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Extending Social Host Liability: Chapter 154 Seeks to Hold Adults Accountable for Serving Alcohol to Minors

Joseph Fabel

Code Section Affected

Civil Code § 1714 (amended).

AB 2486 (Feuer); 2010 STAT. Ch. 154.

I. INTRODUCTION

Early on the morning of December 20, 2008, Sean Walker Jordan was driving eastbound on State Road 76, south of Fallbrook, California.¹ Witnesses reported he was driving erratically, even before his truck swerved into the opposite lane of traffic and up an embankment.² Sean, who was not wearing a seat belt, was ejected from his vehicle and died from head injuries when he hit the pavement.³ The police found an open container of alcohol in the truck⁴ and later determined that the accident was the result of driver intoxication.⁵ Earlier that night, Sean attended two parties where adults allowed minors to drink alcohol.⁶ Sean was nineteen years old.⁷

In California, a majority of high school age minors have consumed alcohol.⁸ Underage drinking is a leading cause of death for those under twenty-one years of age; it increases the likelihood of future alcohol dependency and is linked to

1. Andrea Verdin, *19-Year-Old Fatally Injured in SR76 Crash*, FALLBROOK BONSALL VILLAGE NEWS, Dec. 25, 2008, available at <http://www.thevillagenews.com/story/34873> (on file with the *McGeorge Law Review*).

2. *See id.* (reporting witness observations that Sean was “weaving side-to-side and traveling at speeds varying between 15 and 45 mph”).

3. *Id.*

4. *Id.*

5. Kristina Davis & Karen Kucher, *Host of Underage-Drinking Party Pleads Guilty*, SAN DIEGO UNION-TRIB., Feb. 18, 2010, available at <http://www.signonsandiego.com/news/2010/feb/18/host-underage-drinking-party-pleads-guilty> (on file with the *McGeorge Law Review*).

6. Sarah Gordon, *Fallbrook: Mom Pleads Guilty to Violating Social Host Ordinance*, NORTH COUNTY TIMES, Mar. 30, 2010, available at http://www.nctimes.com/news/local/fallbrook/article_5a9dfc94-10f0-543c-b3be-b254ee58b5ed.html (on file with the *McGeorge Law Review*).

7. *Id.*

8. *See* LLOYD D. JOHNSTON ET AL., MONITORING THE FUTURE: NATIONAL RESULTS ON ADOLESCENT DRUG USE 8 (2008), available at <http://www.monitoringthefuture.org/pubs/monographs/overview2008.pdf> (on file with the *McGeorge Law Review*) (“Nearly three-quarters of students (72%) have consumed alcohol (more than just a few sips) by the end of high school”); *see also* MICHAEL R. PEMBERTON ET AL., UNDERAGE ALCOHOL USE: FINDINGS FROM THE 2002-2006 NATIONAL SURVEY ON DRUG USE AND HEALTH 98, Tbl.3.10B (2008), available at <http://www.oas.samhsa.gov/underage2k8/underage.pdf> (on file with the *McGeorge Law Review*) (reporting that from 2002-2006 in California, on average 51.5% of all persons between the ages of twelve and twenty had tried alcohol and 16.2% had engaged in binge drinking).

violent youth crime.⁹ Alcohol is readily available to many minors; they can easily get it from their own parents, a friend's parents, or other adults.¹⁰ Various communities across California have enacted laws to curb underage drinking by authorizing fines and criminal penalties for adults who serve alcohol to minors or allow minors access to alcohol.¹¹ Chapter 154 places civil liability on adults who knowingly allow minors to drink in their home.¹² The California Legislature believes that if adults are civilly liable for the harm caused by serving alcohol to minors, they will be less inclined to tolerate underage drinking.¹³

II. LEGAL BACKGROUND

After Sean's death, two adults were fined and sentenced to community service for hosting the two parties Sean attended.¹⁴ At the time, California law did not hold adults civilly liable for harm done to minors or any third party as a result of providing alcohol.¹⁵ Social hosts¹⁶ were statutorily immune against civil suits, regardless of who they provided alcohol to or the harm that resulted.¹⁷ The legal recourse against those serving alcohol to minors was criminal prosecution under local ordinances.¹⁸

9. See generally NAT'L INST. OF HEALTH, UNDERAGE DRINKING FACT SHEET 1 (2007), available at <http://www.nih.gov/about/researchresultsforthepublic/UnderageDrinking.pdf> (on file with the *McGeorge Law Review*) (summarizing the negative effects of underage drinking, including risky sexual behavior, assault, alcohol dependency, and death).

