intoxicant as proximate cause of injury).

21. *See infra* note 23 and accompanying text (providing examples of how hazards of drunk driving motivated changes in liquor liability law).

22. *See* Craig v. Driscoll, 813 A.2d 1003, 1019-20 (Conn. 2003) (quoting Slicer v. Quigley, 429 A.2d 855, 864 (Conn. 1980) (Bogdanski, J., dissenting) (viewing change in transportation technology reason enough to amend common-law rule)), *overruled on other grounds by* Ely v. Murphy, 540 A.2d 54 (Conn. 1988).

23. *See, e.g.*, McGuiggan v. New England Tel. & Tel. Co., 496 N.E.2d 141, 145-46 (Mass. 1986) (recognizing trend toward imposing liability as response to society's greater concern for drunk driving); Nehring v. LaCounte, 712 P.2d 1329, 1334 (Mont. 1986) (observing greater unreasonable risk of harm resulting from frequency of drunk driving accidents), *superseded by statute*, Dram Shop Act, 1986 Mont. Spec. Sess. Laws, ch. 1, § 1 (codified as amended at MONT. CODE ANN. § 27-1-710 (2009)), *as recognized in* Rohlfs v. Klemenhagen, LLC, 227 P.3d 42 (Mont. 2009); Kelly v. Gwinnell, 476 A.2d 1219, 1224 (N.J. 1984) (noting society's "extreme concern about drunk driving"), *superseded by statute*, 1987 N.J. Laws 1804. In *Kelly*, the court held that a social host who serves liquor to an adult guest, knowing that the guest is intoxicated and subsequently intends to operate a motor vehicle, is liable to third parties injured as a result of the guest's intoxication. *Kelly*, 476 A.2d at 1224. The court reasoned that in light of society's concerns about the dangers of drunk driving, the assurance of just compensation to drunk driving victims coupled with the effect of deterring drunk driving justified the creation of a new common-law cause of action. *Id.* Similarly, in *McGuiggan*, the court recognized a social host's liability to a person injured by an intoxicated guest's negligent operation of a motor vehicle where the social host knew or should have known the guest was intoxicated and yet, still provided him with an alcoholic beverage. *McGuiggan*, 496 N.E.2d at 146. The court justified its holding upon society's increasing concern about the dangers of drunk driving to the public. *Id.* In *Nehring*, the court held that violation of a state liquor control statute constituted evidence of negligence. *Nehring*, 712 P.2d at 1334. The court reasoned that the current dangers to society associated with drunk driving rendered the common-law rule shielding vendors from liability unjust. *Id.*

24. *See* Bernat, *supra* note 1, at 984 (attributing adoption of dram shop statutes to rise in drunk driving related fatalities); Diamantopoulos, *supra* note 1, at 205 (noting common-law rule abrogated in many states by statutes imposing liability under specific circumstances).

25. *See, e.g.*, ALASKA STAT. § 04.21.020(a) (2010) (holding vendors liable for injuries resulting from sale of alcohol to minor or intoxicated person); ARK. CODE ANN. § 16-126-105 (Supp. 2009) (creating cause of

hold licensed vendors of alcoholic beverages liable for injuries resulting from the negligent sale of alcohol than to hold social hosts liable.[26] The rationale behind this disparate treatment was that social hosts are not in as good a position to protect the public from intoxicated persons as are licensed vendors.[27] As our society has grown more conscious of the hazards associated with drunk driving, however, some state legislatures have extended liability to social hosts as well.[28]

### *2. Judicial Modification of the Common-Law Rule*

Courts have often been reluctant to make substantive changes to the common-law rule where the state legislature has already defined the liabilities of commercial vendors and social hosts.[29] Some of these courts have reasoned

action for knowingly selling alcohol to minor or clearly intoxicated person); CAL. BUS. & PROF. CODE § 25602.1 (West 1997) (creating cause of action against licensed vendor for sale of alcohol to visibly intoxicated minor).

26. *See* Bernat, *supra* note 1, at 984 (noting historical reluctance to impose liability on social hosts).

27. *See* Manning v. Nobile, 582 N.E.2d 942, 948 (Mass. 1991) (explaining rationale for not imposing identical duties upon licensed vendors and social hosts); Hilary Ray Weinert, Comment, *Social Hosts and Drunken Drivers: A Duty to Intervene?*, 133 U. PA. L. REV. 867, 872 (1985) (recognizing lesser blameworthiness of host as reason to deny injured imbiber right to recover from host). In *Manning*, the court refused to recognize a cause of action against a social host for injuries sustained by an intoxicated guest. *Manning*, 582 N.E.2d at 948. The court recognized that under Massachusetts law, a licensed vendor may be found liable for the injuries of an intoxicated patron where the licensee engaged in willful, wanton, or reckless conduct. *Id.* Nevertheless, the court reasoned that due to the "important 'differences between the operation of a commercial establishment selling alcoholic beverages for consumption on the premises and the furnishing of alcoholic beverages to guests in one's home,'" social hosts should not be held to the same standard of care as licensed vendors. *Id.* (quoting *McGuiggan*, 496 N.E.2d at 143-44). First, the court reasoned that the threat of liability might "offset a commercial vendor's 'financial incentive to encourage drinking.'" *Id.* (quoting *McGuiggan*, 496 N.E.2d at 144). Second, the court reasoned that licensed vendors naturally have more control over and the better ability to monitor drinking than social hosts at their private homes. *Id.* Third, licensed vendors are generally more experienced at identifying and managing intoxicated patrons than are social hosts. *Id.* Fourth, the court reasoned that licensed vendors are in a better position to insure themselves against such liability than are social hosts. *Id.*; *see also* Bernat, *supra* note 1, at 984 (explaining legislative reluctance to impose identical duties upon licensed vendors and social hosts).

28. *See, e.g.*, ALASKA STAT. § 04.21.020(d) (2010) (holding social hosts liable for furnishing alcohol to persons under legal drinking age); COLO. REV. STAT. § 12-47-801(4)(a)(I) (2010) (holding social host liable where host knowingly served person under legal drinking age); IDAHO CODE ANN. § 23-808(3) (2009) (holding social hosts and licensed vendors equally liable for negligent distribution of alcohol).

29. *See, e.g.*, Bankston v. Brennan, 507 So. 2d 1385, 1387 (Fla. 1987) (holding deference to legislative branch proper when legislature has entered particular field); Settlemyer v. Wilmington Veterans Post No. 49, Am. Legion, Inc., 464 N.E.2d 521, 524 (Ohio 1984) (deferring policy modifications to social host liability to discretion of legislature), *superseded by statute*, 1986 Ohio Laws, Part III, 5711, *as recognized in* Lesnau v. Andate Enters., Inc., 756 N.E.2d 97 (Ohio 2001); Burkhart v. Harrod, 755 P.2d 759, 761 (Wash. 1988) (en banc) (deferring to legislature to expand scope of social host liability). In *Bankston*, the court refused to hold a social host liable for providing alcohol to a minor who subsequently drove and injured a third party. *Bankston*, 507 So. 2d at 1387. The court held that a statute that limited tort liability for a person selling or furnishing alcoholic beverages to minors to those who willfully and unlawfully sold such beverages applied only to licensed vendors and not to social hosts. *Id.* The court also refused to amend the common law and thereby impose liability upon the social host. *Id.* The court reasoned that, although it had the inherent power to make such a change to the common law, to do so would be improper in light of the legislature's active role in

that where a state legislature has spoken on an issue, it is the legislature's sole prerogative to make any further alterations to the law.[30] Other courts have gone even further, declaring that they no longer have the authority to amend the common law.[31] In *Wright v. Sue & Charles, Inc.*,[32] Justice Moylan eloquently remarked:

> Time was, of course, when common law courts actually made or changed substantive law, but that practice is no longer a valid precedent. . . . The rationale for such authority in the common law courts was that the primary source of law was not the people, speaking through a legislative branch, but the King. The courts were simply an arm of the King, as the very extension of the word "court" . . . demonstrates. That law-making prerogative was forever curtailed when American constitution makers, state and federal, designed a radically different governmental scheme incorporating Montesquieu's concept of three coordinate branches of government and the careful allocation of separate powers among those separate branches. If the judicial branch today occasionally strays beyond its assigned turf, it is either an inadvertent lapse or a stealthy usurpation of a power that properly belongs somewhere else.[33]

It should be noted, however, that not all courts are in accord with Justice Moylan's views about the role of the judiciary in writing the common law.[34] Many courts have chosen to modify the common-law rule governing the liabilities of social hosts.[35] These courts maintain that when the public policies supporting a particular common-law rule become outdated, it is the duty of the judiciary to rewrite the law to more accurately reflect the values and concerns of society.[36] Courts that have extended liability to social hosts have done so

defining the liabilities associated with the distribution of alcoholic beverages. *Id.* The court stated that "when the legislature has actively entered a particular field and has clearly indicated its ability to deal with such a policy question, the more prudent course is . . . to defer to the legislative branch." *Id.* The court further reasoned that the legislative branch is better capable of deciding such broad questions of public policy. *Id.*

30. *See supra* note 29 and accompanying text (explaining refusal of some courts to amend common-law rule regarding social host liability).

31. *See* Wright v. Sue & Charles, Inc., 749 A.2d 241, 242 (Md. Ct. Spec. App. 2000) (holding practice of common-law courts amending law no longer valid precedent).

32. 749 A.2d 241 (Md. Ct. Spec. App. 2000).

33. *Id.* at 242.

34. *See infra* note 35 (providing examples of courts that have modified common-law rule relating to social host liability).

35. *See, e.g.*, McGuiggan v. New England Tel. & Tel. Co., 496 N.E.2d 141, 146 (Mass. 1986) (observing social hosts liable to third parties injured by negligently served intoxicated guest); Camalier v. Jeffries, 460 S.E.2d 133, 138 (N.C. 1995) (citing Hart v. Ivey, 420 S.E.2d 174, 178 (N.C. 1992)) (holding social host liable when host should have known guest intoxicated and intended to drive); Martin v. Marciano, 871 A.2d 911, 920 (R.I. 2005) (creating cause of action against social hosts for injuries caused to and by intoxicated minors).

36. *See* Ely v. Murphy, 540 A.2d 54, 57 (Conn. 1988) (quoting Herald Publ'g Co. v. Bill, 111 A.2d 4, 8 (Conn. 1955)) (noting rules once believed sound sometimes require modification to serve interests of justice); Kelly v. Gwinnell, 476 A.2d 1219, 1226 (N.J. 1984) (noting traditional function of judiciary includes determining scope of duty in negligence cases), *superseded by statute*, 1987 N.J. Laws 1804; Marcum v.

based upon either traditional negligence principles or upon the theory of negligence per se.[37] Several state courts have altered the common-law rules of social host liability despite the existence of concurrent dram shop legislation.[38] In some instances, state legislatures have elected to prevent judicial interference in the realm of social host liability law by adopting so-called anti-dram shop statutes, which specifically immunize social hosts from any liability arising out of the intoxication of a guest.[39]

### *C. Fifty State Survey of Social-Host Liability Law*

#### *1. Alabama*

Alabama has never recognized a common-law cause of action against a social host for the negligent provision of alcohol to a guest.[40] Alabama courts have adhered to the common-law rationale that it is the consumption of the alcohol, rather than its provision, which is the proximate cause of any resulting injuries.[41] In 1909, the Alabama legislature adopted a dram shop statute that created a civil cause of action against a purveyor of alcoholic beverages in favor of a third party injured or killed by an intoxicated person when the purveyor dispensed beverages causing the intoxication "contrary to the

Bowden, 643 S.E.2d 85, 88 (S.C. 2007) (holding judiciary has power to change common law when outdated rules offend public policy).

37. *See, e.g.*, *Ely*, 540 A.2d at 57-58 (amending common law to allow claim against social host for furnishing alcohol to minor); Mitseff v. Wheeler, 526 N.E.2d 798, 800 (Ohio 1988) (finding statutory duty to refrain from furnishing alcohol to person under legal drinking age); Douglas v. Schwenk, 479 A.2d 608, 611 (Pa. Super. Ct. 1984) (holding social hosts negligent per se for serving alcohol to person under legal drinking age); *see also* RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL AND EMOTIONAL HARM § 14 (2005) [hereinafter RESTATEMENT (THIRD) OF TORTS] (defining doctrine of negligence per se). "AN ACTOR IS NEGLIGENT IF, WITHOUT EXCUSE, THE ACTOR VIOLATES A STATUTE THAT IS DESIGNED TO PROTECT AGAINST THE TYPE OF ACCIDENT THE ACTOR'S CONDUCT CAUSES, AND IF THE ACCIDENT VICTIM IS WITHIN THE CLASS OF PERSONS THE STATUTE IS DESIGNED TO PROTECT." RESTATEMENT (THIRD) OF TORTS, *supra*, § 14; *see also* Diamantopoulos, *supra* note 1, at 205 (noting most courts imposing liability on social hosts have applied principles of common-law negligence).

38. *See* Craig v. Driscoll, 813 A.2d 1003, 1015 (Conn. 2003) (holding dram shop statute does not preclude common-law cause of action in negligence against licensed vendor); Bauer v. Dann, 428 N.W.2d 658, 661 (Iowa 1988) (holding common-law claim against social hosts not preempted by state dram shop statute).

39. *See, e.g.*, CAL. CIV. CODE § 1714(c) (West 2009) (providing social host who furnishes alcoholic beverages to another is not liable for damages); LA. REV. STAT. ANN. § 9:2800.1 (2009) (limiting social host liability arising from injuries caused by intoxication of adult guests); TENN. CODE ANN. § 57-10-101 (2002) (declaring consumption, not furnishing, of alcoholic beverages is proximate cause of injuries inflicted upon another).

