COMMENTS

Minor Drinking and Driving: California's Inconsistent and Inequitable Statutory Scheme of Social Host Immunity

INTRODUCTION

In California, drunk drivers pose a serious threat to the motoring public.[1] Each year, the California Highway Patrol reports thousands of preventable, alcohol-related injuries and fatalities.[2] For years, California courts have attempted to fashion remedies for drunk driving victims and their families.[3] In many instances,

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[1] *See, e.g.*, Andre v. Ingram, 210 Cal. Rptr. 150, 152 (Cal. Ct. App. 1985) (holding that enormity of damage, death, grief, and suffering drunk drivers cause is so well known that it needs neither pleading nor proof); Michigan Dept. of State Police v. Sitz, 110 S. Ct. 2481, 2487 (1990) (stating that no one can seriously dispute magnitude of drunk driving problem or states' interest in eradicating it). For a discussion of alternative federal and state efforts aimed at both preventing drunk driving incidents and compensating innocent third parties, see Sharon E. Conaway, Comment, *The Continuing Search for Solutions to the Drinking Driver Tragedy and the Problem of Social Host Liability*, 82 NW. U. L. REV. 403, 404-05 (1988).

[2] *See, e.g.*, CALIFORNIA HIGHWAY PATROL, 1989 ANNUAL REPORT OF FATAL AND INJURY MOTOR VEHICLE TRAFFIC ACCIDENTS 27 (1989) [hereafter 1989 ANNUAL REPORT] (prepared pursuant to CAL. VEH. CODE § 2408 (West 1987)) (reporting 2,038 fatalities and 38,516 injuries in 1989).

[3] *See* Alexander S. Keenan, *Liquor Law Liability in California*, 14 SANTA CLARA L. REV. 46, 80 (1973) (suggesting California's limited judicial remedy against servers needs expansion); *see generally* Darla R. Desteiguer, Comment, *California Liquor Liability: A Decade After* Coulter v. Superior Court, 16 PEPP. L. REV. 21 (1988) (comparing California judicial and legislative responses to drunk driving problem); Karen M. Shichman, Comment, *California Liquor Liability: Who's to Pay the Costs?*, 15 CAL. W. L. REV. 490

however, imposing liability on the individual drinker alone failed to provide the victim with an adequate remedy.[4] As a result, California courts began to extend liability to the initial source of alcohol, the server.[5]

In 1978, the California Legislature reacted to this expansion of liability by enacting Civil Code section 1714[6] and Business and Professions Code section 25602.[7] These statutes limit the causes

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(1980) (finding California has reversed its progressive trend of allowing liquor liability).

[4] *Cf.* James T. Landenberg et al., *Tort Law*—Kelly v. Gwinnell: *The Social Host and His Visibly Intoxicated Guest: Joint Liability for Injuries to Third Parties and Proper Evidentiary Tests*, 60 NOTRE DAME L. REV. 191, 196 (1984) (noting that holding two parties liable rather than one will persuade more persons to act responsibly and compensate injured victims more fully).

[5] *See* Vesely v. Sager, 486 P.2d 151 (Cal. 1971) (imposing liability on liquor licensee for statutory violation).

[6] The relevant portion of § 1714 of the Civil Code now reads as follows:

> (b) It is the intent of the Legislature to abrogate the holdings in cases such as Vesely v. Sager (5 Cal.3d 153), Bernhard v. Harrah's Club (16 Cal.3d 313), and Coulter v. Superior Court (— Cal.3d—) and to reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic beverages to an intoxicated person, *namely that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person.*
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> (c) No social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by such person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of such beverages.

CAL. CIV. CODE § 1714 (West 1985) (emphasis added).

[7] § 25602 currently states:

> (a) Every 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.
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> (b) No person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage pursuant to subdivision (a) of this section shall be civilly liable to any injured person or the estate of such person for injuries inflicted on that person as a result of intoxication by the consumer of such alcoholic beverage.
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> (c) The Legislature hereby declares that this section shall be interpreted so that the holdings in cases such as Vesely v. Sager (5 Cal.3d 153), Bernhard v. Harrah's Club (16 Cal.3d 313) and

of action available to drunk driving victims by providing virtually blanket immunity to social hosts and licensed vendors who serve alcohol.[8] This legislative action effectively returned California to the prior common-law view that consuming alcohol, not serving it, proximately causes any resulting injury.[9]

In addition to sections 1714 and 25602, the legislature also added Business and Professions Code section 25602.1[10] to its statutory scheme. Section 25602.1 provides the sole exception to the general rule of server immunity.[11] This section authorizes a civil cause of action when a commercial vendor sells alcohol to an obviously intoxicated minor who subsequently causes injury.[12] Moreover, section 25602.1 contradicts the immunity granted in sections 1714 and 25602 by providing that either furnishing or selling alcohol to an intoxicated minor may proximately cause any resulting injury.[13]

> Coulter v. Superior Court (21 Cal.3d 144) be abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages rather than the serving of alcoholic beverages as the proximate cause of injuries inflicted upon another by an intoxicated person.

CAL. BUS. & PROF. CODE § 25602 (West 1985).

8 *See supra* notes 6-7.

9 *See supra* notes 6-7; *see also* Cole v. Rush, 289 P.2d 450, 451 (Cal. 1955) (allowing no cause of action against tavern for furnishing intoxicating liquor to able-bodied man); Fleckner v. Dionne, 210 P.2d 530 (Cal. Ct. App. 1949) (holding tavernkeeper not liable for third party injuries for serving intoxicated minor despite knowledge that minor would drive).

10 § 25602.1 provides:

> Notwithstanding subdivision (b) of Section 25602, a cause of action may be brought by or on behalf of any person who has suffered injury or death against any person licensed, *or required to be licensed,* pursuant to Section 23300, *or any person authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave,* who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic beverages *and any other person who sells, or causes to be sold, any alcoholic beverage,* to any obviously intoxicated minor where the furnishing, sale or giving of *that* beverage to the minor is the proximate cause of the personal injury or death sustained by *that* person.

CAL. BUS. & PROF. CODE § 25602.1 (West Supp. 1991) (1986 amendments emphasized).

11 *Id.*

12 *Id.*

13 *See* CAL. CIV. CODE § 1714 (West 1985); CAL. BUS. & PROF. CODE § 25602 (West 1985); CAL. BUS. & PROF. CODE § 25602.1 (West Supp. 1991).