10. AM. MED. ASS'N, TEENAGE DRINKING KEY FINDINGS (2005), available at <http://www.ama-assn.org/ama1/pub/upload/mm/388/keyfindings.pdf> (on file with the *McGeorge Law Review*) (summarizing results of a survey of teenagers showing "one in four teens [have] attended a party where minors were drinking alcohol in front of parents" and two out of five teens say "it is easy to get alcohol from a friend's parents").

11. See News Archive, SOCIALHOSTLIABILITY.ORG, <http://www.socialhostliability.org/news> (last visited Mar. 16, 2011) (on file with the *McGeorge Law Review*) (linking to stories reporting that Santa Barbara, Carlsbad, Pomona, Mission Viejo, Marin County, Ceres, Palo Alto and other California municipalities are enacting or broadening social host ordinances).

12. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2486, at 2 (Apr. 14, 2010).

13. *Id.* at 4.

14. Gordon, *supra* note 6.

15. CAL. CIV. CODE § 1714(c) (West 2009) ("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.").

16. See Lee A. Coppock, *Social Host Immunity: A New Paradigm to Foster Responsibility*, 38 CAP. U. L. REV. 19, 28 (2009) (providing an example of a social host as "the homeowners who provide alcohol to their guests at a dinner party or to friends at a backyard barbecue").

17. 1978 Cal. Stat. ch. 929, § 2, at 2904 (amending CAL. CIV. CODE § 1714) ("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.") (emphasis added).

18. See, e.g., BENICIA, CAL., MUN. CODE, §§ 9.02.010-9.02.050 (codifying criminal penalties of \$750 for the first social host violation, \$1,500 for the second, and \$2,500 for three or more violations).

A. *Traditional Common Law*

Traditionally, a commercial vendor of alcohol could not be held civilly liable for harm caused by customers to themselves or third parties by the consumption of alcohol.¹⁹ Courts reasoned that the customer's voluntary consumption of alcohol was the proximate cause of the harm, as opposed to the act of supplying alcohol by the vendor.²⁰ California case law extended the vendor liability shield to private social hosts serving alcohol in their homes.²¹

In 1971, the California Supreme Court, in *Vesely v. Sager*, created an exception to commercial vendor liability.²² *Vesely* held that a violation of section 25602 of the Business and Professional Code²³ created a presumption of negligence and gave a private right of action to the plaintiff.²⁴ The court further held, consistent with modern principles of negligence, that serving alcohol may be a proximate cause of injury because the "resulting intoxication[] and injury-producing conduct are foreseeable intervening causes"²⁵

In 1976, the California Supreme Court, in *Bernhard v. Harrah's Club*, expanded commercial liquor liability by allowing actions against out-of-state vendors,²⁶ and in *Coulter v. Superior Court*, removed civil immunity from social hosts who violated Business and Professional Code section 25602, vastly expanding liability for residents.²⁷

19. 6 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, Torts § 1066 (10th ed. 2005).

20. *Id.*; see also *Cole v. Rush*, 45 Cal. 2d 345, 356, 289 P.2d 450, 457 (1955) ("[I]t is the voluntary consumption, not the sale or gift, of intoxicating liquor which is the proximate cause of injury from its use.").

21. See, e.g., *Cole*, 45 Cal. 2d at 366, 289 P.2d at 462 (Carter, J., dissenting) (implying that any voluntary alcohol consumption creates contributory negligence); *Fleckner v. Dionne*, 94 Cal. App. 2d 246, 248-49, 210 P.2d 530, 532 (1st Dist. 1949) (stating that absent a statute saying otherwise, providing an intoxicated person with alcohol is not the proximate cause of his or her injuries regardless if served by a business or individual).