40. *See* Buchanan v. Merger Enters., Inc., 463 So. 2d 121, 125 (Ala. 1984) (reiterating common-law rule of no liability for negligently dispensing alcohol), *superseded by statute*, Dram Shop Act, ALA. CODE § 6-5-71 (LexisNexis 2005), *as recognized in* Jackson v. Azalea City Racing Club, Inc., 553 So. 2d 112, 113 (Ala. 1989).

41. *See* King v. Henkie, 80 Ala. 505, 511, (1886) (holding selling of whiskey not proximate cause of patron's death), *abrogated by Buchanan*, 463 So. 2d 121.

provisions of law."[42] Alabama courts have interpreted this statute to apply solely to the commercial sale of alcohol.[43] Therefore, a cause of action may not lie against a social host for negligently dispensing alcohol where no sale is involved and where the alcohol was not dispensed contrary to law.[44]

### *2. Alaska*

Alaska's dram shop statute creates civil liability only for licensed vendors of alcohol when the injuries at issue result from a recipient's intoxication.[45] Thus, the statute implicitly absolves social hosts from civil liability for harm resulting from the intoxication of their guests.[46] In *Chokwak v. Worley*,[47] the Supreme Court of Alaska upheld Alaska's dram shop statute as constitutional.[48] The court applied a rational basis analysis and concluded that "immunizing social hosts from liability caused by their guests' conduct can rationally be based on a view that it is an undesirable interference with normal hospitality to require a social host to monitor guests' alcohol consumption" and "the primary actor responsible for harm caused by a drunken person is the drunken person."[49]

### *3. Arizona*

The Arizona legislature has adopted a statute that immunizes social hosts who furnish alcohol to persons of legal drinking age from liability.[50] In *Estate of Hernandez v. Arizona Board of Regents*,[51] the Supreme Court of Arizona assessed the liabilities of social hosts who negligently furnish alcohol to persons under the legal drinking age.[52] The court held that third parties injured by an intoxicated person under the legal drinking age may bring a cause of

42. *See* 1909 Ala. Acts 63 (providing cause of action against provider of intoxicant in favor of third party victims), *amended by* ALA. CODE § 6-5-71 (LexisNexis 2005).

43. Beeson v. Scoles Cadillac Corp., 506 So. 2d 999, 1000 (Ala. 1987) (noting social hosts not liable for negligently dispensing alcohol in absence of sale).

44. *See id.* (interpreting 100 years of Alabama jurisprudence).

45. ALASKA STAT. § 04.21.020 (2010) (proscribing liabilities of persons providing alcoholic beverages).

46. *See* Christiansen v. Christiansen, 152 P.3d 1144, 1146 (Alaska 2007) (explaining liabilities of social hosts in light of Alaska dram shop statute).

47. 912 P.2d 1248 (Alaska 1996).

48. *Id.* at 1255.

49. *Id.* (proposing possible legislative rationale for immunizing social hosts from civil liability).

50. *See* ARIZ. REV. STAT. ANN. § 4-301 (2002). The statute provides:

> A person other than a licensee or an employee of a licensee acting during the employee's working hours or in connection with such employment is not liable in damages to any person who is injured, or to the survivors of any person killed, or for damage to property, which is alleged to have been caused in whole or in part by reason of the furnishing or serving of spirituous liquor to a person of the legal drinking age.

*Id.*

51. 866 P.2d 1330 (Ariz. 1994).

52. *Id.* at 1333 (presenting issue before court).

action against the social host who negligently furnished the alcohol.[53]

### 4. Arkansas

Arkansas has statutorily codified the common-law rule shielding social hosts from all liability.[54] Section 16-126-105 of the Arkansas Code states:

> Except in the knowing sale of alcohol to a minor or to a clearly intoxicated person, the General Assembly hereby finds and declares that the consumption of any alcoholic beverage, rather than the furnishing of any alcoholic beverage, is the proximate cause of injuries or property damage inflicted upon persons or property by a legally intoxicated person.[55]

Because social hosts, by definition, do not sell alcoholic beverages to their guests, they can never be found liable for any injuries caused by an intoxicated guest.[56]

53. *Id.* at 1342 (stating holding of court). The court first noted that by granting immunity in section 4-301 solely to social hosts who furnish alcohol to persons of legal drinking age, the Arizona legislature left the door open for the court to determine the liability of social hosts who furnish alcohol to persons under the legal drinking age. *Id.* at 1338. The court found that social hosts have a duty of care, based upon both statutory and common-law principles, to avoid furnishing alcohol to underage consumers. *Id.* at 1341-42. For identifying the source of the duty, the court looked to an Arizona statute making it a criminal offense to furnish alcohol to a minor. *Id.* at 1339; *see also* ARIZ. REV. STAT. ANN. § 4-244(9) (2002). In finding a duty under the common law, the court looked to the well-established principle that dangerous items should not be furnished to those known to have a diminished capacity when doing so would create an unreasonable risk of harm. *Estate of Hernandez*, 866 P.2d at 1340 (citing RESTATEMENT (SECOND) OF TORTS § 390 (1965)). The court did not expressly hold that an underage person who sustained injury as a result of his own voluntary intoxication could bring a cause of action against the social host who served him. *See id.* at 1342. The court's dicta, however, suggests that Arizona courts would recognize an underage person's right to recovery against a social host. *See id.* at 1339. The court relied upon section 4-244, which makes it a criminal offense to furnish alcohol to a minor, as the basis for imposing a duty of care upon social hosts to refrain from furnishing alcohol to minors. *Id.*; *see also* ARIZ. REV. STAT. ANN. § 4-244(9) (2002). The court noted that a criminal statute may establish a duty under tort law if the plaintiff is within the class of persons the statute is designed to protect and the harm suffered is of the type the statute is designed to prevent. *See Estate of Hernandez*, 866 P.2d at 1339 (citing W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 36, at 229-30 (5th ed. 1984)). The court observed that it had previously relied upon the same statute to sustain a cause of action against licensees who furnish alcohol to minors. *Id.* (citing Brannigan v. Raybuck, 667 P.2d 213, 217 (Ariz. 1983)). In *Brannigan*, the court stated that section 4-244(9) "constitute[s] legislative recognition of the foreseeable danger to both the patron and third parties, and an effort to meet that danger by enactment of laws designed to regulate the industry, to protect third persons, and to protect those who are underage from themselves." *Brannigan*, 667 P.2d at 217. Because the Supreme Court of Arizona has already determined that underage drinkers fall within the class of persons section 4-244(9) is designed to protect, it necessarily follows that the statute creates a cause of action in favor of an underage person against a social host whose act of furnishing alcohol led to the underage person's voluntary intoxication and subsequent injuries. *See Estate of Hernandez*, 866 P.2d at 1339.

54. *See* ARK. CODE ANN. § 16-126-105 (Supp. 2009) (limiting liability to injuries resulting from sale of alcohol to minor or visibly intoxicated person).

55. *Id.*

56. *See id.*; *see also* Looby v. Local 13 Prods., 751 A.2d 220, 222 (Pa. Super. Ct. 2000) (defining social host as one who provides intoxicant to another without remuneration).

### 5. California

The California state legislature has chosen to explicitly shield social hosts from any and all liability relating to the provision of alcoholic beverages to social guests.[57] Section 1714(c) of the California Civil Code provides that "no social host who furnishes alcoholic beverages to any person may be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages."[58]

### 6. Colorado

Colorado courts have never recognized social host liability under the common law.[59] Notwithstanding this fact, an exception to the common-law rule has been created by statute.[60] The statute provides that a social host may be civilly liable for furnishing alcohol only if "[i]t is proven that the social host knowingly served any alcohol beverage to such person who was under the age of twenty-one years or knowingly provided the person under the age of twenty-one a place to consume an alcoholic beverage."[61] This statute affords the exclusive remedy for the negligent provision of alcohol by social hosts.[62] The statute provides a cause of action only in favor of third parties injured by an intoxicated minor.[63]

### 7. Connecticut

Connecticut courts recognize an exception to the general common-law principle exempting social hosts from liability in circumstances when alcohol is furnished to a minor.[64] The Supreme Court of Connecticut justified creating such an exception to the common-law rule "[i]n view of the legislative determination that minors are incompetent to assimilate responsibly the effects of alcohol and lack the legal capacity to do so."[65] Under this exception, a

57. *See* CAL. CIV. CODE § 1714(c) (West 2009) (exempting social hosts from potential liability for furnishing alcohol to guests).

58. *Id.*

59. *See* Rojas v. Engineered Plastic Designs, Inc., 68 P.3d 591, 592 (Colo. App. 2003).

60. COLO. REV. STAT. § 12-47-801(4) (2010) (creating liability against social host who knowingly serves alcohol to person under twenty-one).

61. *Id.*

62. *Rojas*, 68 P.3d at 592. Section 12-47-801(4) provides the exclusive remedy against social hosts because, in all other cases, the consumption of alcohol, rather than the sale, service, or provision of alcohol, is the proximate cause of injury caused by the intoxicated person. *Id.* at 592-93.

63. *See* Forrest v. Lorrigan, 833 P.2d 873, 874 (Colo. App. 1992) (stating statute provides liability for injury to third person).

64. *See* Pike v. Bugbee, 974 A.2d 743, 750 (Conn. App. Ct. 2009) (acknowledging Supreme Court of Connecticut's recognition of common-law principle subject to exception for minors).

65. Ely v. Murphy, 540 A.2d 54, 58 (Conn. 1988) (holding minor's voluntary consumption of alcohol does not insulate provider from liability for ensuing injury); *see also* Bohan v. Last, 674 A.2d 839, 842-43

social host may be found liable to the minor served for the minor's own injuries sustained as a result of his or her own voluntary intoxication.[66] The social host may likewise be found liable to innocent third parties injured as a result of the social host's service of alcohol to a minor.[67]

### *8. Delaware*

Delaware courts have refused to recognize a cause of action against a social host for the negligent provision of alcohol to a guest.[68] In *Shea v. Matassa*,[69] the wife of a motorist who was involved in a fatal car crash with an intoxicated driver brought a wrongful death claim against the social host, who she alleged had negligently served alcohol to the driver knowing that he would drive while intoxicated.[70] The Supreme Court of Delaware refused to create a new common-law cause of action and affirmed the trial court's grant of summary judgment for the defendant.[71] The court reasoned that due to the controversial public policy issues surrounding social host liability, abrogation of the common-law rule of nonliability should be left to the state legislature, which has yet to address the issue.[72] The court further reasoned that, because it had declined to recognize a "common law dram shop cause of action, it would be anomalous" to hold social hosts to a higher standard of legal responsibility than trained, licensed, and regulated bartenders.[73]

(Conn. 1996) (noting minors overall less blameworthy than adults for overconsumption of alcohol).

66. *Pike*, 974 A.2d at 751 (holding scope of exception extends to injuries sustained by both minor served and third parties).

67. *Id.*

68. *See* Shea v. Matassa, 918 A.2d 1090, 1097 (Del. 2007) (refusing to create cause of action against social host).

69. 918 A.2d 1090 (Del. 2007).

70. *Id.* at 1091-92.

71. *Id.* at 1092.

72. *Id.* at 1097 (observing host's inability to control guests might lead to "'significant financial burdens'" (citation omitted)). *But see* DiOssi v. Maroney, 548 A.2d 1361, 1368 (Del. 1988) (determining voluntary consumption by minor does not insulate provider from liability). In *DiOssi*, the plaintiff was injured by an intoxicated minor guest while providing valet services at the defendant's home. *Id.* at 1362-63. The Delaware Supreme Court overruled the trial court's grant of summary judgment for the defendant and held that a social host is liable to a third party business invitee when the host can reasonably anticipate that some of his minor guests will drink alcoholic beverages and subsequently attempt to drive a vehicle. *Id.* at 1368. The *Shea* court distinguished the holding in *DiOssi* by noting that the finding of liability in *DiOssi* revolved around the existence of a special relationship between the social host and injured third party created by "'the exposure of a business invitee to a dangerous activity which the property owner permitted to exist on his land.'" *Shea*, 918 A.2d at 1096 (quoting *DiOssi*, 548 A.2d at 1365).

73. *Shea*, 918 A.2d at 1097; *see also* Oakes v. Megaw, 565 A.2d 914, 917 (Del. 1989) (refusing to recognize claim against vendor by third person injured by intoxicated minor patron); Samson v. Smith, 560 A.2d 1024, 1028 (Del. 1989) (refusing to recognize claim against vendor by third person injured by intoxicated adult patron); Wright v. Moffit, 437 A.2d 554, 556-57 (Del. 1981) (refusing to recognize claim against vendor for patron's injuries resulting from patron's own voluntary intoxication).

### *9. Florida*

Florida courts generally do not recognize a cause of action against a social host under common-law negligence principles.[74] Florida does have a dram shop statute that creates a cause of action against a person who "willfully and unlawfully sells or furnishes alcoholic beverages to a person who is not of lawful drinking age or who knowingly serves a person habitually addicted to the use of any or all alcoholic beverages."[75] This statute, however, has been held to be inapplicable to social hosts.[76]

Florida courts have recognized a limited exception to the common-law rule under the doctrine of negligence per se.[77] In *Trainor v. Estate of Hansen*,[78] Megan Trainor was killed in a car accident involving an intoxicated minor driver.[79] The minor driver had become intoxicated at a house party hosted by the defendants in the case.[80] The court recognized a cause of action for social host liability under the doctrine of negligence per se based on an alleged violation of a Florida statute making it a crime for an adult to host an open house party and knowingly allow minor guests to possess or consume alcoholic beverages or drugs.[81] The court reasoned that minors and innocent third

74. *See* United Servs. Auto. Ass'n v. Butler, 359 So. 2d 498, 499 (Fla. Dist. Ct. App. 1978) (noting at common law, injured party had no cause of action against dispenser of alcohol).