Generally, legislative policy seeks to prevent and deter minor drinking and driving.[14] This is a sound and laudable policy.[15] The 1978 legislation, however, undercuts the policy's importance by distinguishing between equally culpable groups based solely on commercial status.[16] As a result, the statutory framework lacks coherence and harmony.

Because of the statutory framework's inconsistent nature, server liability remains a viable issue today.[17] Although amended once in 1986, section 25602.1 remains fraught with inconsistencies regarding what proximately causes a drunk driving accident.[18] Nevertheless, the statute's wording is explicit. For this reason, courts continue to deny remedies to victims, suggesting that the legislature is the appropriate forum for correcting "bad" legislation.[19] Consequently, the legislature should re-examine the section 25602.1 intoxicated minor exception.

Part I of this Comment explores the history behind the current statutory framework.[20] Part II examines minor drinking and society's interest in its prevention.[21] Next, Part III analyzes the judicial treatment of section 25602.1 and the California Legislature's

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14 *See* Brockett v. Kitchen Boyd Motor Co., 100 Cal. Rptr. 752, 756 (Cal. Ct. App. 1972) (concluding that imposing liability on social hosts furthers legislative goals of deterring and preventing minor drinking, thus comporting with policy goals of § 25658).

15 *See* Cory v. Shierloh, 629 P.2d 8, 14 (Cal. 1981) (approving legislative recognition of minors' comparative inexperience in drinking and driving).

16 *See* CAL. CIV. CODE § 1714 (West 1985); CAL. BUS. & PROF. CODE § 25602 (West 1985); CAL. BUS. & PROF. CODE § 25602.1 (West Supp. 1991).

17 Courts continue to express their dissatisfaction with the 1978 legislation. *See, e.g.*, *Cory*, 629 P.2d at 13 (stating that "the 1978 amendments constitute a patchwork of apparent inconsistencies and anomalies"); *see also* Rogers v. Alvas, 207 Cal. Rptr. 60, 65 (Cal. Ct. App. 1984) (sharing *Cory* court's concern about nature and wisdom of 1978 amendments).

18 *See supra* note 10 (demonstrating § 25602.1's treatment of proximate cause).

19 *See* cases cited *supra* note 17; *see also* Werner v. Southern Cal. Associated Newspapers, 216 P.2d 825, 830 (Cal. 1950) (concluding that forum for correcting ill-considered legislation is responsible legislature). *But see* Cornelius J. Peck, *The Role of the Courts and Legislatures in the Reform of Tort Law*, 48 MINN. L. REV. 265, 268-75 (1963) (arguing legislative inattention to tort law leaves many tort law questions undecided).

20 *See infra* notes 24-52 and accompanying text.

21 *See infra* notes 53-62 and accompanying text.

forceful resistance to social host liability in any context.[22] Finally, Part IV proposes that the legislature should amend the 25602.1 exception to extend liability to both vendors and social hosts who serve alcohol to minors.[23]

I. Historical Background of Server Liability in California

California law has traditionally recognized two types of servers: the commercial vendor operating for profit and the social host.[24] Early common law did not distinguish between these two groups.[25] Rather, courts refused to impose liability on either group, maintaining that consuming, not furnishing, alcohol proximately causes the victim's injury.[26] As a result, the drinker alone incurred responsibility, and all servers of alcoholic beverages remained free from liability.[27]

Courts subsequently became dissatisfied with the common-law approach to proximate cause.[28] A growing number of courts began to embrace the theory of multiple causation, finding that

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22 *See infra* notes 63-120 and accompanying text.

23 *See infra* notes 121-142 and accompanying text.

24 Cory v. Shierloh, 629 P.2d 8, 12-14 (Cal. 1981) (rejecting equal protection argument by noting that traditional distinction between social hosts and vendors is within legislature's authority).

25 *See, e.g.*, Cole v. Rush, 289 P.2d 450 (Cal. 1955) (finding no distinction between social hosts and commercial providers of alcohol); *cf.* Fleckner v. Dionne, 210 P.2d 530 (Cal. Ct. App. 1949) (recognizing no liability for either vendor or host).

26 *See* cases cited *supra* note 25; *see also* Shichman, Comment, *supra* note 3, at 492-94 (discussing various reasons for adhering to common-law proximate causation and individual responsibility).

27 *See* cases cited *supra* note 25.

28 *See* Strang v. Cabrol, 691 P.2d 1013 (Cal. 1984) (Kaus, J., dissenting). Judge Kaus asks the following question: "[H]ow can a rule, newly written in the stars, that it is the consumption and not the furnishing which proximately causes the harm, peacefully coexist with a concurrently enacted statute which is predicated on the furnishing being the proximate cause after all?" *Id.* at 1020; *see also Cory*, 629 P.2d at 13-14 (noting that causation "has never pivoted on such a perilous and seemingly irrelevant fulcrum"); Bernhard v. Harrah's Club, 546 P.2d 719 (Cal. 1976) (calling prior use of proximate cause, which denied liability for furnishing alcohol, patently unsound and inconsistent with established principles in other areas of negligence law); Rogers v. Alvas, 207 Cal. Rptr. 60, 62-63 (Cal. Ct. App. 1984) (questioning how §§ 1714 and 25602 can establish consumption as proximate cause while § 25602.1 establishes furnishing, selling, or giving as proximate cause).

several independent acts may contribute to a single injury.[29] This trend undermined the idea that consuming alcohol constitutes the sole cause of a resulting injury. In accordance with the multiple causation theory, several courts began to impose liability on alcohol servers for their guests' subsequent acts.[30]

The California Supreme Court first embraced server liability in a string of cases beginning in 1971.[31] Initially, the court allowed civil causes of action only against commercial vendors who served drunk drivers.[32] In 1972, however, the court extended civil liability to social hosts.[33] In *Brockett v. Kitchen Boyd Motor Co.*,[34] social hosts violated Business and Professions Code section 25658[35] by

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29 *See* American Motorcycle Ass'n v. Superior Court, 578 P.2d 899, 904 (Cal. 1978) (holding plaintiff not required to prove defendant's conduct was sole proximate cause, but only that negligence was a proximate cause of injury); Sagadin v. Ripper, 221 Cal. Rptr. 675, 686 (Cal. Ct. App. 1985) (stating that more than one negligent act may be proximate cause of injury); Cantor v. Anderson, 178 Cal. Rptr. 540, 545 (Cal. Ct. App. 1981) (noting that injury is often result of joint and concurrent acts); Palsgraf v. Long Island R.R. Co., 162 N.E. 99, 103-04 (N.Y. 1928) (Andrews, J., dissenting) (maintaining that proximate cause does not equal sole cause). *See generally* W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 41, at 265-68 (5th ed. 1984).