22. See *Vesely v. Sager*, 5 Cal. 3d 153, 157, 95 Cal. Rptr. 623, 625 (1971) (relating the case to involve a tavern owner who after serving copious amounts of alcohol over many hours to a customer, allowed the customer to drive while visibly intoxicated down what the owner knew as a steep and windy road. The customer hit the plaintiff causing harm; the plaintiff sued that tavern owner).

23. See 1953 Cal. Stat. ch. 152, § 1, at 1020 (enacting CAL. BUS. & PROF. CODE § 25602) (reading, in relevant part, that "[e]very person who sells, furnishes, gives or causes to be sold, furnished, or given away, any alcoholic beverage to any habitual or common drunkard or to any obviously intoxicated person is guilty of a misdemeanor."); see also CAL. EVID. CODE § 669(a) (West 1995) (establishing a presumption of failure to exercise due care if a person violates a statute or ordinance, that violation proximately causes harm, the harm was such that the statute was intended to prevent, and the person harmed was of a class of persons the statute was enacted for).

24. *Vesely*, 5 Cal. 3d. at 164-65, 95 Cal. Rptr. at 631 (1971).

25. *Id.* at 164, 95 Cal. Rptr. at 631.

26. See generally *Bernhard v. Harrah's Club*, 16 Cal. 3d 313, 128 Cal. Rptr. 215 (1976) (holding that even though a commercial alcohol vendor in Nevada could not be charged under Business and Professional Code section 25602, the plaintiff harmed by the alcohol could still sue under a right of action).

27. See *Coulter v. Superior Court*, 21 Cal. 3d 144, 145 Cal. Rptr. 534 (Cal. 1978) (expanding the scope of section 25602 to create a duty of care for both commercial and social host providers of alcohol).

B. The Legislature Restores Social Host Immunity

In 1978, the California Legislature responded to judicial expansion of both commercial and social host civil liability by enacting Chapters 929 and 930.²⁸ The chapters abrogated the holdings of *Vesely*, *Bernhard*, and *Coulter*, reinstating the prior common law rule that consumption of alcohol, not service, is the proximate cause of any resulting harm.²⁹ Although the amendments restored social host and commercial vendor civil immunity, Chapter 930 created a cause of action for licensed sellers of alcohol who sell to “obviously intoxicated” minors.³⁰

C. Sanctions for Serving Alcohol to Minors

The California Legislature has a demonstrated policy of keeping minors away from alcohol.³¹ In California, “[e]very person who sells, furnishes, [or] gives . . . any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.”³² Further, if a minor either harms him or herself or a third party due to the service of that alcohol, the server is guilty of a misdemeanor.³³ However, Chapters 929 and 930 show clear legislative intent to shield violators of anti-minor drinking laws from civil liability.³⁴ Prior to the enactment of Chapter 154, section 25602.1 of the Business and Professions Code allowed a cause of action only against licensed sellers, or those required to be licensed, who served an obviously intoxicated minor.³⁵ This limited exception carried no liability for social hosts who served alcohol to minors, even where the minor was obviously intoxicated.³⁶

28. Torts; *Civil Liability for Furnishing Alcohol*, 10 PAC. L.J. 591, 591 (1978).

29. *Id.* at 591-92.

30. CAL. BUS. & PROF. CODE §25602.1 (West 1997).

31. See generally Kelly B. Dick, *Minor Drinking and Driving: California's Inconsistent and Inequitable Statutory Scheme of Social Host Immunity*, 25 U.C. DAVIS L. REV. 463, 471 (1992) (demonstrating that the creation of a minimum drinking age and penalties for drinking show the Legislature's interest in keeping minors away from alcohol).

32. CAL. BUS. & PROF. CODE § 25658(a) (West 1997).

33. *Id.* § 25658(c) (West Supp. 2010).

34. *Cory v. Shierloh*, 29 Cal. 3d 430, 433, 436, 174 Cal. Rptr. 500, 504-05 (1981) (holding that a minor who was served alcohol and was later injured in a vehicle accident had no civil recourse for the harm resulting from service of alcohol); *id.* at 439 (“[T]he Legislature possesses a broad authority both to establish and to abolish tort causes of action.”).