75. FLA. STAT. ANN. § 768.125 (West 2005).

76. Bankston v. Brennan, 507 So. 2d 1385, 1385 (Fla. 1987) (holding section 768.125 does not create cause of action against social host). The court reasoned that the purpose of section 768.125 was to limit vendor liability, which had been broadened by previous judicial decisions. *Id.* at 1386-87. In light of the legislative intent, the court concluded that it would be "anomalous and illogical to assume that a statute enacted to limit preexisting vendor liability would simultaneously create an entirely new and distinct cause of action against a social host, a cause of action previously unrecognized by the common law." *Id.* at 1387. After holding that section 768.125 did not create a cause of action against a social host in favor of a person injured by an intoxicated minor who was served alcohol by the host, the court then considered whether or not to recognize such a cause of action under the common law. *Id.* The court declined to recognize such a cause of action, reasoning that, "when the legislature has actively entered a particular field and has clearly indicated its ability to deal with such a policy question, the more prudent course is for this Court to defer to the legislative branch." *Id.*

77. *See* Trainor v. Estate of Hansen, 740 So. 2d 1201, 1202 (Fla. Dist. Ct. App. 1999) (recognizing social host liability under doctrine of negligence per se). *But see Butler*, 359 So. 2d at 500 (holding violation of statute prohibiting sale or gift of alcohol to minor not negligence per se). In *Butler*, the court determined that the criminal statute was applicable to licensed vendors and not to social hosts. *Id.*

78. 740 So. 2d 1201 (Fla. Dist. Ct. App. 1999)

79. *Id.* at 1202 (recounting facts of case).

80. *Id.*

81. *Id.*; *see also* FLA. STAT. ANN. § 856.015 (West Supp. 2011). The statute provides,

> A person having control of any residence may not allow an open house party to take place at the residence if any alcoholic beverage or drug is possessed or consumed at the residence by any minor where the person knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at said residence and where the person fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug.

FLA. STAT. ANN. § 856.015(2) (West Supp. 2011).

persons are within the class of persons the statute is designed to protect and the injury suffered by the plaintiff is the type of harm the statute seeks to prevent.[82]

### *10. Georgia*

The Georgia legislature has declared that "the consumption of alcoholic beverages, rather than the sale or furnishing or serving of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon another person."[83] Consequently, a person who sells, furnishes, or serves alcoholic beverages to a person of lawful drinking age cannot be held liable for damages resulting from that person's intoxication.[84] The statute provides an exception, however, in the case where the person served is visibly intoxicated or is under the legal drinking age.[85] Under the statute, a person who willfully, knowingly, and unlawfully sells, furnishes, or serves alcohol to a visibly intoxicated person or a person under the legal drinking age, knowing that such person will soon be driving an automobile, may be held liable for damages suffered by third parties resulting from that person's intoxication.[86] The imbiber, however, has no cause of action against the provider for injuries that result from his own voluntary intoxication under the statute.[87] The statute applies to both licensed vendors and social hosts, and provides the exclusive remedy for injuries sustained as a result of the sale or gift of alcoholic beverages.[88]

### *11. Hawaii*

The Supreme Court of Hawaii has recognized a right of recovery, in the absence of dram shop legislation, in favor of a person injured by an inebriated motorist against the tavern that provided the alcohol to the driver.[89] In *Ono v. Applegate*,[90] the court found that tavern owners have a duty based on statute not to serve minors and visibly intoxicated patrons.[91] Hawaiian courts, however,

82. *See Trainor*, 740 So. 2d at 1202.

83. GA. CODE ANN. § 51-1-40(a) (2000).

84. *Id.* § 51-1-40(b).

85. *Id.*

86. *Id.*

87. GA. CODE ANN. § 51-1-40(b) (2000).

88. *See* Hulsey v. Northside Equities, Inc., 548 S.E.2d 41, 45 (Ga. Ct. App. 2001) (noting section 51-1-40(b) provides exclusive remedy for injuries resulting from provision of alcohol); Birnbrey, Minsk & Minsk, LLC v. Yirga, 535 S.E.2d 792, 794 (Ga. Ct. App. 2000) (recognizing applicability of statute to social hosts).

89. *See* Ono v. Applegate, 612 P.2d 533, 538 (Haw. 1980) (listing common-law dram shop elements).

90. 612 P.2d 533 (Haw. 1980).

91. *Id.* at 539 (noting motorist was in fact inebriated at time tavern served her alcohol); *see also* HAW. REV. STAT. ANN. § 281-78(b)(1) (LexisNexis 2011). Section 281-78(b)(1) states, "At no time under any circumstances shall any licensee or its employee: (1) [s]ell, serve, or furnish any liquor to, or allow the consummation of any liquor by: (A) [a]ny minor[, or] (B) [a]ny person at the time under the influence of liquor." HAW. REV. STAT. ANN. § 281-78(b)(1).

have refused to extend such liability to social hosts.[92] In *Johnston v. KFC National Management Co.*,[93] the court noted that the decision to amend the common-law rule in *Ono* was premised upon a clear trend across the country to impose a duty of care upon licensed vendors and upon a statute establishing a standard of conduct for liquor licensees.[94] The court concluded that, in the absence of both a clear judicial trend and a statutory enactment imposing liability upon social hosts, to change the common-rule exempting social hosts from liability would be inappropriate.[95]

### *12. Idaho*

The Idaho legislature has adopted legislation limiting social host and dram shop liability.[96] Under the statute, a person may not be held liable for selling or furnishing alcohol to another unless the provider knew or should have known that the recipient was under the legal drinking age or was visibly intoxicated.[97] The statute provides a cause of action in favor of injured third parties only.[98] The imbiber has no right of recovery for injuries sustained as a result of his own voluntary intoxication.[99] Additionally, a person who is a passenger in an automobile driven by an intoxicated person may not bring a cause of action against the person who provided the driver with alcohol for injuries sustained as a result of the driver's intoxication.[100] The statute applies to social hosts as well as licensed vendors of alcohol.[101]

### *13. Illinois*

Illinois courts have refused to deviate from the common-law rule regarding the liabilities of social hosts.[102] In *Wakulich v. Mraz*,[103] a teenage girl died of acute alcohol poisoning after drinking a quart of liquor.[104] Under a theory of negligence, the girl's mother sued the hosts who had furnished her daughter

92. *See* Johnston v. KFC Nat'l Mgmt. Co., 788 P.2d 159, 162 (Haw. 1990) (holding change in common law inappropriate at this time).

93. 788 P.2d 159 (Haw. 1990).

94. *Id.* at 161-62 (discussing reasons for modifying common-law rule for commercial suppliers of alcohol).

95. *Id.* at 162.

96. IDAHO CODE ANN. § 23-808(1) (2009) (declaring legislative intent to limit liability).

97. *Id.* § 23-808(3)(a)-(b).

98. *See id.* § 23-808(4)(a)-(b) (preventing intoxicated person or his passenger from bringing claim).

99. *Id.*; *see also* Coghlan v. Beta Theta Pi Fraternity, 987 P.2d 300, 306 (Idaho 1999) (holding statute does not provide right of recovery to injured imbiber).

100. IDAHO CODE ANN. § 23-808(4)(b) (2009).

101. *Id.* § 23-808(1).

102. *See* Wakulich v. Mraz, 785 N.E.2d 843, 848 (Ill. 2003) (refusing to amend common-law rule where legislature has already taken action).

103. 785 N.E.2d 843 (Ill. 2003).

104. *Id.* at 846 (discussing facts of case).

with the alcohol and encouraged her to drink it.[105] The court held that Illinois common law does not recognize a cause of action for injuries arising out of the sale or gift of alcoholic beverages.[106] The plaintiff urged the court to amend the common-law rule exempting social hosts from liability; the court, however, refused to do so, noting the legislature's adoption of the Dramshop Act.[107] The court reasoned that the passage of the Dramshop Act, which created an exclusive statutory cause of action against dram shops for selling or giving alcoholic beverages to persons who subsequently injure third persons, preempted the entire field of alcohol-related liability from judicial review.[108]

### *14. Indiana*

In Indiana, common-law negligence liability regarding the provision of alcohol is restricted by statute.[109] Under Indiana law, a person who furnishes alcohol to another is not liable for damages caused by the intoxication unless two conditions are met: the person who procured the alcohol had actual knowledge that the recipient was visibly intoxicated and the intoxication was the proximate cause of the resulting injury.[110] Injured third parties may recover damages from a social host who provides alcohol to a visibly intoxicated person.[111] In limited circumstances, a person who voluntarily consumes alcohol may bring a cause of action against the person who provided the alcohol for injuries sustained as a result of his own voluntary intoxication.[112] Under Indiana law, the age of the recipient is irrelevant to the liability of the alcohol provider.[113] Whether the recipient is an adult or minor, a social host

105. *Id.* at 845-46 (discussing claims brought by mother).

106. *Id.* at 848 (refusing to override prior decision denying negligence claim against social host).

107. *Wakulich*, 785 N.E.2d at 848 (noting alcohol-related liability wholly within preview of legislature).

108. *Id.*; *see also* 235 ILL. COMP. STAT. ANN. 5/6-21(a) (West Supp. 2010). The statute limits civil liability for alcohol related injuries to dram shop owners and persons twenty-one years of age or older who pay for a hotel room knowing that the room will be used by underage persons for the unlawful consumption of alcohol. *See* 235 ILL. COMP. STAT. ANN. 5/6-21(a). The court observed that the legislature had considered on several occasions imposing some form of social host liability upon adults who furnish alcohol to underage persons, but that all such attempts never came to fruition. *Wakulich*, 785 N.E.2d at 849. The court reasoned that, since the legislature had deliberately chosen not to impose this sort of liability, it would be improper for the court to do so judicially. *Id. But see* Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity, 507 N.E.2d 1193, 1198 (Ill. App. Ct. 1987) (recognizing exception to common-law rule based on antihazing statute).

109. Rauck v. Hawn, 564 N.E.2d 334, 337 (Ind. Ct. App. 1990).

110. *Id.*; *see also* IND. CODE ANN. § 7.1-5-10-15.5(b)(1) (West 2005) (creating social host liability for knowingly furnishing alcohol to visibly intoxicated person).

111. *See Rauck*, 564 N.E.2d at 339 (recognizing cause of action against social host who gives alcohol to visibly intoxicated person).

112. IND. CODE ANN. § 7.1-5-10-15.5(c) (West 2005) (creating cause of action in favor of injured imbiber). The injured imbiber may bring a claim only if the provider had actual knowledge that the imbiber was visibly intoxicated at the time the alcohol was provided and the provision of the alcohol was the proximate cause of the imbiber's injuries. *Id.*

113. *See* Thompson v. Ferdinand Sesquicentennial Comm., Inc., 637 N.E.2d 178, 180 (Ind. Ct. App. 1994) (refusing to hold social host liable for furnishing alcohol to minor absent visible intoxication).

will not be liable for any resulting damages unless the host had actual knowledge that the recipient was visibly intoxicated.[114]

### *15. Iowa*

In Iowa, persons injured as a result of a social host who furnishes alcohol to a person under the legal drinking age may bring a negligence claim against the social host.[115] This includes both third parties injured by an intoxicated underage drinker, as well as the underage drinkers themselves.[116] Iowa courts have imposed liability on social hosts for furnishing alcohol to minors under the doctrine of negligence per se.[117] The Iowa legislature has entered the field of liquor liability by adopting two statutes.[118] The first shields social hosts from liability for furnishing alcohol to visibly intoxicated persons; the other statute specifically exposes licensed vendors to liability for selling alcohol to visibly intoxicated persons.[119] Nevertheless, the Supreme Court of Iowa has held that such legislation does not preempt prior judicial rulings holding social hosts liable for furnishing alcohol to minors.[120]

### *16. Kansas*

In *Ling v. Jan's Liquors*,[121] a motorist who was injured in a car accident with an intoxicated minor asked the Supreme Court of Kansas to recognize a cause of action against the vendor who sold the minor the alcohol.[122] The court refused to recognize such a cause of action.[123] The court noted that, under the common law, suppliers of alcohol are not liable to victims of an intoxicated

114. *Id.*

115. *See* Sage v. Johnson, 437 N.W.2d 582, 584-85 (Iowa 1989) (holding social hosts liable to minors for injuries sustained as result of minors' own intoxication); Bauer v. Dann, 428 N.W.2d 658, 660 (Iowa 1988) (holding social hosts liable to third parties injured by intoxicated underage drinkers).

116. *See supra* note 115 (citing relevant Iowa social host cases).

117. *See* Lewis v. State, 256 N.W.2d 181, 191-92 (Iowa 1977). In *Lewis*, the plaintiff was killed when the car she was traveling in was struck by a car driven by an intoxicated minor who had purchased alcohol at a state-run liquor store. *Id.* at 184. The court held that the defendant breached its duty of reasonable care owed to the plaintiff by selling alcohol to the minor-driver in violation of a state criminal statute prohibiting the sale or gift of alcohol to a person under the legal drinking age. *Id.* at 189; *see also* IOWA CODE ANN. § 123.47 (West Supp. 2011). The court held that the statute set a "minimum standard" of care, the violation of which could be the proximate cause of injuries sustained by innocent third parties. *Lewis*, 256 N.W.2d at 189, 191-92. Although *Lewis* involved the commercial sale of alcohol to a person under the legal drinking age, the Supreme Court of Iowa has applied that same reasoning to the social host context. *See Bauer*, 428 N.W.2d at 661 (holding social hosts liable under theory of negligence per se).

118. *See* IOWA CODE ANN. § 123.49(1) (West Supp. 2011) (shielding from liability social hosts who furnish alcohol to intoxicated persons); *Id.* § 123.92 (holding licensed vendors liable for selling alcohol to visibly intoxicated persons).