30 *See* cases cited *infra* notes 31-43 and accompanying text.

31 *See* Bernhard v. Harrah's Club, 546 P.2d 719 (Cal. 1976) (extending liability to vendor using ordinary negligence rules of proximate cause and foreseeability); Vesely v. Sager, 486 P.2d 151 (Cal. 1971) (imposing liability on liquor licensee using statutory violation as its basis); *infra* notes 32-43 and accompanying text.

32 *See Vesely*, 486 P.2d 151.

33 Brockett v. Kitchen Boyd Motor Co., 100 Cal. Rptr. 752 (Cal. Ct. App. 1972). Importantly, the legislature did not explicitly abrogate *Brockett* in the 1978 amendments. *See supra* notes 6-7 (setting forth §§ 1714 and 25602). This arguably indicates the legislature's unwillingness at that time to give social hosts the same blanket immunity for serving alcohol to minors as they apparently enjoyed for serving adults. *See* Rogers v. Alvas, 207 Cal. Rptr. 60, 62 (Cal. Ct. App. 1984) (arguing that legislative intent was to leave law in place as it related to minors); *cf.* Bauer v. Dann, 428 N.W.2d 658 (Iowa 1988) (comparing statutory scheme similar to California's and noting question of liability for serving minors is still open).

34 100 Cal. Rptr. 752.

35 CAL. BUS. & PROF. CODE § 25658 (West 1985). § 25658(a) provides, "Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor." *Id.*; *see also* Lacabanne Properties, Inc. v. Department of Alcohol Beverage Control, 67 Cal. Rptr. 734 (Cal. Ct. App. 1968) (noting that § 25658's purpose is to protect minors from harm).

serving alcohol to minors.[36] Based on this statutory violation, the court found the hosts civilly liable.[37]

Extension of server liability peaked in 1978.[38] In *Coulter v. Superior Court*, the California Supreme Court extended civil liability to a social host for serving an adult guest.[39] The court refused to distinguish social hosts from commercial vendors, reasoning that each is responsible for the foreseeable acts of a guest or patron.[40] The court found the risk to be the same in either a commercial establishment or a host's home.[41] Consequently, the court held causation to be the same in either instance, regardless of whose hand poured the alcohol.[42] In effect, the court imposed a new duty on social hosts to exercise reasonable care when gratuitously furnishing alcohol.[43]

The California Legislature immediately responded to this judicial trend of extending liability to social hosts. Notwithstanding the seriousness of the drunk driving problem,[44] the legislature

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[36] *Brockett*, 100 Cal. Rptr. at 756.

[37] *Id.* The court noted that § 25658 states that "every person" who gives alcohol to a minor is guilty of a misdemeanor, regardless of whether they are in the business of dispensing alcoholic beverages. *Id.* This language remains undisturbed to date. *See supra* note 35 (setting forth text of § 25658).

[38] 577 P.2d 669 (Cal. 1978).

[39] *Id.* at 674.

[40] *Id.*

[41] *Id.*; *see also* Cory v. Shierloh, 629 P.2d 8, 17 (Cal. 1981) (finding risk to third persons identical whether server is social host or bartender).

[42] *Coulter*, 577 P.2d at 674. The court stated:

> [I]t is small comfort to the widow whose husband has been killed in an accident involving an intoxicated driver to learn that the driver received his drinks from a hospitable social host rather than by purchase at a bar. . . . The danger and risk to the potential victim on the highway is equally as great, regardless of the source of the liquor.

Id.

[43] *Id.* For a discussion of factors courts often look to when establishing new legal duties, see Rowland v. Christian, 443 P.2d 561, 564 (Cal. 1969) (including foreseeability of harm to plaintiff, closeness in connection between defendant's act and plaintiff's injury, moral blame attached to defendant's conduct, policy of preventing future harm, and consequences to community of imposing duty).

[44] *See, e.g.*, 4 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 10.8(d), at 71 (1987) (stating that drunk drivers cause over twenty-five thousand deaths, nearly one million personal injuries, and more than five billion dollars in property damage annually); *see also*

amended Civil Code section 1714[45] and Business and Professions Code section 25602[46] to explicitly abrogate *Coulter* and similar holdings.[47] These amendments granted virtual immunity from liability to both vendors and social hosts who serve alcohol. Through these amendments, the legislature effectively returned California to the common-law approach that consuming, not furnishing, alcohol proximately causes alcohol-related accidents.[48]

The 1978 legislation grants sweeping immunities from liability to both vendors and social hosts who serve alcohol to adults.[49] The legislature, however, retained a single cause of action against alcohol servers by enacting the section 25602.1 exception.[50] Apparently, the legislature felt that retaining this cause of action was necessary to deter the serving of alcohol to minors.[51] Thus,

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Jardine v. Upper Darby Lodge No. 1973, Inc., 198 A.2d 550, 553 (Pa. 1964) (suggesting that "an intoxicated person . . . is as much a hazard to the safety of the community as a stick of dynamite").

45 *See* CAL. CIV. CODE § 1714 (West 1985); *supra* note 6 (quoting § 1714).

46 *See* CAL. BUS. & PROF. CODE § 25602 (West 1985); *supra* note 7 (quoting § 25602).

47 *See supra* notes 6-8 and accompanying text. Many courts and commentators have expressed skepticism regarding the influences that might have prompted the legislature's action. *See, e.g.*, Cory v. Shierloh, 629 P.2d 8, 12 (Cal. 1981) (declining to "speculate on the influences that might have prompted the legislature to answer this acute and growing problem by narrowly *restricting* rather than *enlarging* civil liability") (emphasis in original); Sean A. Davitt, Comment, *Parking Lot Attendant Malpractice—A New Tort in California?*, 16 W. ST. U. L. REV. 693 (1989) (suggesting that amendments were result of successful immunity campaign by California's influential hotel and restaurant lobby); W. B. Rood, *Drinking Liability Changes Approved*, L.A. TIMES, August 31, 1978, at Part 1, 27 (discussing controversy surrounding passage of §§ 1714 and 25602 in California Legislature, which includes numerous attorneys and owners of liquor establishments); David G. Savage, *High Court Upholds Law Backing Bar in Drunk Driving Case*, L.A. TIMES, May 23, 1989, at Metro, Part 2, 3 (speculating that California liquor and restaurant industries, fearing huge damage verdicts from drunk driving incidents, successfully lobbied for new law).