35. CAL. BUS. & PROF. CODE § 25602.1.

36. For one common law exception to social host immunity see *Bass v. Pratt*, 177 Cal. App. 3d 129, 129, 222 Cal. Rptr. 723, 723 (1st Dist. 1986) (noting that an adult can be liable if they serve alcohol to one “who is unable to voluntarily resist its consumption because of some exceptional physical or mental condition and that youth, by itself, does not create such a condition”).

III. CHAPTER 154

Chapter 154, known as the “Teen Alcohol Safety Act of 2010,” creates an exception to the rule that social hosts who serve alcohol to minors are immune from civil liability for all harm resulting from the consumption of that alcohol.³⁷ Chapter 154 amends the Civil Code by adding that, despite social host immunity, “[n]othing . . . shall preclude a claim against a parent, guardian, or another adult who knowingly furnishes alcoholic beverages at his or her residence to a person under 21 years of age[.]”³⁸ Notwithstanding existing notions of proximate cause, “the furnishing of the alcoholic beverage may be found to be the proximate cause of resulting injuries or death.”³⁹ This amendment allows adult social hosts who, while in their homes, knowingly serve alcohol to minors to be held civilly liable for any harm to the minor or to third parties as a result of the minor’s alcohol consumption.⁴⁰

IV. ANALYSIS

Chapter 154 adds California “to the large preponderance of states who impose potential ‘social host’ liability on [those] adults who knowingly [furnish] alcohol to minors”⁴¹ However, important questions about how courts will define the scope of liability arise because other states have defined “knowingly furnishes” in different ways.⁴² The prohibitive effect of Chapter 154 on underage drinking will depend on how California defines “knowingly furnishes” and whether service to minors will be considered a willful act.⁴³

A. *The Scope of “Knowingly Furnishes”*

Because Chapter 154 does not define “knowingly,” how the term is interpreted in the context of social host liability will determine Chapter 154’s prohibitive effect on under-age drinking.⁴⁴ Supporters of Chapter 154 contend that the amendment “is extremely limited as it only applies to social hosts who

37. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2486, at 2 (June 29, 2010).

38. CAL. CIV. CODE § 1714(d) (enacted by Chapter 154).

39. *Id.*

40. *Id.*

41. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2486, at 1 (June 29, 2010).

42. See *infra* Part IV.A (examining the scope of “knowingly furnishes”).

43. See *infra* Part IV.B (examining whether “willfully” equals “knowingly”).

44. See ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2486, at 2 (June 29, 2010) (“[Chapter 154] would add California to the large preponderance of states who impose potential ‘social host’ liability on those adults who knowingly provide alcohol to minors”); see also *infra* notes 49-52 (surveying alternative state interpretations of “knowingly”).

knowingly [furnish] alcohol to minors.”⁴⁵ The interpretation has varied and it becomes important to evaluate the term as used in other jurisdictions with laws similar to Chapter 154.⁴⁶

Black’s Law Dictionary defines “knowingly” as “[h]aving or showing awareness or understanding.”⁴⁷ Many states modify the definition of knowingly by adding a “furnish” requirement.⁴⁸ Under this modified requirement, to trigger a cause of action, adults must have knowledge that minors are drinking in their home *and* affirmatively provide the alcohol.⁴⁹ In the context of social host service to minors, the Vermont Legislature has defined “knowingly” to include situations where “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.”⁵⁰ New York and Florida have similar statutes, requiring that the host specifically know they are serving minors.⁵¹ Minnesota, which has a statute much like Chapter 154, passed a law in 2000 based on Colorado’s approach defining “knowingly” as an adult simply knowing that they are providing a place for minors to drink, or permitting alcohol consumption on a property they control, even when the adult does not furnish the alcohol.⁵²

45. Letter from Christopher B. Dolan, President, & John A. Montevideo, President-Elect, Consumer Att’ys of Cal., to Mike Feuer, Assembly Member, Cal. State Assembly (Mar. 15, 2010) (on file with the *McGeorge Law Review*).

46. VT. STAT. ANN. tit. 7, § 501 (West 1999 & Supp. 2003), N.Y. GEN. OBLIG. LAW § 11-100 (McKinney 2010), FLA. STAT. ANN. § 768.125 (West 2005), MINN. STAT. ANN. § 340A.801 (West 2004).