119. *See supra* note 118.

120. *See Bauer*, 428 N.W.2d at 660-61.

121. 703 P.2d 731 (Kan. 1985).

122. *Id.* at 735 (addressing gravamen of plaintiff's case).

123. *Id.* at 738-39 (stating court's holding).

tortfeasor.[124] The court declined to amend the common-law rule, reasoning that doing so would constitute a public policy decision best left to the legislature.[125] Lastly, the court refused to recognize a cause of action under the doctrine of negligence per se.[126]

Later, in *Bland v. Scott*,[127] the representative of a deceased motorist asked the Supreme Court of Kansas to recognize a cause of action against a social host who had provided alcohol to the minor who killed the motorist in a car accident.[128] The court, relying on the reasoning in *Ling*, refused to recognize such a claim against a social host based either upon common-law negligence principles or the doctrine of negligence per se.[129]

### *17. Kentucky*

Kentucky case law is completely silent on the issue of social host liability.[130] Indeed, there is not a single Kentucky case addressing the liabilities of social hosts.[131] Kentucky's legislature, however, has codified the common-law rule shielding social hosts from liability for the negligent distribution of alcohol.[132] Section 413.241 of the Kentucky Revised Statutes provides that "the consumption of intoxicating beverages . . . is the proximate cause of any

124. *Id.* at 739 (citing legislature's failure to create civil cause of action despite prior consideration).

125. *See Ling*, 703 P.2d at 739. In 1949, the Kansas legislature repealed its dram shop statute. *Id.* at 738-39. On several occasions, the Kansas legislature had reconsidered imposing limited dram shop liability, but had never actually adopted legislation. *Id.* at 739. Furthermore, the court felt that the substance of this particular issue fell squarely within the realm of public policy, and, as such, was particularly suited to be decided by the legislature. *Id.*

126. *Id.* at 738. The plaintiff had argued that a state liquor law establishing criminal penalties for the sale of alcohol to minors created a legal duty to abstain from such conduct. *Id.* The court noted, however, that this statute was enacted in the same year that the dram shop statute was repealed. *Id.* at 738-39. The court, therefore, reasoned that, had the legislature intended the new criminal statute to impose civil liability, it would have explicitly said so. *Id.* at 739.

127. 112 P.3d 941 (Kan. 2005).

128. *Id.* at 945 (setting forth primary issues of case).

129. *Id.* at 949-50 (discussing court's holding). The court acknowledged, however, that "[t]he states are widely split on liability to third parties arising from the dispensing of alcohol in social settings." *Id.* at 949.

130. *See* Estate of Vosnick v. RRJC, Inc., 225 F. Supp. 2d 737, 740 (E.D. Ky. 2002) (noting total dearth of Kentucky case law on social host liability).

131. *Id.* (noting inapplicability of several duty of care cases to specific issue of social host liability).

132. *See* KY. REV. STAT. ANN. § 413.241 (LexisNexis 2005) (defining liability for sale or gift of alcoholic beverages), *declared unconstitutional in part by* Taylor v. King, No. 2009-CA-001599-MR, 2010 WL 3810797 (Ky. Ct. App. Oct. 1 2010) (opinion not final) (holding section 413.241 unconstitutional to extent it prohibits recovery of punitive damages). Section 413.241(1) provides that "the consumption of intoxicating beverages . . . is the proximate cause of any injury . . . inflicted by an intoxicated person upon himself or another person." *Id.* § 413.241(1). Notwithstanding that provision, section 413.241(2) provides that a dram shop, not a social host, may be liable for negligently serving a visibly intoxicated patron. *Id.* § 413.241(2). The court in *Taylor* noted that section 413.241 effectively prohibits an award of punitive damages against a dram shop because under Kentucky law, punitive damages may only be awarded if the defendant's conduct was the proximate cause of injury to the plaintiff. *Taylor*, 2010 WL 3810797, at *3. The court held that such an "implicit prohibition on recovery of punitive damages violates the jural rights and separation-of-powers provisions of the Kentucky Constitution." *Id.* at *1.

injury . . . inflicted by an intoxicated person upon himself or another person."[133] The plain language of the statute suggests that a social host can never be found liable for the negligent provision of alcohol.[134] Kentucky courts, however, have yet to interpret this statute as applied to social hosts.[135]

### *18. Louisiana*

Under the Louisiana dram shop statute, social hosts are immune from liability for injuries resulting from the intoxication of social guests who are of legal drinking age.[136] When a social host furnishes alcohol to a person under the legal drinking age, Louisiana courts utilize a traditional duty-risk analysis to determine whether the social host violated general negligence principles.[137] Louisiana courts also recognize a cause of action against a social host for negligently furnishing narcotics to another person.[138] In such cases, liability is again determined under the traditional duty-risk analysis.[139]

### *19. Maine*

The Maine Liquor Liability Act provides the exclusive remedy against a social host for claims by persons injured as a result of the host's service of alcohol.[140] Under the Act, a social host who negligently or recklessly serves alcohol to a minor or visibly intoxicated person is liable for damages proximately caused by the recipient's consumption of the alcohol.[141] A minor

133. KY. REV. STAT. ANN. § 413.241 (1) (LexisNexis 2005).

134. *See id.*; *see also Estate of Vosnick*, 225 F. Supp. 2d at 742 (attempting to predict future applicability of statute to social hosts). The court noted that the plain language of the statute "seems to amount to a specific rejection of social host liability." *Estate of Vosnick*, 225 F. Supp. 2d at 742. The court concluded, however, that it was unlikely that the legislature intended the statute to apply to social hosts. *Id.* The court ultimately predicted that Kentucky courts would only recognize a cause of action against social hosts for serving alcohol to minors. *Id.*

135. *See Estate of Vosnick*, 225 F. Supp. 2d at 742.

136. LA. REV. STAT. ANN. § 9:2800.1(c) (2009).

137. Stewart v. Daiquiri Affair, Inc., 20 So. 3d 1041, 1046 (La. 2009) (using traditional negligence analysis to determine liability for providing alcohol to minors).

138. *See* Cook v. Kendrick, 931 So. 2d 420, 427-28 (La. Ct. App. 2006) (holding jury warranted in finding host negligent for furnishing drugs to guest who later overdosed). In *Cook*, the plaintiffs brought a wrongful death suit against the defendant for negligently providing narcotics to their son, who died of a drug overdose. *Id.* at 423. The jury found the plaintiff's son to be eighty percent at fault and the defendant to be twenty percent at fault. *Id.* On appeal, the court held that the jury did not commit manifest error in concluding that the defendant's conduct contributed to the death of the decedent. *Id.* at 429. The court reasoned that, under a duty-risk analysis, the jury was justified in finding the defendant liable for providing narcotics to the decedent. *Id.*

139. *Id.* at 427.

140. ME. REV. STAT. ANN. tit. 28-A, § 2511 (2007).

141. *Id.* § 2506(3) (describing negligent service of alcohol). "Service of liquor to a minor or to an intoxicated individual is negligent if the server knows or if a reasonable and prudent person in similar circumstances would know that the individual being served is a minor or is visibly intoxicated." *Id.* Additionally, the Act states:

> Service of liquor is reckless if a server intentionally serves liquor to an individual when the server

is defined as a person under the age of eighteen.[142] Any person who suffers injury may bring an action against a social host for negligently or recklessly serving alcohol to another, except that, under the Act, an intoxicated individual who is eighteen or older is precluded from bringing a claim against a social host for injuries resulting from his own voluntary intoxication.[143]

### *20. Maryland*

Maryland does not recognize any form of liquor liability against licensed vendors or social hosts.[144] Maryland courts have refused to amend the common-law rule, reasoning that it is the duty of the legislature, not the courts, to implement such policy decisions.[145] When considering whether to recognize social host liability, the Maryland Court of Special Appeals noted that doing so would be particularly anomalous in light of the fact that Maryland has declined to extend liability to licensed vendors.[146]

### *21. Massachusetts*

Massachusetts courts do not recognize a cause of action against a social host in favor of an adult guest served by the host for injuries arising out of the guest's own voluntary consumption of alcohol.[147] This is true even for persons between the ages of eighteen and twenty, who, although legally adults, are under the legal drinking age of twenty-one.[148] Massachusetts courts, however,

> knows that the individual being served is a minor or is visibly intoxicated and the server consciously disregards an obvious and substantial risk that serving liquor to that individual will cause physical harm to the drinker or to others.

*Id.* § 2507(3).

142. ME. REV. STAT. ANN. tit. 1, § 73 (1989) (defining age of majority as eighteen years of age and older).

143. ME. REV. STAT. ANN. tit. 28-A, § 2504(2)(A) (2007).

144. *See* Wright v. Sue & Charles, Inc., 749 A.2d 241, 246 (Md. Ct. Spec. App. 2000) (affirming common-law rule exempting provider of alcohol from liability).

145. *See supra* notes 31-33 and accompanying text (discussing Maryland courts' rationale for refusing to amend common-law rule regarding social hosts).

146. *See Wright*, 749 A.2d at 247 (noting "[n]o jurisdiction which refuses to sanction Dram Shop law recognizes social host liability").

147. *See supra* note 27 (discussing Massachusetts decision refusing to recognize claim against social host in favor of injured adult guest).

148. *See* Panagakos v. Walsh, 749 N.E.2d 670, 672-73 (Mass. 2001) (holding eighteen-year-old could not recover for injuries resulting from own consumption of alcohol); Hamilton v. Ganias, 632 N.E.2d 407, 407 (Mass. 1994) (foreclosing existence of duty owed by social hosts to nineteen-year-old who voluntarily consumed alcohol). The court in *Hamilton* reasoned that, as an adult, the plaintiff was responsible for his own conduct. *Hamilton*, 632 N.E.2d at 407. The court also observed that the legislature enacted a dram shop statute providing that a licensed vendor shall not be liable for negligently serving alcohol to an intoxicated person who injures himself in the absence of willful, wanton, or reckless conduct on the part of the licensed vendor. *Id.* at 408 n.4. The court reasoned that, in light of this articulation of public policy, it would be anomalous to hold social hosts to a stricter standard. *Id.* In *Panagakos*, the estate of the deceased eighteen-year-old sought to avoid the precedent set in *Hamilton* by asking the court to adopt the principles set out in the *Restatement (Second) of Torts* sections 321 and 322. *Panagakos*, 749 N.E.2d at 672. Under section 321, "[i]f the actor does

recognize a cause of action against a social host in favor of a third party injured by an intoxicated guest's negligent operation of an automobile where the social host knew or should have known that the guest was drunk, but nevertheless, allowed the guest to consume alcohol.[149]

### *22. Michigan*

Michigan courts do not recognize a cause of action against a social host who furnishes alcohol to an adult guest for injuries sustained as a result of the guest's intoxication.[150] This is true even where the adult guest is visibly intoxicated at the time he is served.[151] Michigan courts, however, recognize a cause of action against a social host who furnishes alcohol to a person under the legal drinking age through the doctrine of negligence per se.[152] Accordingly, a social host who violates any state statute criminalizing the sale or provision of alcohol to a person under twenty-one years of age may be held liable for injuries sustained by third parties and the underage drinker himself.[153]

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an act, and subsequently realizes or should realize that it has created an unreasonable risk of causing physical harm to another, he is under a duty to exercise reasonable care to prevent the risk from taking effect." RESTATEMENT (SECOND) OF TORTS § 321 (1965). Under section 322,

> If the actor knows or has reason to know that by his conduct, whether tortious or innocent, he has caused such bodily harm to another as to make him helpless and in danger of further harm, the actor is under a duty to exercise reasonable care to prevent such further harm.

*Id.* § 322. The court concluded that, if it were to recognize these two provisions of the Restatement, it would effectively overrule *Hamilton*, for "[a] social host who provides liquor to an underage drinker or to an already intoxicated drinker would or should realize that doing so 'create[s] an unreasonable risk of causing physical harm' to that drinker" in violation of section 321. *Panagakos*, 749 N.E.2d at 673 (quoting RESTATEMENT (SECOND) OF TORTS § 321 (1965)). Likewise, "a social host who provides liquor to an underage drinker or to an already intoxicated drinker may render the drinker 'helpless and in danger of further harm' from intoxication" in violation of section 322. *Id.* (quoting RESTATEMENT (SECOND) OF TORTS § 322 (1965)). Unwilling to overrule the precedent established in *Hamilton*, the court declined to adopt sections 321 and 322 of the Restatement. *Id.* The court also held that the violation of a state statute prohibiting the provision of alcohol to a person under the age of twenty-one does not create an independent ground for civil liability. *Id.* at 672 n.4.

149. *See supra* note 23 (discussing Massachusetts courts' willingness to impose social host liability in favor of injured third parties).

150. *See* Fournier v. Moretti, No. 267625, 2006 WL 1867702, at *1 (Mich. Ct. App. July 6, 2006) (unpublished decision). The rationale for not extending liability to social hosts for serving alcohol to adults is that social hosts are not among those who could be found to have proximately caused any resulting injury. *Id.*

151. *Id.* (citing Leszczynski v. Johnston, 399 N.W.2d 70, 73 (Mich. Ct. App. 1986)).

152. Thaut v. Finley, 213 N.W.2d 820, 822 (Mich. Ct. App. 1973) (holding violation of statute prohibiting furnishing alcohol to minors negligence per se); *see also* MICH. COMP. LAWS ANN. § 436.1701 (West Supp. 2010) (making it misdemeanor to negligently sell or furnish alcohol to minors).

153. *See* Longstreth v. Gensel, 377 N.W.2d 804, 813 (Mich. 1985) (recognizing cause of action in favor of injured minor imbiber under doctrine of negligence per se); *Thaut*, 213 N.W.2d at 822 (recognizing cause of action in favor of injured third party under doctrine of negligence per se).