48 *See supra* notes 6-7, 25-26 and accompanying text.

49 *See* Biles v. Richter, 253 Cal. Rptr. 414, 416 (Cal. Ct. App. 1988) (noting near blanket immunity granted to social hosts and vendors with 1978 legislative amendments).

50 CAL. BUS. & PROF. CODE § 25602.1 (West 1985). For an explanation of the circumstances leading to the amendment and its current content, see *infra* notes 59-80 and accompanying text.

51 *See supra* note 14 (noting that legislature's policy goals embodied in § 25602.1 comport with § 25658's policy of preventing minor drinking and driving).

section 25602.1 partially implements the legislature's policy of preventing minor drinking by retaining a limited cause of action against the vendor who serves minors.[52]

II. ALCOHOL AND MINORS

Traditionally, the legislature has provided special regulation in the area of minor alcohol consumption.[53] The legislature's primary policy involves preventing and deterring minor drinking and the risks associated with driving under the influence.[54] Authorities reason that minors, because of their youth and inexperience in both drinking and driving, need greater safeguarding from intoxication than adults.[55] As a result of this special treatment, courts have held that furnishing alcohol to minors constitutes a breach of public duty.[56]

Business and Professions Code section 25658 reflects California's concern for minors.[57] Section 25658 imposes criminal misdemeanor penalties on every person who furnishes alcohol to a person under the age of twenty-one.[58] This statute treats social

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[52] *See* CAL. BUS. & PROF. CODE § 25602.1 (West Supp. 1991).

[53] For example, the age at which it becomes legal to consume alcoholic beverages in California is twenty-one. CAL. BUS. & PROF. CODE § 25659 (West 1985). Similarly, the legislature seeks to deter minors from drinking just as it seeks to deter vendors and hosts from serving them. § 25658(b) of the Business and Professions Code imposes a misdemeanor penalty on the minor who purchases alcoholic beverages. CAL. BUS. & PROF. CODE § 25658(b) (West 1985).

[54] *See supra* note 14 (noting legislature's policy of preventing minor drinking and driving). This continues to be a viable goal. In 1989 alone, drunk drivers under the age of twenty-one were responsible for 5,372 recorded highway injuries and fatalities. 1989 ANNUAL REPORT, *supra* note 2, at 27.

[55] The legal age required for a driver's license in California is sixteen. CAL. VEH. CODE § 12507 (West 1985). The legal age for consuming alcohol is twenty-one. CAL. BUS. & PROF. CODE § 25659 (West 1985). For a discussion of the need to protect minors from alcohol consumption, see Brockett v. Kitchen Boyd Motor Co., 100 Cal. Rptr. 752, 756 (Cal. Ct. App. 1972) (suggesting that minors need special protection because their tender years and inexperience make them unable to cope with alcohol); *see also* Douglas Bedard, Note, *One More for the Road: Civil Liability of Licensees and Social Hosts for Furnishing Alcoholic Beverages to Minors*, 59 B.U. L. REV. 725, 739-40 (1979) (suggesting that minors' actions are presumptively more dangerous after any amount of alcohol).

[56] *E.g.*, *Brockett*, 100 Cal. Rptr. 752.

[57] *See supra* note 35 (discussing § 25658's purpose).

[58] § 25658's penalty provision provides:

hosts and vendors similarly when either serves alcohol to minors.

Like section 25658, the legislature enacted the section 25602.1 exception because it believed that minors are neither mentally nor physically equipped to handle the effects of alcohol consumption.[59] Nevertheless, section 25602.1 fails to fully implement this policy against minor drinking and driving. Rather, in section 25602.1, the legislature imposes civil liability only on commercial vendors who serve alcohol to an obviously intoxicated minor in violation of section 25658.[60] Thus, section 25602.1 is a narrow exception to California's immunity from civil liquor liability.[61]

> (d) Any person who violates this section shall be punished by a fine of not less than two hundred fifty dollars ($250), no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of fine and community service as determined by the court.

CAL. BUS. & PROF. CODE § 25658 (West Supp. 1991). It may be argued that § 25658's misdemeanor penalty is sufficient for social hosts, who serve alcohol gratuitously and without profit. A more serious penalty, however, would have a greater deterrent value than § 25658's relatively modest penalty. Furthermore, allowing social hosts to escape civil liability by paying a small fine or working 24 to 32 hours of community service does nothing to compensate victims of drunk driving. Victim compensation is an equally important justification for imposing civil liability for serving minors. *See infra* notes 136-37 and accompanying text.

[59] *See supra* notes 35, 53 (discussing legislative attempts to safeguard minors from alcohol).

[60] *See* Shichman, Comment, *supra* note 3, at 527-28 (discussing why § 25602.1 will be narrowly construed). Interestingly, the author could find no cases on point in which a plaintiff successfully brought a § 25602.1 cause of action. Because the exception is so narrow, violators of § 25658 often escape liability when their identity or fact situation does not precisely fit within the exception. *See* Salem v. Superior Court, 259 Cal. Rptr. 447 (Cal. Ct. App. 1989) (finding that store supplying alcohol to minor who in turn supplied alcohol to companion involved in collision with third party did not proximately cause injury); Cully v. Bianca, 231 Cal. Rptr. 279 (Cal. Ct. App. 1986) (concluding that nonlicensee serving obviously intoxicated minor did not fit into § 25602.1 exception); Zieff v. Weinstein, 221 Cal. Rptr. 536 (Cal. Ct. App. 1985) (holding unlicensed party not liable for serving alcohol to minors). *But see* Chalup v. Aspen Mine Co., 221 Cal. Rptr. 97 (Cal. Ct. App. 1985) (holding that obviously intoxicated minor who obtained liquor from tavern could bring cause of action for his injuries under § 25602.1 exception); *cf.* Sagadin v. Ripper, 221 Cal. Rptr. 675 (Cal. Ct. App. 1985) (holding social hosts liable under § 25658 for minors' subsequent acts after finding § 25602.1 nonretroactive).

