

Social Host Liability

As the recent tragedies and near tragedies involving alcohol and driving throughout the State has become front page news, individuals are wisely becoming more interested in what their liability is in connection with serving alcohol to both adults and minors. The term "Social Host Liability" refers to both the criminal liability that may lead to criminal penalties such as fines and imprisonment and the civil liability which refers to an action by a private party against a host seeking monetary damages for injuries and damages.

In the context of criminal liability, those who furnish or procure and /or are aware of the consumption of alcohol by underage persons in their residence or on their real property are being held criminally liable. Recently, Governor Carcieri has approved legislation to close a perceived loophole in the Social Host Laws and to stiffen the penalties. Previously, homeowners could only be held criminally liable if they allowed underage persons to consume alcohol in their residence. The recent revision to the Social Host Laws makes it unlawful for any person twenty-one (21) years of age or older to permit the consumption of alcohol by underage persons anywhere on his or her property.

The penalties for a violation of the statutes prohibiting the furnishing or procurement of alcoholic beverages for underage persons (R.I.G.L. 3-8-11.1 and R.I.G.L. 3-8-11.2) include the following:

First Offense: is a misdemeanor violation punishable by a \$350.00 to \$1,000.00 fine, and/or imprisonment for a period not exceeding six (6) months, or both;

Second Offense: is a misdemeanor violation punishable by a \$750.00 to \$1,000.00 fine, and/or imprisonment for a period not exceeding one (1) year, or both; and

Third /Subsequent Offense: is a felony punishable by a \$1,000.00 to \$2,500.00 fine, and/or imprisonment not exceeding three (3) years.

The penalties for a violation of the possession of beverage by underage persons (R.I.G.L. 3-8-10) include the following:

First Offense: \$150.00 to \$750.00 fine;

Second Offense: \$300.00 to \$750.00 fine;

Third /Subsequent Offense: \$450.00 to \$950.00 fine; and

Any person who violates this statute, shall be required to perform thirty (30) hours of community service and shall be subject to a minimum sixty (60) day license suspension. Upon a second offense, the violator may be ordered to undergo a substance abuse assessment.

The revised legislation also includes increased penalties for unlawful drinking and misrepresentation by underage persons (fake IDs) (R.I.G.L. 3-8-6) and transportation of alcoholic beverages by underage persons (R.I.G.L. 3-8-9).

In the context of civil liability, the Rhode Island Supreme Court has held that if a homeowner provided alcoholic beverages to underage persons or had actual knowledge of the presence and consumption of alcohol by underage persons on the property, then the homeowner was duty-bound to exercise reasonable care to protect the injured guest. In its recent decision in *Willis v. Omar*, the R.I. Supreme Court affirmed its holding in the *Martin* case, and stated that the Court will only recognize Social Host Liability in the limited circumstances where a special

relationship exists because a host unlawfully furnishing alcohol to underage persons. In *Willis*, the R.I. Supreme Court adamantly stated that “[w]e consistently have refused to adopt the principle that a social host owes a duty to a third party for injuries suffered by an intoxicated guest who was imbibing at his or her home, and we have only imposed such a duty where a special relationship exists.”

"This Court recently set forth the elements defining a special relationship in *Martin*, in which the plaintiff was a guest at a high school graduation party at which alcoholic beverages, including keg-beer, were readily available to numerous underage partygoers. An altercation arose, fueled by alcohol, during which the plaintiff was struck in the head by a party-crasher wielding a baseball bat. We held that a party host who makes alcohol available to an underage guest owes a duty of reasonable care to protect the guest from harm, including a criminal assault. Such a duty exists as a matter of law between the host and her underage guests because allowing underage drinking gives rise to a special duty, based on both public policy and foreseeability grounds. To avoid assuming a duty of protection, the adult property owner must simply comply with existing law and refuse to provide alcohol or condone underage drinking on his or her property."

It is clear from recent tragic and near tragic cases that the Rhode Island Legislature and Judiciary are seriously considering the theory of social host liability. Attorney Humphrey has recently lectured on behalf of the Little Compton Substance Abuse Task Force on the topic of Social Host Laws. In addition, in the Fall of 2009 Attorney Humphrey will be lecturing for the Rhode Island Bar Association on the topic of Social Host Laws. Please contact Attorney Humphrey with your questions regarding the Social Host Laws and social host liability.

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