### *23. Minnesota*

Minnesota courts have never recognized under the common law a cause of action against a social host for furnishing alcohol.[154] The Minnesota legislature, however, has adopted a statute that allows a third party to recover from a social host who either "knowingly or recklessly" permitted a person under the age of twenty-one to consume alcohol.[155] Under the statute, the intoxicated minor has no cause of action against the social host for injuries resulting from his own voluntary intoxication.[156]

### *24. Mississippi*

The Mississippi legislature has declared that "the consumption of intoxicating beverages, rather than the sale or serving or furnishing of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon another person."[157] Under Mississippi law, "no social host who serves or furnishes any intoxicating beverage to a person who may lawfully consume such intoxicating beverage shall be liable" for any resulting damages.[158] Mississippi courts have yet to recognize a cause of action against a social host for furnishing alcohol to a person who could not lawfully consume the alcohol.[159]

### *25. Missouri*

Missouri has never recognized a cause of action against a social host for the negligent distribution of alcohol.[160] According to public policy in Missouri, it is the consumption, rather than the furnishing, of alcohol that is the proximate

154. *See* Koehnen v. Dufuor, 590 N.W.2d 107, 111-12 (Minn. 1999) (noting social host liability nonexistent at common law).

155. *See* MINN. STAT. ANN. § 340A.90 (West 2004) (creating social host liability for injuries caused by intoxicated minor).

156. *Id.* § 340A.90(c).

157. MISS. CODE ANN. § 67-3-73(1) (West 1999).

158. *Id.* § 67-3-73(3).

159. *See* Boutwell v. Sullivan, 469 So. 2d 526, 529 (Miss. 1985) (declining to recognize social host liability). In *Boutwell*, the widow of a man killed in an auto accident by an intoxicated driver brought suit against the social hosts who had allegedly served the driver with alcohol while he was in a state of visible intoxication. *Id.* at 527. The plaintiff argued that the defendants should be found liable under the doctrine of negligence per se because they had violated a statute making it unlawful for "any permittee or other person to sell or furnish any alcoholic beverage to any person . . . who is visibly intoxicated." *Id.*; *see also* MISS. CODE ANN. § 67-1-83(1) (West Supp. 2010) (making it unlawful to serve alcohol to alcoholic or visibly intoxicated person). The court rejected this argument, holding that the statute did not apply to social hosts. *Boutwell*, 469 So. 2d at 528. The court then refused to recognize social host liability under the common law. *Id.* The court reasoned that the issue of social host liability, which involves strong public policy considerations, is one that should be decided by the legislature. *Id.* at 529.

160. *See* McClure v. McIntosh, 770 S.W.2d 406, 408 (Mo. Ct. App. 1989) (noting social hosts never held liable for injuries caused by intoxicated driver).

cause of injuries caused by an imbiber.[161]

### *26. Montana*

In Montana, a person who furnishes alcohol to another may not be held liable unless

> (a) the consumer was under the legal drinking age and the furnishing person knew that the consumer was underage or did not make a reasonable attempt to determine the consumer's age; (b) the consumer was visibly intoxicated; or (c) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol.[162]

The consumer of alcohol may not bring a claim against the alcohol provider for injuries sustained as a result of the consumer's intoxication unless "(a) the consumer was under the legal age and the furnishing person knew or should have known that the consumer was under age; or (b) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol while knowing that it did contain alcohol."[163]

### *27. Nebraska*

Nebraska courts have adhered to the common-law rule shielding both licensed vendors and social hosts from liability for the negligent sale or gift of alcoholic beverages.[164] In *Holmes v. Circo*,[165] the plaintiff, who was injured in a car accident by an inebriated driver, sued the tavern owner, alleging that the tavern had negligently served alcohol to the inebriated driver.[166] The Supreme Court of Nebraska refused to recognize the plaintiff's negligence claim against the tavern, relying on the common-law rule that "the proximate cause of the injury was the act of the purchaser in drinking the liquor and not the act of the vendor in selling it."[167] The court observed that imposing a common-law duty of care upon licensed vendors would create much uncertainty, including whether liability should also extend to social hosts.[168] The court concluded that

161. *Id.* (discussing public policy behind statute); *see also* MO. ANN. STAT. § 537.053 (West 2008) (limiting dram shop liability to sale of alcohol to minors or visibly intoxicated persons). The statute states that "it has been and continues to be the policy of this state to follow the common law of England . . . to prohibit dram shop liability and to follow the common law rule that furnishing alcoholic beverages is not the proximate cause of injuries inflicted by intoxicated persons." MO. ANN. STAT. § 537.053.

162. MONT. CODE ANN. § 27-1-710(3) (2009).

163. *Id.* § 27-1-710(5).

164. *See* Holmes v. Circo, 244 N.W.2d 65, 68 (Neb. 1976) (explaining common-law rule concerning liquor liability).

165. 244 N.W.2d 65 (Neb. 1976).

166. *Id.* at 66 (discussing facts of case).

167. *Id.* at 68 (explaining court's holding).

168. *Id.* at 70 (discussing ramifications of imposing common-law duty of care on taverns).

such policy decisions are best left to the legislature.[169] The court also held that violation of a state statute criminalizing the sale or gift of alcohol to minors and visibly intoxicated persons does not constitute negligence per se.[170]

### *28. Nevada*

In Nevada, if an intoxicated guest causes injury to himself or a third party, the social host cannot be held liable for any damages related to the injury.[171] Nevada courts have decided that it is the province of the legislature, not the courts, to modify the common-law rule.[172] Nevada courts have also held that violations of criminal liquor laws prohibiting the sale of alcohol to minors and visibly intoxicated persons do not constitute negligence per se.[173]

### *29. New Hampshire*

In New Hampshire, a social host who negligently furnishes alcohol to another person may be found liable to third persons injured as a result of the recipient's intoxication.[174] In order for one who is injured as a result of his own voluntary intoxication to recover from the social host who served him, the social host's provision of alcohol must have been reckless.[175] The age and level of intoxication of the recipient are factors to be considered by the finder of fact in determining whether the social host's conduct was negligent or reckless.[176]

### *30. New Jersey*

The New Jersey legislature has limited the social host-liability rule adopted by the New Jersey Supreme Court in *Kelly v. Gwinnell*.[177] Under section

169. *Holmes*, 244 N.W.2d at 70 (stating policy decisions best left to legislature).

170. *Id.* at 67. The court noted that, from 1881 to 1917, Nebraska had a dram shop statute which provided for broad civil liability against those who negligently distributed alcohol. *Id.* The court reasoned that, had the legislature desired to impose civil liability upon licensed vendors and social hosts when it adopted the Nebraska Liquor Control Act in 1935, it would have expressly done so. *Id.* The court concluded that the legislature did not intend for violations of the criminal liquor distribution statute to create civil liability. *Id.*; *see also* NEB. REV. STAT. § 53-180 (2010) (prohibiting sale or gift of alcohol to minors or mentally incompetent persons).

171. *See* Hinegardner v. Marcor Resorts, L.P. V., 844 P.2d 800, 802 (Nev. 1993) (noting Nevada's adherence to common-law rule refusing to recognize liability for selling or furnishing alcohol).

172. *Id.* (citing Hamm v. Carson City Nugget, Inc., 450 P.2d 358, 359 (Nev. 1969)).

173. *See* Bell v. Alpha Tau Omega Fraternity, Eta Epsilon Chapter, 642 P.2d 161, 162 (Nev. 1982) (holding violation of statute prohibiting sale of alcohol to minor not negligence per se); *Hamm*, 450 P.2d at 360 (holding violation of statute prohibiting sale of alcohol to intoxicated person not negligence per se).

174. Thompson v. McClure, No. 99-C-0084, 2001 WL 34012411, at *2 (N.H. Super. Ct. Dec. 28, 2001) (unpublished decision).

175. Hickingbotham v. Burke, 662 A.2d 297, 301 (N.H. 1995). "A social host's service of alcohol would be reckless if the host 'consciously disregard[ed] a substantial and unjustifiable risk' of a high degree of danger." *Id.* (quoting BLACK'S LAW DICTIONARY 1270 (6th ed. 1990)).

176. *See id.* at 302.

177. *See* N.J. STAT. ANN. § 2A:15-5.6 (West 2000) (stating conditions of recovery for damages arising

2A:15-5.6, a social host may be liable to third parties injured as a result of the host's negligent provision of alcohol to a visibly intoxicated person provided that "[t]he 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 [the] social host."[178] Furthermore, "[n]o 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."[179] A person under the legal drinking age may bring a cause of action against a social host who negligently served him or her with alcohol while in a visibly intoxicated state for injuries resulting from his or her own voluntary intoxication.[180] Likewise, a social host who furnishes alcohol to a visibly intoxicated minor knowing that the minor intends to drive soon after, may also be held liable to a third party injured as a result of subsequent drunk driving by the minor.[181]

### *31. New Mexico*

Under New Mexico law, a social host may not be held liable for damages resulting from a guest's intoxication unless the alcohol was "provided recklessly in disregard of the rights of others, including the social guest."[182] Both injured third parties and injured imbibers themselves may recover from the social host who served them as long as the social host's service of alcohol was reckless.[183]

### *32. New York*

New York courts have declined to amend the common-law rule shielding social hosts from liability for negligently furnishing alcohol to their guests.[184] Notwithstanding this fact, the legislature has created an exception to the

from social host negligence); Kelly v. Gwinnell, 476 A.2d 1219, 1224 (N.J. 1984), *superseded by statute*, 1987 N.J. Laws 1804. In *Kelly*, the New Jersey Supreme Court held that a social host is liable for injuries inflicted on a third party by an intoxicated guest when the social host knowingly provides alcohol to an intoxicated guest who will soon be driving. *Kelly*, 476 A.2d at 1224. In enacting section 2A:15-5.7 in 1987, the New Jersey legislature limited *Kelly*'s scope by restricting "a social host's liability to an adult for the negligent provision of alcoholic beverages." Wagner v. Schlue, 605 A.2d 294, 295 n.2 (N.J. Super. Ct. Law Div. 1992).

178. N.J. STAT. ANN. § 2A:15-5.6.

179. *Id.* § 2A:15-5.7.

180. Camp v. Lummino, 800 A.2d 234, 236 (N.J. Super. Ct. App. Div. 2002) (holding section 2A:15-5.6 does not prohibit suit by underage drinker against social host).

181. Linn v. Rand, 356 A.2d 15, 19 (N.J. Super. Ct. App. Div. 1976) (rejecting immunity of social host who negligently provides alcohol to minor guest).

182. N.M. STAT. ANN. § 41-11-1(E) (1996) (providing exclusive remedy against social hosts for provision of alcohol).

183. *Id.*

184. *See* D'Amico v. Christie, 518 N.E.2d 896, 899 (N.Y. 1987) (refusing to recognize social host liability under common law). The court in *D'Amico* also held that a statute creating liability for the unlawful sale of alcohol did not apply to social hosts. *Id.* at 898 (implying statute only applied to sale of alcohol for profit).

common-law rule by adopting a statute creating a cause of action against a social host who negligently furnishes alcohol to a person under the legal drinking age in favor of a third person injured by the intoxicated underage guest.[185] The statute, however, does not create a cause of action in favor of one injured as a result of his own voluntary intoxication.[186]

### *33. North Carolina*

The Supreme Court of North Carolina in *Hart v. Ivey*[187] clearly defined the liabilities of social hosts.[188] In *Hart*, an intoxicated minor, who had been served alcohol at a party hosted by the defendants, drove and collided with the plaintiff's vehicle causing injury to the plaintiff.[189] The plaintiff brought suit on two grounds: that the defendants were negligent per se for violating a state statute prohibiting the provision of alcohol to persons under the age of twenty-one and that the defendants, as social hosts, were negligent under common-law principles for serving alcohol to a person who they knew or should have known was under the influence of alcohol and would be driving an automobile soon thereafter.[190] The court held that violation of the state liquor statute did not constitute negligence per se.[191] The court reasoned that the purpose of the statute was to stop minors from drinking alcohol, not to protect the general public from the dangers of drunk driving.[192] The court concluded that if the purpose of the statute was to protect the public, it should not be limited to persons under twenty-one years of age, for adult drivers under the influence of alcohol can be just as dangerous as intoxicated minor drivers.[193]

Addressing the issue of common-law negligence, the court held that a social host may be held liable to third parties for furnishing alcohol to a person the host knew or should have known was intoxicated and would soon thereafter drive an automobile.[194] The court reasoned that such conduct constitutes a breach of the duty of reasonable care and can be the proximate cause of any resulting injuries to third parties because a man of ordinary prudence would know that providing alcohol to an intoxicated person who intends to drive

185. N.Y. GEN. OBLIG. LAW § 11-100 (McKinney 2010).

186. Searley v. Wegmans Food Mkts., Inc., 807 N.Y.S.2d 768, 768-69 (N.Y. App. Div. 2005).

187. 420 S.E.2d 174 (N.C. 1992).

188. *Id.* at 177-78 (stating court's holding).

189. *Id.* at 175.

190. *Id.* at 176 (identifying claims against defendants); *see also* N.C. GEN. STAT. § 18B-302 (2009) (making it unlawful to furnish alcohol to person under twenty-one years of age).