[61] *See, e.g.*, Strang v. Cabrol, 691 P.2d 1013 (Cal. 1984) (en banc)

Section 25602.1's disparate treatment fails to fully implement section 25658's strong policy of preventing minor drinking and driving. Because section 25602.1 distinguishes social hosts from vendors, it restricts the number of servers who will be deterred from and punished for serving alcohol to minors. Thus, as section 25602.1 stands, it provides only a partial solution to the problem of minor drinking and driving.[62] To fully understand section 25602.1's limitations, it is necessary to examine the difficulty courts have had in applying the statute.

III. The Judicial Treatment of Section 25602.1

A. The 1986 Amendment

California courts have faced a great variety of challenges to section 25602.1.[63] While often expressing serious reservations

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(imposing no liability for serving alcohol to sober minor); Cully v. Bianca, 231 Cal. Rptr. 279, 281 (Cal. Ct. App. 1986) (denying liability on principles of *Strang* and Cory v. Shierloh, 629 P.2d 8 (Cal. 1981)). For a particularly chilling illustration of § 25602.1's potentially unjust nature, see DeBolt v. Kragen Auto Supply, Inc., 227 Cal. Rptr. 258 (Cal. Ct. App. 1986). In *DeBolt*, a host who ordered an obviously intoxicated guest from a company party, knowing she would drive, was found not liable for the guest's resulting accident. *Id.*

62 *See supra* note 10 (setting forth text of § 25602.1).

63 *See* cases cited *supra* note 61. Causes of action based on circumstances other than a violation of § 25602.1 are beyond the scope of this Comment. In many instances, however, causes of action involving a host who did not directly serve the minor might still succeed if § 25602.1 were expanded to include social hosts. Arguments that a host had the "capacity to control" or that a host's behavior constituted a "substantial factor" in bringing about the resulting injury have been successful in California as well as in other jurisdictions. *See* Sagadin v. Ripper, 221 Cal. Rptr. 675 (Cal. Ct. App. 1985); *see also* Clement v. Armoniet, 527 So. 2d 1004 (La. Ct. App.) (finding minor guest 8% liable, host 50% liable, and other defendants 42% liable for actions contrary to reasonable behavior), *writ denied*, 531 So. 2d 475 (La. 1988); Koback v. Crook, 366 N.W.2d 857 (Wis. 1985) (noting that defendant's knowledge of relevant facts was substantial factor in producing plaintiff's injuries); Palsgraf v. Long Island R.R. Co., 162 N.E. 99, 101-05 (N.Y. 1928) (Andrews, J., dissenting) (arguing that proximate cause is not necessarily sole cause of actions of single party closest to accident). *But see* Andre v. Ingram, 210 Cal. Rptr. 150 (Cal. Ct. App. 1985) (holding host not liable where no direct service to guest).

In *Sagadin*, the court first held that the 1978 legislation eliminating social host liability was not retroactive. 221 Cal. Rptr. at 677. The court then upheld the jury's finding that a father's permission and acquiescence in his minor son's beer party constituted actionable negligence. *Id.* at 685. The

about the statute's propriety, the courts have consistently deferred to the legislature in their final analyses.[64] For example, in *Cory v. Shierloh*,[65] the California Supreme Court reluctantly deferred to section 25602.1's narrow scope.[66] In *Cory*, an unlicensed vendor sold alcohol to a visibly intoxicated minor.[67] The court held that, because the defendant was unlicensed, he was not liable under section 25602.1.[68] This fact situation uncovered a major flaw in the statute's language.[69] The case revealed that section 25602.1 actually gave vendors who failed to obtain licenses a "preferred liability status" for serving inebriated minors.[70] While the court questioned the propriety of the statute, it nevertheless upheld the legislature's scheme, "[w]ith effort," and did not impose liability on the unlicensed vendor.[71]

While the *Cory* holding did not prompt the legislature to reexamine section 25602.1, an admonition by the Ninth Circuit Court of Appeals resulted in a restructuring of the statute within

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percentage of total fault was apportioned among the drinker, the father, and the son or host. *Id.* at 694.

64 *See supra* note 17. Courts have also been unresponsive to arguments that minors are a special class who, by reason of their youth and inexperience, ought to make social hosts liable under §§ 1714 and 25602. *Cf.* Brockett v. Kitchen Boyd Motor Co., 100 Cal. Rptr. 752 (Cal. Ct. App. 1972). In Cantor v. Anderson, 178 Cal. Rptr. 540, 544 (Cal. Ct. App. 1981), the court held that a return to the common-law principles of Cole v. Rush, 289 P.2d 450 (Cal. 1955), also entailed a return to its limitations, one of which was immunity to those serving competent persons. Thus, in *Strang*, 691 P.2d 1013, when a social host served alcohol to a disabled person who was unable to voluntarily resist consumption, the court concluded that the host was not protected by the immunity statute. *Id.* This argument failed as applied to minors in Bass v. Pratt, 222 Cal. Rptr. 723 (Cal. Ct. App. 1986).

65 629 P.2d 8 (Cal. 1981).

66 *Id.*

67 *Id.* at 9.

68 *Id.* at 11.

69 *Id.* at 11-12.

70 *Id.* at 13; *see also* Zieff v. Weinstein, 236 Cal. Rptr. 536 (Cal. Ct. App. 1987) (finding social host charging admission not subject to licensee liability).

71 *Cory*, 629 P.2d at 14. Three years later in Strang v. Cabrol, 691 P.2d 1013 (Cal. 1984), the California Supreme Court dealt with a licensee who sold alcohol to a sober minor. Following *Cory*, the court found the defendants not civilly liable for violating § 25658, thus overruling Burke v. Superior Court, 181 Cal. Rptr. 149 (Cal. Ct. App. 1982), which had found liability in such a situation. *Strang*, 691 P.2d at 1019. Again, the *Strang* court stressed that the *sole* exception to liability is the one explicitly stated in § 25602.1. *Id.* at 1015.

months. In *Gallea v. United States*,[72] Gallea and a friend became intoxicated at a federal military base establishment that was not subject to California's licensing system.[73] The minors departed from the base on a motorcycle, which subsequently crashed and killed Gallea.[74] The court found that the California Legislature intended to limit the immunity exception to vendors licensed pursuant to Business and Professions Code section 23300.[75] Thus, while noting that the California law was unfortunate, the court nevertheless denied a cause of action to Gallea's parents.[76]

As a direct result of *Gallea*, the legislature amended section 25602.1.[77] First, the legislature added provisions to address federal military establishments in California.[78] Second, the legislature eliminated *Cory*'s immunity status for unlicensed vendors.[79] These changes, however, address only some of section 25602.1's problems.[80] Because of section 25602.1's remaining inconsistencies and inequities, the legislature needs to address the two flaws left in the statute. The legislature first needs to examine the statute's theory of proximate cause. Next, the legislature needs to

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[72] 779 F.2d 1403 (9th Cir. 1986).