47. BLACK’S LAW DICTIONARY 403 (3d. Pocket ed. 2006).

48. *See, e.g.*, CAL. BUS. & PROF. CODE § 4026 (West 2003) (“‘Furnish’ means to supply by any means, by sale or otherwise.”).

49. *See* MacGilvray v. Denino, 540 N.Y.S.2d. 449, 451, 149 A.D.2d 571, 572 (N.Y. App. Div. 1989) (holding that mere knowledge that minors are consuming alcohol does not satisfy the furnish requirement for liability); *see also* Sherman v. Robinson, 591 N.Y.S.2d 974, 977, 80 N.Y.2d 483, 487 (N.Y. 1992) (holding that liability exists only where an adult furnishes or actively “assists in the procurement of alcohol” to minors).

50. VT. STAT. ANN. tit. 7, § 501(g)(2).

51. *See* N.Y. GEN. OBLIG. LAW § 11-100(1) (“Any person who shall be injured in person, property, means of support or otherwise, by reason of the intoxication or impairment of ability of any person under the age of twenty-one years . . . shall have a right of action to recover actual damages.”); FLA. Stat. Ann. § 768.125 (“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 may become liable for injury or damage caused by or resulting from the intoxication of such minor or person.”).

52. *See* COLO. REV. STAT. ANN. § 12-47-801 (West 2010) (allowing liability even without an adult knowingly providing alcohol to a minor); *id.* § (3)-(4)(a)(I) (“It 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.” Damages are capped under this section at \$150,000 and adjusts the amount annually for inflation); *see also* MINN. STAT. ANN. § 340A.801 (a law nearly identical to Chapter 154); *id.* § 340A.90 (allowing liability where an adult “had control over the premises and, being in a reasonable position to prevent the consumption of alcoholic beverages by that person, knowingly or recklessly permitted that consumption and the consumption caused the intoxication of that person.” Minnesota only allows injured third parties and not injured minors to sue the adult); Jennifer E. Ampulski & Eric E. Holman, *Social Host Liability in Minnesota*, 64 BENCH & B. OF MINN. 19, 19-20 (2007) (suggesting that both laws serve a purpose in Minnesota, in cases where an adult furnished alcohol, the minor who was served can seek relief under section 340A.801. For the cases where the adult just provided a home to drink without furnishing section 340A.90 allows third parties a cause of action).

Regardless of how California interprets “knowingly furnishes,” the scope of liability under Chapter 154 may be quite limited. For example, in New York, parents were not liable because they were away from home and unaware of the underage drinking.⁵³ In Minnesota, prior to section 340A.90, an adult who allowed his underage son to have a party with alcohol was not liable because the adult stayed in his room the entire time and did not furnish the alcohol.⁵⁴

California courts, looking to legislative history, may not find a clear picture of how “knowingly furnishes” should be applied. According to the final assembly analysis, Chapter 154 will encompass “[t]he most shocking episodes involv[ing] parents or other adults who knowingly provide alcohol to underage minors—and this bill only targets those most *egregious* situations.”⁵⁵ The author of Chapter 154 stresses that the bill does not place “automatic liability” on hosts; “the families of a minor injured or killed by alcohol will still need to prove in court all the elements of negligence—that an adult social host . . . breached his or her responsibility[,] . . . knowingly provided alcohol to the child, and injuries or death thereby resulted”⁵⁶

The incident attributed by the author of Chapter 154 and referenced as the inspiration in every legislative analysis is one in which adults, while at home, did not affirmatively furnish alcohol.⁵⁷ Under the facts known, if a court applied the stricter New York⁵⁸ definition of “knowingly furnish,” plaintiffs would not recover because the minor child affirmatively supplied the alcohol. If, however, the broader interpretation of Minnesota or Colorado⁵⁹ applies, plaintiffs could raise facts showing that the adults may have been aware of a propensity to drink and, therefore, a duty existed to ensure the minors had not been furnished with alcohol that they would later drink.⁶⁰ The author of Chapter 154 states there

53. See *MacGilvray*, 540 N.Y.S.2d. at 451, 149 A.D.2d at 572 (requiring more than mere knowledge of consumption).

54. See *Frisch v. Bassett*, No. C9-95-2043, 1996 WL 104770, at *2 (Minn. Ct. App. Mar. 12, 1996) (holding that an adult who stayed in his room during the duration of a party could not have “furnished alcohol” to minors).

55. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2486, at 2 (June 29, 2010) (emphasis added).

56. *Id.*

57. See Scott Mobley, *Shelby Allen’s Death Caused by Alcohol Poisoning; Parents Launch Educational Campaign*, REC. SEARCHLIGHT (Redding, CA), Jan. 14, 2009, available at <http://www.redding.com/news/2009/jan/14/shelby-allens-death-caused-by-alcohol-poisoning> (on file with the *McGeorge Law Review*) (noting the story of Shelby Allen, a minor who died from alcohol poisoning while drinking at her friend’s house). Her friend’s parents were home, although they allegedly “warned the girls . . . there was to be no drinking” *Id.*; see also Jim Schultz, *Teen Charged with Manslaughter in Shelby Lyn Allen’s Death*, REC. SEARCHLIGHT (Redding, CA), May 27, 2009, available at <http://www.redding.com/news/2009/may/27/teen-charged-manslaughter-shelby-lyn-allens-death> (on file with the *McGeorge Law Review*) (reporting that the minor daughter of the parents whose home Shelby Allen died at is being charged for allegedly furnishing the alcohol leading to Shelby’s death; however “[T]here are simply not enough facts to support bringing charges against the parents”).

58. See *supra* note 48 and accompanying text.

59. See *supra* note 51-52 and accompanying text.

60. Mobley, *supra* note 57.

should not be “‘automatic liability’ on any adult who may have *inadvertently* provided access to alcohol by a minor.”⁶¹ This raises the question of whether a plaintiff can try to prove the adult unintentionally, although negligently, provided alcohol to minors. For example, does recklessly or negligently leaving alcohol in the kitchen or in an unlocked cabinet equate with “knowingly furnished”? The Legislature is silent on this point.⁶²

B. Whether “Knowingly” Equates with “Willfully”

Chapter 154 is not explicit as to whether “knowingly” providing alcohol to minors is considered “willful.” This is important in the context of homeowners’ insurance, because under section 533 of the Insurance Code, “[a]n insurer is not liable for a loss caused by the willful act of the insured[.]”⁶³ Early legislative hearings for Chapter 154 linked a cause of action under section 1714(d) of the Civil Code with section 533 of the Insurance Code.⁶⁴ If the act of knowingly providing alcohol is considered willful under section 533, then adults sued under Chapter 154 could not rely on their homeowners’ insurance policy for liability protection.⁶⁵ Further, primary and third-party victims may be undercompensated if the wrongdoer does not have sufficient assets to compensate for harm.⁶⁶

“Willful” is not defined within section 533 of the Insurance Code. The California Supreme Court has held that willfulness exists where one acts “with a ‘preconceived design to inflict injury.’”⁶⁷ A court could find that the California Legislature, by establishing a policy to keep minors away from alcohol, has determined drinking to be injurious to minors.⁶⁸ However, in the absence of statutory guidance, courts will determine if adults who knowingly serve alcohol

61. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2486, at 2 (June 29, 2010) (emphasis added).

62. CAL. CIV. CODE § 1714(d) (enacted by Chapter 154).

63. CAL. INS. CODE § 533 (West 2010).

64. See ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2486, at 2 (June 29, 2010) (listing section 533 of the Insurance Code under existing law related to Chapter 154); see also ASSEMBLY REPUBLICAN BILL ANALYSIS: AB 2486, at 25 (on file with the *McGeorge Law Review*) (suggesting that “[i]n order to remove possible doubt,” the following amendment be added to Chapter 154: “For purposes of Section 533 of the Insurance Code, a social host who acts within the scope of subdivision (d) is deemed to have acted willfully”) (emphasis added).

65. See James A. Fischer, *The Exclusion from Insurance Coverage of Losses Caused by the Intentional Acts of the Insured: A Policy in Search of a Justification*, 30 SANTA CLARA L. REV. 95, 99 (1990) (stating that due to the increase of intentional torts and willful misbehavior of home owners, insurance companies rely more and more on intentional act policy exclusions).