191. *Hart*, 420 S.E.2d at 177 (deciding whether violation of statute constitutes negligence per se). In North Carolina, "[w]hen a statute imposes a duty on a person for the protection of others . . . it is a public safety statute and a violation of such a statute is negligence *per se* unless the statute says otherwise." *Id.*

192. *Id.*

193. Hart v. Ivey, 420 S.E.2d 174, 177 (N.C. 1992) (stating court's reasoning).

194. *Id.* at 178.

creates a foreseeable risk of harm to the public.[195] The court concluded that social hosts owe a duty to the public not to serve alcohol to an intoxicated individual who intends to drive later.[196]

### *34. North Dakota*

In North Dakota, the legislature has created a statutory cause of action "against any person who knowingly disposes, sells, barters, or gives away alcoholic beverages to a person under twenty-one years of age, an incompetent, or an obviously intoxicated person."[197] The statute creates a cause of action in favor of third parties injured as a result of the intoxication.[198] The intoxicated person, however, is barred from bringing a cause of action under the statute for injuries sustained as a result of his own voluntary intoxication.[199] Likewise, an adult passenger in an automobile driven by an intoxicated person may not recover from the person who provided the driver with alcohol for injuries sustained as a result of the driver's intoxication.[200] The statute creates a cause of action against both commercial vendors and social hosts.[201]

### *35. Ohio*

In Ohio, a social host may be held liable for damages to a third party caused by the intoxication of a person under the legal drinking age, to whom the social host furnished alcohol.[202] The Supreme Court of Ohio has recognized such liability under the doctrine of negligence per se.[203] Absent a statutory violation, Ohio courts adhere to the common-law rule exempting social hosts from liability for negligently furnishing alcohol to their guests.[204]

195. *Id.*; *see also* Smith v. Winn-Dixie Charlotte, Inc., 542 S.E.2d 288, 293-94 (N.C. Ct. App. 2001) (recognizing unreasonableness of furnishing alcohol to visibly intoxicated person about to drive vehicle).

196. *Hart*, 420 S.E.2d at 178.

197. N.D. CENT. CODE § 5-01-06.1 (2006).

198. *Id.*

199. *Id.* The statute states,

> No claim for relief . . . may be had on behalf of the intoxicated person nor on behalf of the intoxicated person's estate or personal representatives, nor may a claim for relief be had on behalf of an adult passenger in an automobile driven by an intoxicated person or on behalf of the passenger's estate or personal representatives.

*Id.*

200. *Id.*

201. Born v. Mayers, 514 N.W.2d 687, 690 (N.D. 1994).

202. Mitseff v. Wheeler, 526 N.E.2d 798, 800 (Ohio 1988) (finding statutory duty to refrain from furnishing alcohol to persons under legal drinking age).

203. *See id.* (recognizing statutory duty to refrain from providing alcohol to minors); *see also* OHIO REV. CODE ANN. § 4301.69 (LexisNexis Supp. 2011) (prohibiting furnishing of alcohol to persons under legal drinking age).

204. Morrison v. Fleck, 697 N.E.2d 1064, 1071 (Ohio Ct. App. 1997) (denying social host liability for provision of alcohol to adults); *see also* Settlemyer v. Wilmington Veterans Post No. 49, Am. Legion, Inc., 464

### *36. Oklahoma*

Oklahoma adheres to the common-law rule that the voluntary consumption of alcohol, rather than its dissemination, is the sole proximate cause of any resulting injuries.[205] The Supreme Court of Oklahoma, however, has recognized an exception to this rule in the context of dram shop operators.[206] In *Brigance v. Velvet Dove Restaurant, Inc.*,[207] the court held that commercial vendors of alcohol could be found liable for the negligent sale of alcohol to a visibly intoxicated person.[208] This exception to the common-law rule, however, does not apply to social hosts.[209]

### *37. Oregon*

Under Oregon law, "[a] . . . guest who voluntarily consumes alcoholic beverages served by . . . a social host does not have a cause of action, based on statute or common law, against the person serving the alcoholic beverages, even though the alcoholic beverages are served to the . . . guest while the . . . guest is visibly intoxicated."[210] Although the imbiber of alcohol has no cause of action against the social host who served him, a social host may be held liable to innocent third parties injured as a result of a guest's intoxication where the social host served the guest while the guest was in a state of visible intoxication.[211] A social host may also be held liable to third parties injured by a person under twenty-one years of age who was served alcohol by the social

N.E.2d 521, 524 (Ohio 1984) (giving reasons for shielding social hosts from liability), *superseded by statute*, 1986 Ohio Laws, Part III, 5711, *as recognized in* Lesnau v. Andate Enters., Inc., 756 N.E.2d 97 (Ohio 2001).

205. *See* McClelland v. Harvie Kothe-Ed Rieman, Post No. 1201, Veterans of Foreign Wars of U.S., Inc., 770 P.2d 569, 571-72 (Okla. 1989) (stating common-law proximate causation rule for alcohol-related liability).

206. *See* Brigance v. Velvet Dove Rest., Inc., 725 P.2d 300, 305 (Okla. 1986) (abrogating common-law rule for dram shop operators).

207. 725 P.2d 300 (Okla. 1986).

208. *Id.* at 304-05. In determining that commercial vendors have a duty to exercise reasonable care not to sell alcohol to a visibly intoxicated person, the court opined, "We believe the application of the old common law rule of a tavern owner's nonliability in today's automotive society is unrealistic, inconsistent with modern tort theories and is a complete anachronism within today's society." *Id.* at 304. The court held all people have a duty not to subject others to an unreasonable risk of harm, and concluded that "[i]t is not unreasonable to expect a commercial vendor who sells alcoholic beverages . . . to a person he knows or should know . . . is already intoxicated, to foresee the unreasonable risk of harm to others who may be injured by such person's impaired ability to operate an automobile." *Id.* The court held that this duty is based upon both common-law principles and statute. *Id.*

209. *See* Battles v. Cough, 947 P.2d 600, 602-03 (Okla. Civ. App. 1997) (holding *Brigance* exception to common-law rule not applicable to social hosts); *see also* Teel v. Warren, 22 P.3d 234, 236 (Okla. Civ. App. 2001) (holding providing alcohol to minor in violation of statute does not create social host liability).

210. OR. REV. STAT. ANN. § 471.565(1) (West 2003).

211. *Id.* § 471.565(2). It is important to note that only "innocent" third parties may bring a cause of action against a social host for serving alcohol to a visibly intoxicated guest. *Id.* § 471.565(2)(b). An injured third party is barred from bringing a cause of action against a social host if the third party "substantially contribute[d] to the intoxication of the . . . guest by: (A) [p]roviding or furnishing alcoholic beverages to the . . . guest; (B) [e]ncouraging the . . . guest to consume . . . alcoholic beverages . . . ; or (C) [f]acilitating the consumption of alcoholic beverages by the . . . guest in any manner." *Id.*

host where "a reasonable person would have determined that identification should have been requested or that the identification exhibited was altered or did not accurately describe the person to whom the alcoholic liquor was . . . served."[212]

### *38. Pennsylvania*

In Pennsylvania, a social host who furnishes alcohol to a minor guest is negligent per se.[213] Social hosts who serve alcohol to persons under twenty-one years of age can be held liable for injuries suffered by a third party that proximately result from the minor guest's intoxication.[214] Social hosts can likewise be held liable for the minor guest's own injuries that are the proximate result of the minor guest's voluntary intoxication.[215] Social hosts, however, may not be held liable for furnishing alcohol to adult guests, even if they are visibly intoxicated.[216]

### *39. Rhode Island*

In Rhode Island, a social host may not be held liable to a third party for injuries suffered by an intoxicated guest absent the existence of a special relationship.[217] A special relationship exists between a plaintiff and defendant in situations where the plaintiff has a reasonable expectation that the defendant will anticipate harmful acts of third persons and take appropriate steps to protect the plaintiff from harm.[218] In *Martin v. Marciano*,[219] an intoxicated minor, who was a guest at a party hosted by the defendant, attacked and injured the plaintiff.[220] The Rhode Island Supreme Court held that the defendant owed the plaintiff a duty of reasonable care to protect him from harm at the hands of

212. *See id.* § 471.567(1).

213. *See* Douglas v. Schwenk, 479 A.2d 608, 611 (Pa. Super. Ct. 1984). In *Douglas*, the court reasoned that a state statute setting the drinking age at twenty-one-years-old evidenced a legislative judgment that persons younger than twenty-one are incompetent to handle alcohol. *Id.* The court concluded that the purpose of the statute was "to protect both minors and the public at large from the perceived deleterious effects of serving alcohol to persons under twenty-one years of age." *Id.* (quoting Congini v. Portersville Valve Co., 470 A.2d 515, 518 (Pa. 1983)).

214. *Id.* (finding defendants negligent per se).

215. *Congini*, 470 A.2d at 518 (noting service of alcohol to minor forms basis of minor's claim).

216. *See* Klein v. Raysinger, 470 A.2d 507, 510-11 (Pa. 1983) (refusing to recognize claim against social host for furnishing alcohol to visibly intoxicated adult); Burkhart v. Brockway Glass Co., 507 A.2d 844, 847 (Pa. Super. Ct. 1986) (holding social hosts not liable for furnishing alcohol to competent, adult individuals). In *Raysinger*, the court reasoned that, "in the case of an ordinary able bodied man it is the consumption of the alcohol, rather than the furnishing of the alcohol, which is the proximate cause of any subsequent occurrence." *Raysinger*, 470 A.2d at 510-11.

217. Willis v. Omar, 954 A.2d 126, 130 (R.I. 2008).

218. Martin v. Marciano, 871 A.2d 911, 915 (R.I. 2005) (citing Luoni v. Berube, 729 N.E.2d 1108, 1111 (Mass. 2000)).

219. 871 A.2d 911 (R.I. 2005).

220. *Id.* at 914 (noting plaintiff was struck in head with baseball bat).

fellow guests or third persons because it was generally foreseeable that an underage guest could have been the victim of an attack while at the party.[221] Although supplying underage guests with alcohol may trigger a special relationship, providing alcohol to an adult guest does not.[222] Furthermore, even if a social host unlawfully serves alcohol to a minor guest, "this act alone is insufficient to trigger a special relationship, if the resultant risk of injury is not foreseeable."[223]

### *40. South Carolina*

In *Marcum v. Bowden*,[224] the Supreme Court of South Carolina amended the common-law rule shielding social hosts from liability and held that social hosts who furnish alcohol to persons under the legal drinking age "are liable to the person served, and to any other person, for damages proximately caused by the [social] host's service of alcohol."[225] Despite the existence of liquor control statutes, the court recognized this new cause of action under the common law, rather than under the doctrine of negligence per se.[226]

### *41. South Dakota*

In South Dakota, the legislature has enacted an anti-dram shop statute codifying the common-law rule of nonliability for social hosts.[227] The statute provides that "the consumption of alcoholic beverages, rather than the serving of alcoholic beverages, is the proximate cause of any injury inflicted upon another by an intoxicated person."[228] Section 35-11-2, which deals specifically with the liabilities of social hosts, states, "No social host who furnishes any

221. *Id.* at 915-17.

222. *Willis*, 954 A.2d at 130 (acknowledging social host liability exists in limited circumstances).

223. Willis v. Omar, 954 A.2d 126, 130 (R.I. 2008).

224. 643 S.E.2d 85 (S.C. 2007).

225. *Id.* at 90 (stating court's holding).

226. *Id.* at 88-90 (stating amending common law falls within court's purview). *But see* Christiansen v. Campbell, 328 S.E.2d 351, 354 (S.C. Ct. App. 1985) (holding violation of statute prohibiting sale of alcohol to visibly intoxicated person negligence per se), *overruled in part by* Tobias v. Sports Club, Inc., 504 S.E.2d 318 (S.C. 1998) (refusing to recognize claim by injured intoxicated patron against tavern under negligence per se doctrine). The court in *Tobias* only overruled the holding in *Campbell* to the extent that the intoxicated injured adult imbiber does not have a claim against the tavern owner under the doctrine of negligence per se for a violation of a state statute prohibiting the sale of alcohol to a visibly intoxicated adult. *Tobias*, 504 S.E.2d at 319. The court, however, specifically retained the holding in *Campbell* that permits an injured third party to file a claim against the tavern owner. *See id.* In *Marcum*, the court elected to find this duty under the common law, rather than under the doctrine of negligence per se, because, in its view, the statutes prohibiting the furnishing of alcohol to persons under the age of twenty-one were designed to protect only the person under twenty-one who consumes the alcohol. *Marcum*, 643 S.E.2d at 89. If the court were to impose liability under the doctrine of negligence per se, the social host would be liable only to the underage drinker and not to any injured third party. *Id.* The court held that such an outcome would contravene the public policy of South Carolina. *Id.*

227. *See* S.D. CODIFIED LAWS § 35-11-1 (2004); *Id.* § 35-11-2 (Supp. 2008).

228. *Id.* § 35-11-1.

alcoholic beverage is civilly liable to any injured person . . . for any injury suffered."[229]

### *42. Tennessee*

The Tennessee legislature has declared that "the consumption of any alcoholic beverage or beer rather than the furnishing of any alcoholic beverage or beer is the proximate cause of injuries inflicted upon another by an intoxicated person."[230] Accordingly, a social host may not be held liable as a matter of law for furnishing alcohol to another person, even if that person is under the legal drinking age.[231] Tennessee courts, however, have held that a defendant has an affirmative duty to protect another from harm if a special relationship exists between the defendant and the person who is either the source of danger or the person who is at risk.[232] In *Biscan v. Brown*,[233] the Tennessee Supreme Court held that a social host who knowingly permitted and facilitated the consumption of alcohol by minors had a special relationship with his minor guests, and therefore, had a duty to exercise reasonable care to prevent his minor guests from harming third persons or themselves.[234] In so holding, the court reached an interesting result whereby a social host who actively furnishes alcohol to underage guests is exempt from liability for any resulting injuries, but a social host who merely provides the setting for underage drinking may be held liable for any resulting injuries to third parties and to the minor drinkers themselves.[235]

### *43. Texas*

Texas courts do not recognize any form of social host liability.[236] On several occasions, the courts have refused to amend the common-law rule shielding social hosts from liability because of legislative action in the field of

229. *Id.* § 35-11-2.