[73] *Id.* at 1404.

[74] *Id.*

[75] *Id.* at 1406. Prior to 1986, alcohol servers had to be licensed pursuant to § 23300 in order for liability to attach. *See, e.g.*, Baker v. Sudo, 240 Cal. Rptr. 38 (Cal. Ct. App. 1987) (finding no liability under § 25602.1 where defendant not licensed pursuant to § 23300). This created a noticeable loophole, which was corrected in 1986. *See* CAL. BUS. & PROF. CODE § 25602.1; *see also supra* notes 63-71 and accompanying text (discussing cases that criticize loophole).

[76] *Gallea*, 779 F.2d at 1406-07. United States Supreme Court Justice Kennedy, who sat on the Ninth Circuit when *Gallea* was decided, wrote a strong concurring opinion that probably provided the impetus for legislative action. Justice Kennedy felt it was "interesting to speculate" what amendment the California Legislature could adopt to avoid results such as *Gallea*, but that "if it chooses to persist in retaining a statute that does not permit courts to apply a sensible rule to events the legislature obviously can not foresee, we cannot extricate it or the injured persons it refuses to compensate. . . . The result is unfortunate, but so is the California law." *Id.* at 1407 (Kennedy, J., concurring).

[77] CAL. BUS. & PROF. CODE § 25602.1 (West Supp. 1991). For § 25602.1's current content, including the highlighted 1986 amendments, see *supra* note 10.

[78] CAL. BUS. & PROF. CODE § 25602.1 (West Supp. 1991).

[79] *Id.*

[80] For a discussion of the proximate cause inconsistency, see *infra* notes 81-91 and accompanying text.

address the statute's disparate treatment of social hosts and vendors.

B. The Drunk Driving Accident's Proximate Cause: Consuming or Furnishing?

Section 25602.1 states that when a vendor furnishes alcohol to an obviously intoxicated minor, the act of *furnishing*, not consuming, alcohol constitutes the proximate cause of a victim's injury or death.[81] Thus, section 25602.1 directly contradicts section 1714, section 25602, and the common-law view that *consuming* alcohol is the sole proximate cause of injury.[82] This inherent inconsistency on proximate causation has not escaped judicial criticism;[83] yet the legislature has failed to correct the problem.

Section 25602.1's treatment of proximate cause is based on two competing, legislative interests. First, section 25602.1 recognizes section 25658's goal of eradicating minor drinking and its effects.[84] Second, section 25602.1 recognizes a distinction between commercial vendors and social hosts, allowing social hosts to avoid liability.[85] In contrast, the misdemeanor section 25658 does not distinguish between the two groups; it penalizes both commercial vendors and social hosts who serve alcohol to minors.[86]

Section 25658 embodies the strong policy of restricting minors' access to alcohol.[87] It imposes criminal penalties on anyone who furnishes alcohol to a minor.[88] Yet section 25602.1 only partially implements this policy of preventing minor drinking and driv-

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81 CAL. BUS. & PROF. CODE § 25602.1 (West Supp. 1991). For a definition of "furnish" for purposes of § 25602.1, see Bennett v. Letterly, 141 Cal. Rptr. 682, 684 (Cal. Ct. App. 1977) (stating that there must be some affirmative act of furnishing alcohol, such as supplying, giving, or providing).

82 To compare the statutes' conflicting treatments of proximate cause, see *supra* notes 6-7, 10 (setting forth §§ 1714, 25602, and 25602.1).

83 *See supra* note 28 (demonstrating judicial criticism of §§ 1714, 25602, and 25602.1 on proximate cause issue).

84 *See supra* note 10.

85 *See supra* note 10; *see also* Cory v. Shierloh, 629 P.2d 8, 13 (Cal. 1981) (holding defendant not liable under § 25602.1 when defendant was not licensed to sell alcohol).

86 CAL. BUS. & PROF. CODE § 25658 (West Supp. 1991).

87 *Id.*

88 *Id.*

ing.[89] Under section 25602.1, only a commercial vendor's serving of alcohol to minors constitutes the proximate cause of any subsequent injury.[90] In contrast, a social host who serves alcohol to minors does not proximately cause a resulting injury under section 25602.1. Sections 1714 and 25602 immunize a social host's acts by stating that only the consumption of alcohol proximately causes a resulting injury.[91] Despite this inconsistency, the legislature remains committed to treating hosts and vendors differently under section 25602.1. Commentators offer competing policy reasons for retaining such a distinction.

C. Should Social Hosts Be Liable?

Opponents of extending section 25602.1 to social hosts make several strong arguments for retaining the distinction between social hosts and commercial vendors.[92] Opponents base these arguments principally on practicality, economics, and fairness.[93]

1. The Practicality of Holding Social Hosts Liable

Opponents of extending section 25602.1 to social hosts argue that it is not practical to hold social hosts liable.[94] These oppo-

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89 CAL. BUS. & PROF. CODE § 25602.1 (West Supp. 1991); *see supra* note 10 (setting forth text of § 25602.1, which allows civil cause of action when commercial vendor serves alcohol to obviously intoxicated minor).

90 *See supra* note 10.

91 *See supra* notes 6-7.

92 For persuasive arguments for extending social host liability, see Hilary R. Weinert, Comment, *Social Hosts and Drunken Drivers: A Duty to Intervene*, 133 U. PA. L. REV. 867, 868-74 (1985) (noting that imposing liability on vendors and not social hosts is puzzling because issues of proximate cause and damages are same); Recent Case, 102 HARV. L. REV. 549 (1988) (concluding that courts' refusal to extend liability to social hosts for accidents they precipitate abdicates judicial responsibility). For a particularly good discussion of the reasons against extending liability to social hosts, see Conaway, Comment, *supra* note 1 (suggesting social host liability is unfair, raises insurance costs, and does not deter drunk driving); *see also* Derry D. Sparlin, Jr., Comment, *Social Host Liability For Guests Who Drink and Drive: A Closer Look at the Benefits and the Burdens*, 27 WM. & MARY L. REV. 583, 614-27 (1986) (noting preventive impact is outweighed by unjust results and heavy burden that potential liability places upon social hosts).