66. See *id.* at 112-13 (arguing that the policy underlying section 533 of the Insurance Code is based on an erroneous assumption that indemnifying the intentional acts of the insured is a boon to the tortfeasor; instead, the primary benefit derives from compensating the victim of the harm in full).

67. *Clemmer v. Hartford Ins. Co.*, 22 Cal.3d 865, 887, 151 Cal. Rptr. 285, 297 (1978) (quoting *Walters v. American Ins. Co.*, 185 Cal. App. 2d 776, 783, 8 Cal. Rptr. 665 (1960)).

68. See *Dick*, *supra* note 31, at 471 (demonstrating that the creation of a minimum drinking age and penalties for drinking show the legislature’s interest in keeping minors away from alcohol).

to minors are also designing to inflict injury, and are thus acting willfully under section 533 of the Insurance Code.⁶⁹

Regardless of whether section 533 is applicable, the potential liability for an adult would likely make them think twice before serving alcohol to minors.⁷⁰ Under California law, a joint-tortfeasor can be held severally liable for his portion of the economic harm.⁷¹ This means that even if a minor was mostly to blame for an injury to a third party, an adult who knowingly served the minor any amount of alcohol earlier can be held fully liable for their contribution.⁷² If section 533 applies, the adult providing alcohol would have to bear the cost of both a legal defense and potential judgment with his or her own assets, likely putting major investments such as a home at risk. This perceived risk of loss may dissuade adults from serving alcohol to minors.⁷³

V. CONCLUSION

Under Chapter 154, California permits plaintiffs to bring civil suits for harm caused by social hosts who, while in their residence, knowingly serve alcohol to minors.⁷⁴ The sponsors and supporters of this bill hope that Chapter 154 will save young lives by holding parents and other adults responsible for the harm caused by serving alcohol to minors.⁷⁵ Civil liability will greatly enhance the penalties adults face under existing ordinances.⁷⁶ However, courts will play a role in defining an adult's duty, and whether the scope of "knowingly furnished" is limited strictly to situations where adults actively provide alcohol.⁷⁷ Courts will also have to decide whether "knowingly" under Chapter 154 equates with willfully, which would invalidate liability protections under an adult's

69. See Fischer, *supra* note 65, at 99.

70. See generally What is a Social Host?, MOTHERS AGAINST DRUNK DRIVING, <http://www.madd.org/underage-drinking/social-host/> (last visited Sept. 10, 2010) (on file with the *McGeorge Law Review*) (discussing the consequences of serving alcohol to minors).

71. CAL. CODE CIV. PROC. § 875 (West 2010).

72. *Id.*

73. See Legal Issues, SOCIALHOSTLIABILITY.ORG, <http://www.socialhostliability.org/legalissues> (last visited Feb. 21, 2011) [hereinafter Legal Issues] (on file with the *McGeorge Law Review*) (providing an example of a Massachusetts case where a minor caused an automobile accident resulting in a jury award in excess of \$8 million).

74. CAL. CIV. CODE § 1714(d) (enacted by Chapter 154).

75. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2486, at 2 (Apr. 14, 2010) ("It is a measure designed to save young lives by acting as a long needed disincentive to irresponsible adults who knowingly provide underage teens with alcohol in their homes.").

76. Compare BENICIA, CAL., MUN. CODE, § 9.02.010 (codifying criminal monetary criminal penalties), with Legal Issues, *supra* note 73 (reporting a potential civil penalty over \$8 million).

77. See *MacGilvray v. Denino*, 540 N.Y.S.2d. 449, 451, 149 A.D.2d 571, 572 (N.Y. App. Div. 1989) (showing limitations on the "knowing" requirement).

homeowners' insurance.⁷⁸ The potential of losing all of one's assets in a judgment will hopefully cause adults to think twice before serving alcohol to minors.⁷⁹

78. See Fischer, *supra* note 65, at 112-13.

79. See ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2486, at 2 (June 29, 2010) (claiming that the addition of civil liability will be a "long-needed disincentive to irresponsible adults").