230. TENN. CODE ANN. § 57-10-101 (2002).

231. Biscan v. Brown, 160 S.W.3d 462, 472 (Tenn. 2005).

232. *Id.* at 478-79.

233. 160 S.W.3d 462 (Tenn. 2005).

234. *Id.* at 482. The court based its finding of a special relationship on the public policy determination that minors are generally prohibited from consuming alcohol because of their immaturity and inexperience. *Id.* at 480-81. The court further reasoned that, "[a]s it was foreseeable that guests would drink and drive, it was also entirely foreseeable that guests would ride with drivers who had been drinking. We conclude that the foreseeability factor also supports finding that [the defendant social host] had a special relationship to his minor guests." *Id.* at 481.

235. *See id.* at 482 (rationalizing discrepancy that duty owed by social host lies separate from furnishing alcohol to minors).

236. *See, e.g.*, Reeder v. Daniel, 61 S.W.3d 359, 360-61 (Tex. 2001) (refusing to recognize cause of action against social host for making alcohol available to persons under eighteen); Smith v. Merritt, 940 S.W.2d 602, 607 (Tex. 1997) (refusing to recognize claim against social host for serving alcohol to persons over age eighteen); Graff v. Beard, 858 S.W.2d 918, 918 (Tex. 1993) (refusing to recognize claim against social host who makes alcohol available to adult guest).

liquor liability.[237] Texas courts have likewise refused to recognize social host liability under the doctrine of negligence per se.[238]

### *44. Utah*

Utah courts do not recognize social host liability under the common law.[239] The Utah legislature, however, has adopted legislation that creates a cause of action against a social host who negligently serves alcohol to a person under twenty-one years of age in favor of a third party injured as a result of the social host's service of alcohol.[240] Under the statute, only third parties may bring a cause of action against the social host.[241] The imbiber has no remedy for injuries sustained as a result of his own voluntary intoxication.[242]

### *45. Vermont*

Under the Vermont dram shop statute, a social host generally may not be held liable for furnishing alcohol to another person.[243] Nevertheless, "[a] social host who knowingly furnishes intoxicating liquor to a minor may be held liable . . . if the social host knew, or a reasonable person in the same circumstances would have known, that the person who received the intoxicating liquor was a minor."[244] Third parties injured by an intoxicated minor may bring a cause of action against the social host who served the minor.[245] Under the statute, a minor may not recover from the social host who served him for injuries sustained as a result of his own voluntary

237. *See Graff*, 858 S.W.2d at 919 (noting dram shop statute only applies to commercial providers); *see also* TEX. ALCO. BEV. CODE ANN. §§ 2.01-.03 (West 2007) (imposing limited liability upon commercial vendors). When the legislature debated the dram shop bill, it specifically considered creating social host liability, but declined to do so. *Graff*, 858 S.W.2d at 919. In light of the legislature's decision not to adopt social host liability, Texas courts have reasoned that judicial recognition would be inappropriate because it would undermine the clear intent of the legislature. *See Merritt*, 940 S.W.2d at 607 (refusing to circumvent legislative intent).

238. *Merritt*, 940 S.W.2d at 608. In *Merritt*, the court refused to recognize as negligence per se the violation of a statute prohibiting the furnishing of alcohol to a person under the legal drinking age. *See id.* The court reasoned that the legislature intended the dram shop statute to provide the exclusive means of civil liability for serving alcohol to persons under the legal drinking age. *Id.* Recognition of negligence per se in this instance would circumvent the intent of the legislature, which had specifically decided not to create a cause of action against social hosts. *Id.*

239. *See* Gilger v. Hernandez, 997 P.2d 305, 307-08 (Utah 2000) (noting liability precluded under common law for social hosts who serve alcohol to minors); Miller v. Gastronomy, Inc., 110 P.3d 144, 147 (Utah Ct. App. 2005) (observing no third-party cause of action against dram shop exists at common law).

240. UTAH CODE ANN. § 32A-14a-102 (LexisNexis Supp. 2010).

241. Horton v. Royal Order of Sun, 821 P.2d 1167, 1169 (Utah 1991) (discussing legislative enactment of third-party cause of action).

242. *Id.* (noting imbiber precluded from bringing cause of action against social host).

243. VT. STAT. ANN. tit. 7, § 501(g)(1) (2005).

244. *Id.* § 501(g)(2). A minor is defined as a person under the age of twenty-one. *Id.* § 2(26).

245. Langle v. Kurkul, 510 A.2d 1301, 1303 (Vt. 1986) (stating Dram Shop Act provides no remedy to self-injured imbiber, only to injured third parties).

intoxication.[246] The dram shop statute does not preclude an injured third party from bringing a negligence cause of action against a social host under the common law.[247] The Supreme Court of Vermont indicated in dicta that it would recognize a common-law cause of action against a social host "(a) where the social host furnishes alcoholic beverages to one who is visibly intoxicated and it is foreseeable to the host that the guest will thereafter drive an automobile, or (b) where the social host furnishes alcoholic beverages to a minor."[248]

### *46. Virginia*

Virginia courts do not recognize a cause of action against a social host for injuries resulting from the negligent provision of alcohol to a guest.[249] This rule applies even when the recipient of the alcohol is under the age of eighteen.[250] In *Teape v. Ampuero*,[251] the court addressed whether a person injured in a car accident with a seventeen-year-old intoxicated social guest could sue the social host who served alcohol to the minor driver.[252] The court answered the inquiry in the negative, observing that "Virginia law assumes adults will act as a reasonably prudent person would. This presumption of reasonably prudent conduct is an essential component of the Court's rulings that serving alcohol is not the proximate cause of the drinker's future injurious actions."[253] The court reasoned that minors engaged in adult activities are held to the same standard of care as adults.[254] Therefore, social hosts can assume that minor guests will exercise the same degree of caution when driving as would adult guests.[255] The court reasoned that social hosts should not be held to a higher standard of care when their guests are under the age of eighteen because, as a matter of law, future injurious acts of minor drinkers are not more foreseeable than those of adult drinkers.[256]

246. *Id.* (holding Dram Shop Act provides no remedy to imbiber against social host).

247. *Id.* (rejecting notion that dram shop law preempts common-law remedy).

248. *Id.* at 1306.

249. *See* Teape v. Ampuero, 73 Va. Cir. 7, 8-9 (2006) (noting Virginia Supreme Court has refused to judicially adopt social host liability). The rationale for nonliability is that social guests are responsible for their own actions because the consumption of alcohol, not its dissemination, is the proximate cause of the injury. *Id.* (citing Williamson v. Old Brogue, Inc., 350 S.E.2d 621, 623 (Va. 1986) (stating persons, drunk or sober, are responsible for own conduct)).

250. *Id.* at 9 (noting minors engaged in adult activities are held to same standard as adults).

251. 73 Va. Cir. 7 (2006).

252. *Id.* at 7-8.

253. *Id.* at 9.

254. *Id.* (stating driving car is adult activity). *But see* RESTATEMENT (SECOND) OF TORTS § 283A (1965) (stating children held to standard of reasonable, similarly situated child in negligence actions).

255. *Teape*, 73 Va. Cir. 7, at 9.

256. *See id.* at 9-10 (refusing to overturn precedent regarding foreseeability of injurious acts of infants).

### *47. Washington*

In Washington, a social host generally owes no duty to prevent overconsumption of alcohol by an adult guest even if the guest is visibly intoxicated.[257] In *Hansen v. Friend*,[258] however, the Washington Supreme Court held that a social host who furnishes alcohol to a minor may be held liable to that person for injuries sustained as a result of his voluntary intoxication.[259] Notably, in *Reynolds v. Hicks*,[260] the Washington Supreme Court refused to extend the ruling in *Hansen* to recognize a cause of action in favor of an injured third party.[261]

### *48. West Virginia*

West Virginia courts recognize a cause of action based upon the *Restatement (Second) of Torts* section 321, which provides, "One who engages in affirmative conduct, and thereafter realizes or should realize that such conduct has created an unreasonable risk of harm to another, is under a duty to exercise reasonable care to prevent the threatened harm."[262] Under the principles of section 321, a social host who furnishes alcohol or narcotics to a guest may not be held liable to innocent third parties injured as a result of the guest's intoxication unless the social host forced or actively encouraged the guest to imbibe.[263]

### *49. Wisconsin*

In Wisconsin, the legislature has enacted a statue under which a social host may be held liable for injuries sustained by a third party that result from the host's negligent provision of alcohol to a person under the legal drinking age.[264] The statute creates a cause of action in favor of injured third parties

257. *See* Burkhart v. Harrod, 755 P.2d 759, 763-64 (Wash. 1988) (en banc) (declining to hold social hosts to same standard common law requires of commercial hosts).

258. 824 P.2d 483 (Wash. 1992) (en banc).

259. *Id.* at 485-86. The court concluded that a state law making it unlawful to provide alcohol to a person under twenty-one years of age imposes a duty upon social hosts to refrain from serving alcohol to minors. *Id.* (noting contributory negligence must also be considered).

260. 951 P.2d 761 (Wash. 1998) (en banc).

261. *Id.* at 764. The court reasoned that the statute making it unlawful to furnish alcohol to a person under twenty-one years of age was intended to protect minors only. *Id.* The court concluded that third parties are not within the class of persons the statute was enacted to protect, and therefore, are owed no duty by social hosts. *Id.* (stating, however, third party claims would be recognized against commercial vendors).

262. Robertson v. LeMaster, 301 S.E.2d 563, 567 (W. Va. 1983); RESTATEMENT (SECOND) OF TORTS § 321 (1965).

263. *See* Overbaugh v. McCutcheon, 396 S.E.2d 153, 158 (W. Va. 1990).

264. *See* WIS. STAT. ANN. § 125.035 (West 2009). The statute begins by codifying the common-law rule that "[a] person is immune from civil liability arising out of the act of procuring alcohol beverages for or selling, dispensing or giving away alcohol beverages to another person." *Id.* § 125.035(2). The statute, however, carves out an exception to the common-law rule, thus making a social host liable, in the event that the social host "knew or should have known that the underage person was under the legal drinking age and if the

only.[265]

### *50. Wyoming*

The Wyoming legislature has adopted a statute, which provides: "No person who has legally provided alcoholic liquor or malt beverage to any other person is liable for damages caused by the intoxication of the other person."[266] In Wyoming, it is illegal for any person to sell, furnish, or give alcohol to any person under twenty-one-years-old who is not his legal ward, medical patient, or immediate family member.[267] Therefore, where alcohol is illegally provided to a minor, the person providing the alcohol may become liable for injuries resulting from that minor's intoxication.[268] In *Daniels v. Carpenter*,[269] the Supreme Court of Wyoming held that social hosts who illegally provide alcohol to underage persons may be liable to injured third parties under certain circumstances.[270] The court has yet to consider whether a minor guest may recover for injuries sustained as a result of his own voluntary intoxication.[271]

## III. ANALYSIS

### *A. The Traditional Proximate Cause Rationale for Shielding Social Hosts is Flawed*

The traditional rationale for exempting social hosts from liability for the negligent distribution of alcohol to their guests was the lack of proximate causation.[272] At common law, the actual consumption of alcohol, rather than its dissemination, is considered to be the sole proximate cause of injuries

alcohol beverages provided to the underage person were a substantial factor in causing injury to a 3rd party." *Id.* § 125.035(4)(b).

265. *Id.* § 125.035(4)(b).

266. WYO. STAT. ANN. § 12-8-301(a) (2009).

267. *Id.* § 12-6-101(a) (Supp. 2010).

268. Daniels v. Carpenter, 62 P.3d 555, 563 (Wyo. 2003) (holding social hosts who illegally provide alcohol to underage persons liable to injured third parties).

269. 62 P.3d 555 (Wyo. 2003).

270. *Id.* at 563-64. The court laid out a list of factors that must be present in order for a social host to be found liable to a third party injured by an intoxicated underage guest. *Id.* at 564. First, the social host must have provided the alcohol to the minor guest or knew or should have known that alcohol was being provided to the minor guest. *Id.* Second, the social host must have known or should have known that the minor guest was drinking to the point of intoxication. *Id.* Third, the social host must have known or should have known that the minor guest would soon be driving an automobile. *Id.* The court concluded that the mere failure of a social host to supervise minor guests does not by itself create a duty to protect third parties from harm caused by an intoxicated minor driver. *Id.*

271. *See id.* at 563-64 (declining to define all circumstances under which common-law claim for social host liability exists).

272. *See supra* note 20 and accompanying text (explaining common-law rationale for exempting licensed vendors and social hosts from civil liability).

caused to either the recipient or third persons.[273] Although this determination may have made sense centuries ago when horses provided the primary means of terrestrial transportation, the same can no longer be said of today's automotive era.[274]

Proximate causation is said to exist when the injury caused is within the scope of foreseeable risk created by the defendant's negligence.[275] It is plausible to suggest that operating a horse-drawn carriage while intoxicated does not create a foreseeable risk of harm to the public.[276] Indeed, that was the opinion of the learned scholars who wrote the common law.[277] To suggest, however, that the dangers presented to the public by the operation of an automobile while intoxicated are not foreseeable would be naïve at best.[278]

Unlike the horse and buggy, automobiles are extremely fast, massive, and require a high level of attention and dexterity to operate safely.[279] Automobiles are easily capable of causing mass death and destruction when mishandled.[280] Driving while intoxicated amplifies this danger because an intoxicated driver's motor functions and reaction times are significantly impaired, making the task of safely operating an automobile nearly impossible.[281]

In recent years, society has come to appreciate the dangers of drunk driving.[282] It is only proper, then, that the common law adapt to reflect society's evolving concerns.[283] Therefore, in light of the dangers posed by automotive travel and the fact that automobiles are heavily used, it should be clear that providing an intoxicant to a social guest may create a reasonably foreseeable risk of harm to both the recipient and third persons in certain

273. *See supra* note 20 and accompanying text (reiterating rule of responsibility placed on person voluntarily drinking).