93 *See infra* notes 94-120 and accompanying text.

94 *See, e.g.*, Sparlin, Comment, *supra* note 92, at 614-27 (discussing burdens and impracticality of holding social hosts liable); *see also* Conaway, Comment, *supra* note 1, at 423-42 (suggesting that social host liability is impractical and places severe duties on hosts).

nents assert that social hosts lack the training and experience necessary to detect when a person reaches an intoxicated state.[95] While initially appealing, this argument loses its force when one realizes that most courts determine whether a guest was "obviously intoxicated" by examining the guest's objective, outward manifestations.[96] Whether a guest displayed these objective manifestations before the social host involves a question of fact for the jury.[97] The outward manifestation standard is a fair and workable standard because it incorporates those manifestations that are readily apparent and easily detectible.[98]

Commercial vendors may have more experience than social hosts in detecting signs of intoxication.[99] Social hosts, however, often have the advantage of knowing their guests. This personal knowledge makes it easier for social hosts to detect intoxication.[100] Moreover, social hosts often serve alcohol in small and

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95 *See* sources cited *supra* note 94; *see also* Kelly v. Gwinnell, 476 A.2d 1219, 1233 (N.J. 1984) (Garibaldi, J., dissenting) (discussing unfairness and impracticality of holding social hosts liable).

96 *See* Coulter v. Superior Court, 577 P.2d 669, 675 (Cal. 1978) (holding obviously intoxicated standard not too broad or subjective because courts have no discernible difficulty in applying it); Jones v. Toyota Motor Co., 243 Cal. Rptr. 611, 615 (Cal. Ct. App. 1988) (listing outward manifestations that indicate state of intoxication, including "incontinence, unkempt appearance, alcoholic breath, loud or boisterous conduct, bloodshot or glassy eyes, incoherent or slurred speech, flushed face, poor muscular coordination or unsteady walking, loss of balance, impaired judgment, or argumentative behavior"); *see also* People v. Johnson, 185 P.2d 105 (Cal. App. Dep't Super. Ct. 1947) (finding use of alcohol by average persons in quantities producing intoxication causes commonly known, outward manifestations that are plainly and easily discovered); Bedard, Note, *supra* note 55, at 739 (suggesting that § 25658 presumes that "even a very small amount of alcohol may dangerously intoxicate a minor").

97 *See* Fuller v. Standard Stations, Inc., 58 Cal. Rptr. 792 (Cal. Ct. App. 1967). Other questions of fact for the jury include the reasonableness of the host's acts, whether the risk was foreseeable, and whether any intervening causes superseded the causal link between the host's act and resulting injury. *Id.* at 794.

98 *See supra* note 96. An alternative method is blood alcohol concentration (BAC) testing. Many commentators criticize this method for failing to consider actual physical behavior and differences in individual tolerance. *See* Landenberg et al., *supra* note 4, at 196; Bedard, Note, *supra* note 55, at 736-40.

99 *See* Rogers v. Alvas, 207 Cal. Rptr. 60 (Cal. Ct. App. 1984) (noting that because commercial vendors, bartenders, and servers deal with alcohol and its effects daily, they more readily detect signs of intoxication).

100 *See* Bedard, Note, *supra* note 55, at 748. *But see* Sparlin, Comment,

intimate gatherings, allowing them to easily observe and control their guests' alcohol consumption.[101] These factors, combined with the use of the objective outward manifestation standard, undercut the argument that a commercial vendor can more readily detect intoxication.[102]

2. Economic Arguments for Retaining a Distinction Between Host and Vendor

Licensed servers of alcohol conduct business for a profit. In contrast, social hosts typically offer alcohol gratuitously, acquiring no economic advantage by encouraging excessive consumption.[103] Accordingly, advocates of social host immunity argue that any potential third party liability for drunk driving accidents should extend only to commercial servers.[104]

Social hosts stand to lose a great deal if they personally incur civil damages for their guests' acts.[105] Unlike commercial establishments, few social hosts have the financial resources to counter

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supra note 92, at 611 n.185 (noting that early cases approving social host liability do not consider different environment involved in social gatherings).

101 There are numerous factual settings that may be encountered in social host situations. It is important to note that extending the § 25602.1 exception to include social hosts merely allows a cause of action against those hosts exhibiting negligent or reckless behavior. A judge or jury will consider these different situations, weigh the facts, and consider issues of fairness. For example, a social host may not directly serve the intoxicated minor. Similarly, a gathering may be too large for the host to practicably exercise control over her guests' consumption. In these situations, it is highly doubtful that a court or jury will find a social host culpable and thus civilly liable.

For the single successful § 25658 case that apportioned liability among the multiple tortfeasors, including social hosts for their contributing negligence, see Sagadin v. Ripper, 221 Cal. Rptr. 675 (Cal. Ct. App. 1985) (holding that nonretroactivity of § 25602.1 allowed cause of action against social host).

102 *See* sources cited *supra* note 96; *but see* Conaway, Comment, *supra* note 1, at 423-43 (arguing that potential liability would place too great a duty on social hosts).

103 *See* Bedard, Note, *supra* note 55, at 745 (comparing economic motivations for vendors and hosts serving alcohol).

104 *See, e.g.*, Coulter v. Superior Court, 577 P.2d 669, 672 (Cal. 1978).

105 *Id.* Nevertheless, it is arguable whether § 25658's misdemeanor penalty of a $250 fine or 24 to 32 hours of community service or both constitutes a sufficient penalty for social hosts who serve minors. *See supra* note 58 and accompanying text.

the expense of liability.[106] Social host immunity proponents argue that the cost of insurance, if available, would be prohibitive.[107] Moreover, commercial vendors have the ability to spread costs by raising prices for their products and services.[108] Obviously, social hosts cannot similarly spread these costs.