274. *See supra* note 22 and accompanying text (recognizing common-law rule outdated with respect to modern transportation technology).

275. *See* DOBBS ET AL., *supra* note 14, at 186 (formulating scope of risk principle with respect to proximate causation).

276. *See supra* note 22 and accompanying text (noting common-law rule satisfactory during horse-and-buggy era).

277. *See supra* note 22 and accompanying text (discussing former status of common law regarding vehicular liability).

278. *See* Kelly v. Gwinnell, 476 A.2d 1219, 1222 n.3 (N.J. 1984) (detailing injuries and fatalities related to drunk driving in New Jersey over four-year period), *superseded by statute*, 1987 N.J. Laws 1804. "From 1978 to 1982 there were 5,755 highway fatalities in New Jersey. Alcohol was involved in 2,746 or 47.5% of these deaths. Of the 629,118 automobile accident injuries for the same period, 131,160, or 20.5% were alcohol related." *Id.*

279. *See* Craig v. Driscoll, 813 A.2d 1003, 1020 (Conn. 2003) (noting "quick response of mind and muscle" necessary to safely operate automobile).

280. *Id.* (noting automobiles "capable of producing mass death and destruction").

281. *See supra* note 22 and accompanying text (emphasizing danger associated with drunk driving).

282. *See supra* note 23 and accompanying text (noting society's growing concern regarding dangers of drunk driving).

283. *See supra* note 36 and accompanying text (arguing common law must adapt to fit society's changing concerns).

circumstances.[284] In other words, the provision of an intoxicant to a social guest should, under the right circumstances, constitute the proximate cause of any resulting injuries.[285]

### *B. A Reasonable Standard of Care for Social Hosts*

Even if one embraces the notion that the negligent distribution of alcohol may be a proximate cause of resulting injuries, in order to properly define the liabilities of social hosts, it is necessary to define the duty social hosts owe to their guests.[286] Social hosts should owe their guests and the general public a duty of reasonable care in all circumstances, regardless of the guests' age or state of intoxication.[287] By holding social hosts to the traditional "reasonable person" standard, an equitable balance is struck whereby irresponsible conduct is deterred without hindering the enjoyment of social gatherings.[288] This Note will now explore the implications that this standard will have on the liability of social hosts in the context of visibly intoxicated persons, persons under the legal drinking age, and narcotics distribution.[289]

#### *1. Visibly Intoxicated Persons*

A social host should be liable to an innocent third person injured by an intoxicated guest when the host knew or should have known that the guest was visibly intoxicated and intended to drive, but furnished alcohol to the guest nonetheless.[290] Such a standard is appropriate because serving alcohol to a visibly intoxicated guest is unreasonable and presents a foreseeable risk of harm to the public, especially in today's era of automobiles.[291] A social host

284. Nehring v. LaCounte, 712 P.2d 1329, 1334 (Mont. 1986) (observing unreasonable risk of harm more likely under present day conditions than in past), *superseded by statute*, Dram Shop Act, 1986 Mont. Spec. Sess. Laws, ch. 1, § 1, *as recognized in* Rohlfs v. Klemenhagen, LLC, 227 P.3d 42 (Mont. 2009).

285. *See id.* at 1335 (denouncing common-law causation rule regarding liability of social host). In *Nehring*, the court addressed the common-law rule that the drinking of the intoxicating beverage, not the furnishing thereof, is the proximate cause of any subsequent injuries. *Id.* In light of the unreasonable risk of harm posed by drunk driving, the court explicitly rejected this dated common-law principle, branding it a "Neanderthal approach to causation." *Id.*

286. *See supra* notes 15-16 and accompanying text (noting breach of recognized legal duty as element of negligence cause of action).

287. *See* Pike v. Bugbee, 974 A.2d 743, 750-51 (Conn. App. Ct. 2009) (implying service of alcohol to minor is breach of duty of reasonable care); Hart v. Ivey, 420 S.E.2d 174, 178 (N.C. 1992) (holding provision of alcohol to intoxicated person breach of duty of reasonable care to public); Bash v. Book, No. WOCV2006-00745-A, slip op. at 5 (Mass. Super. Ct. Oct. 20, 2009) (suggesting social hosts owe duty of reasonable care to guests).

288. *See infra* Parts III.B.1-.3 and accompanying text (analyzing implications of reasonable person standard).

289. *See infra* Parts III.B.1-.3 and accompanying text (examining liabilities of social hosts when held to standard of reasonable care).

290. Kelly v. Gwinnell, 476 A.2d 1219, 1224 (N.J. 1984) (holding social hosts who serve visibly intoxicated guests liable to injured third parties), *superseded by statute*, 1987 N.J. Laws 1804.

291. *See* Smith v. Winn-Dixie Charlotte, Inc., 542 S.E.2d 288, 293-94 & n.6 (N.C. Ct. App. 2001)

should also be liable to an intoxicated guest for injuries resulting from the guest's own voluntary intoxication.[292] By voluntarily consuming the alcohol, however, the recipient may be equally, if not more, at fault than the host who served him.[293] Depending on the comparative fault rules of the jurisdiction, the injured imbiber's recovery may be significantly reduced or even barred due to his own negligent conduct of voluntarily drinking in excess.[294] Despite the prospects of recovery, an injured imbiber should not be categorically barred from bringing a negligence action against the social host who served him, because serving alcohol to a visibly intoxicated person is a breach of the duty of reasonable care.[295]

### *2. Underage Drinkers*

A social host who serves alcohol to a person under the legal drinking age should be liable to both the underage drinker and innocent third persons for any injuries sustained.[296] This fairly expansive liability is reasonable in light of the fact that providing alcohol to an underage person creates a foreseeable risk of harm to both the underage drinker and to the general public.[297] While possibly negligent himself for voluntarily ingesting the alcohol, an underage drinker is distinguishable from a person of legal drinking age in that an underage drinker is less likely to be able to exert the self-control necessary to refrain from excessive drinking in a social setting.[298] Underage drinkers are presumably less experienced at drinking alcohol, and therefore, are in a worse position to judge the rate and intensity of their intoxication.[299] For these reasons, in a comparative fault jurisdiction, an inexperienced underage drinker may have a

(recognizing unreasonableness of furnishing alcohol to visibly intoxicated person about to drive vehicle). In *Smith*, the court observed that social hosts have a duty to exercise the same degree of care that a reasonably prudent person would exercise under similar conditions. *Id.* at 292. The court held that a social host who furnishes alcoholic beverages to a visibly intoxicated person who intends to drive a motor vehicle breaches his duty of reasonable care. *Id.* at 292-93.

292. *See supra* Part II.C.14 (describing Indiana law recognizing injured imbiber's claim where host has knowledge of guest's visible intoxication).

293. *See* Weinert, *supra* note 27, at 872 (recognizing lesser blameworthiness of host as reason to deny injured imbiber right to recover from host).

294. *See* DOBBS ET AL., *supra* note 14, at 221-23 (discussing comparative fault principles).

295. *See supra* notes 290-91 (citing cases where provision of alcohol to visibly intoxicated guest breached duty of reasonable care).

296. *See supra* Part II.C.7 (analyzing Connecticut law recognizing claim by injured minor imbiber and third parties against social host).

297. *See supra* Part II.C.3 (explaining provision of alcohol to minor breaches duty of reasonable care in Arizona).

298. *See* Bohan v. Last, 674 A.2d 839, 842-43 (Conn. 1996) (noting minors overall less blameworthy than adults for overconsumption of alcohol). In *Bohan*, the court listed two reasons for holding social hosts liable to both injured minor guests and third persons. *Id.* First, the court noted that minors are assigned a lesser degree of responsibility regarding their decision to consume alcohol. *Id.* Second, the court observed that minors are generally incompetent to responsibly handle the effects of alcohol. *Id.* at 843.

299. *See id.* at 842-43.

better chance at recovering for his injuries than would a person of legal drinking age.[300]

### *3. Narcotics*

A social host who provides alcohol to a sober guest of legal drinking age should not be liable for any injuries resulting from the guest's subsequent intoxication because providing alcohol to a competent adult is not unreasonable.[301] Where a social host distributes not alcohol, but narcotics to his guests, the reasonableness analysis changes.[302] Narcotics, unlike alcohol, are illegal.[303] Therefore, it is presumably a breach of the duty of reasonable care to provide someone with a narcotic.[304] This is certainly true in jurisdictions that recognize the doctrine of negligence per se.[305] In jurisdictions that do not recognize the doctrine, the question of reasonableness hinges upon a traditional duty-risk analysis.[306] There exist many types of narcotics, which vary in potency and risk to human life.[307] Presumably, it would be less reasonable to distribute to a social guest heroin, which the federal government has classified as one of the most dangerous illegal drugs, than marijuana, which the federal government has classified as one of the least dangerous.[308] It is up

300. *See* DOBBS ET AL., *supra* note 14, at 221-23 (discussing comparative fault principles); *see also* RESTATEMENT (SECOND) OF TORTS § 283A (1965) (defining standard applied to children in negligence actions). "IF THE ACTOR IS A CHILD, THE STANDARD OF CONDUCT TO WHICH HE MUST CONFORM TO AVOID BEING NEGLIGENT IS THAT OF A REASONABLE PERSON OF LIKE AGE, INTELLIGENCE, AND EXPERIENCE UNDER LIKE CIRCUMSTANCES." RESTATEMENT (SECOND) OF TORTS § 283A. *BUT SEE* Teape v. Ampuero, 73 Va. Cir. 7, 9 (2006) (observing under Virginia law minors engaging in adult activity held to same standard as adults).

301. *See* Bash v. Book, No. WOCV2006-00745-A, slip op. at 4 (Mass. Super. Ct. Oct. 20, 2009) (asserting provision of alcohol to adult guest does not create foreseeable risk of harm); Morrison v. Fleck, 697 N.E.2d 1064, 1071 (Ohio Ct. App. 1997) (denying social host liability for provision of alcohol to adults); Graff v. Beard, 858 S.W.2d 918, 918 (Tex. 1993) (refusing to recognize claim against social host who makes alcohol available to adult guest); *supra* note 6 (discussing holding in *Bash*).

302. *See Bash*, No. WOCV2006-00745-A, slip op. at 4-5 (holding distribution of heroin to be breach of duty of reasonable care).

303. *Id.* (noting illegality of heroin as factor in determining distribution unreasonable).

304. *Id.*; *see also* Commonwealth v. Catalina, 556 N.E.2d 973, 979-80 (Mass. 1990) (holding distribution of heroin wanton and reckless conduct). In *Catalina*, the defendant was indicted for involuntary manslaughter for distributing a potent dose of heroin to a woman, who subsequently died of an overdose. *Catalina*, 556 N.E.2d at 975. The defendant asserted that his alleged conduct was insufficient to justify an indictment for involuntary manslaughter. *Id.* In Massachusetts, involuntary manslaughter includes an unlawful homicide unintentionally caused by wanton or reckless conduct. *Id.* at 979. Considering the strong public policy against heroin use, the inherent dangerousness of the drug, and the high probability that death would result from its ingestion, the court held that the grand jury was warranted in indicting the defendant for the crime of involuntary manslaughter. *Id.* at 980.

305. *See supra* note 37 (defining negligence per se).

306. *See* Cook v. Kendrick, 931 So. 2d 420, 427 (La. Ct. App. 2006) (applying duty-risk analysis to determine social host's liability for furnishing narcotics); *supra* note 138 (discussing court's reasoning in *Cook*).

307. *See* 21 U.S.C. § 812 (2006) (classifying narcotics); UNIFORM CONTROLLED SUBSTANCES ACT (1994) §§ 204-212 (providing classification schedules of narcotics).

308. *See* 21 U.S.C. § 812 (2006).

to the judiciary in each jurisdiction to determine whether the distribution of a particular narcotic violates the duty of reasonable care based on each state's policies regarding the substance involved.[309] If the provision of a particular narcotic does violate the duty of reasonable care by presenting a foreseeable risk of harm to the imbiber and the public, the provider of the narcotic should be liable for any resulting damages.[310] Even if a court recognizes the distribution of a particular narcotic as a breach of the duty of reasonable care, however, the consumer's negligence must also be taken into account under a comparative fault analysis in determining the liability of the social host.[311]

## IV. CONCLUSION

By imposing a duty of reasonable care upon social hosts, an equitable balance is achieved whereby risky behavior is deterred without hindering the enjoyment of social gatherings. In this way, society is best served. Under this standard, social hosts are not liable to their guests or to third parties for injuries arising out of the provision of alcohol unless they knew or should have known that the person they were serving was visibly intoxicated or under the legal drinking age. This proposed rule serves the interests of both the public and social hosts by exposing social hosts to liability only when their conduct is unreasonable in light of public policy. Finally, under the proposed standard, an injured consumer of narcotics should not be barred from bringing a negligence action against the furnisher of the narcotics, provided the jurisdiction considers the distribution of the narcotic at issue to be unreasonable conduct. Such a result supports the strong public policy against the distribution of narcotics.

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309. *See* Bash v. Book, No. WOCV2006-00745-A, slip op. at 5 (Mass. Super. Ct. Oct. 20, 2009) (finding provision of heroin to be breach of duty of reasonable care).

310. *See id.* (refusing to grant summary judgment motion in wrongful death suit against provider of heroin); *see also* Commonwealth v. Catalina, 556 N.E.2d 973, 979-80 (Mass. 1990) (holding distribution of heroin wanton and reckless conduct).

311. *See* DOBBS ET AL., *supra* note 14, at 221-23 (discussing comparative fault principles).