In reality, however, social hosts can obtain and afford insurance.[109] The costs of insuring only against serving alcohol to obviously intoxicated minors is most likely minimal.[110] Insurance carriers recognize that coverage for such liability is not a high risk, because the coverage hinges on a remote contingency.[111] Most policy holders simply will not engage in the prohibited conduct that gives rise to section 25602.1's liability.[112] Extending section 25602.1 imposes no conclusive, detrimental economic effects on social hosts. Thus, there is no inherent economic unfairness in holding social hosts liable.

3. Imposing Liability on Social Hosts Is Fair

While often stated in terms of practicality or economics, all arguments against extending liability to social hosts essentially rest on fairness principles. Alcohol has traditionally enjoyed a

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106 Cory v. Shierloh, 629 P.2d 8, 14 (Cal. 1981) (noting that vendors are more able to absorb and defray liability expenses).

107 *See* Bedard, Note, *supra* note 55, at 744 (speculating that insurance costs would rise dramatically if social host liability were allowed).

108 *Id.* at 745 n.149.

109 *See* Mary L. Loper, *One For the Road—An Ominous Invitation?*, L.A. TIMES, May 29, 1978, § IV, at 10 (containing admission by Don Pauley, senior vice president of United Agencies, Inc., that homeowners' insurance policy holders are probably covered under their comprehensive personal liability clauses); *see also* Beverage Industry News of California (BIN), May 5, 1978, at 3. Edward Levy, spokesman for the Association of California Insurance Companies, indicates that removing all civil liability for furnishing alcohol except for serving obviously intoxicated minors should actually cause insurance premiums to drop. *Id.*

110 *See* Kelly v. Gwinnell, 476 A.2d 1219, 1225 (N.J. 1984) (stating that present day insurance policies would protect policy holders from excessive financial hardship); *cf.* Koback v. Crook, 366 N.W.2d 857, 861 (Wis. 1985) (noting defendant's homeowners' liability policy provided sufficient coverage for damages awarded). Some commentators argue that insurance coverage actually may reduce the deterrent effect on careless behavior. Conaway, Comment, *supra* note 1, at 434-37 (discussing potential insurance effects on social hosts).

111 *See* sources cited *supra* note 109.

112 *See* sources cited *supra* note 110.

pervasive role in our society's social behavior.[113] The California Legislature appears reluctant to attach liability and moral blame to a host who offers alcohol to guests within the confines of her home.[114] It may seem instinctively unfair to burden hosts with a supervisory role in policing their guests' consumption.[115] Moreover, dividing responsibility between the drinker and the server may seem inequitable when the drinker's consumption appears to be a "more direct and immediate cause" of the resulting injury.[116] Such a course could indeed have "a substantial impact . . . on everyday family and social affairs"[117] and perhaps result in misplaced moral blame.[118]

Despite the possible ramifications of social host liability, limiting such liability to situations involving minors produces a fair and equitable result. The misdemeanor section 25658 places all parties on notice that such behavior is against the law.[119] Because they are on notice, social hosts have the opportunity to avoid liability merely by taking precautions against serving obviously intoxicated minors.[120]

IV. Proposing a Logical and Equitable Solution

Section 25602.1 deserves legislative attention. Section

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113 *See* Conaway, Comment, *supra* note 1, at 438.

114 *See* Rogers v. Alvas, 207 Cal. Rptr. 60 (Cal. Ct. App. 1984) (noting legislative resistance to social host liability).

115 *See, e.g.*, Zieff v. Weinstein, 236 Cal. Rptr. 536, 541 (Cal. Ct. App. 1987) (finding no duty to supervise or protect under current statutory framework). *But cf.* Kelly v. Gwinnell, 476 A.2d 1219, 1224 (N.J. 1984) (stating that any restriction on social entertaining is well worth burden).

116 *Cf.* Ewing v. Cloverleaf Bowl, 572 P.2d 1155, 1167 (Cal. 1978) (Clark, J., dissenting) (putting all liability on drinker would result in higher level of responsibility and lower frequency of alcohol-related accidents). *But see Kelly*, 476 A.2d 1219 (suggesting joint liability is necessary to fully compensate injured third parties because driver is not always sufficiently insured); Landenberg et al., *supra* note 4, at 196 (concluding that holding two parties liable rather than one will persuade more people to act responsibly); Bedard, Note, *supra* note 55, at 731 n.9 (commenting that overall deterrent effect is enhanced when both parties are liable).

117 Harriman v. Smith, 697 S.W.2d 219, 221 (Mo. Ct. App. 1985).

118 Coulter v. Superior Court, 577 P.2d 669, 674 (Cal. 1978). *But see* Bedard, Note, *supra* note 55, at 747 n.173.

119 Cal. Bus. & Prof. Code § 25658 (West 1985) (making every person who serves alcohol to minors criminally liable).

120 *See supra* note 101 (discussing how hosts can avoid liability by avoiding negligent and reckless service to minors).

25602.1's current form contributes little to the legislature's policy of preventing minor drunk driving in California.[121] Thus, the legislature should review its narrowly tailored exception regarding minors and amend section 25602.1 to implement its policy more effectively.

A. Correcting Proximate Cause

The legislature's treatment of proximate cause misconstrues a well-established tort doctrine.[122] Sections 1714 and 25602, which grant blanket immunity, do not recognize the accepted principle of multiple causation.[123] Under the principle of multiple causation, liability ensues for the reasonably foreseeable consequences of one's act.[124] Sections 1714 and 25602, however, mandate that only the consumption of alcohol proximately causes the resulting injury.[125]

Because of the plain meaning of sections 1714 and 25602, courts continue to defer to the legislature's retention of early common-law proximate causation.[126] Yet, even within its statutory framework, the legislature has failed to enact a consistent approach to proximate cause.[127] Section 25602.1 completely discards the notion of consumption as the sole cause of injury by explicitly stating that furnishing is the proximate cause.[128] Herein lies the inconsistency.

Public policy often dictates the definition of proximate

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121 *See supra* notes 89-91 and accompanying text.

122 Dean Prosser's definition of proximate cause bears repeating: "[c]ausation is a fact. A cause is something regarded as a necessary antecedent; something without which the event would not have occurred." William L. Prosser, *Proximate Cause in California*, 38 CAL. L. REV. 369, 375 (1950); *see* Peck, *supra* note 19 (arguing that legislatures may actually be attempting to circumvent tort principles).

123 *See supra* note 29 (citing cases discussing multiple causation).

124 Coulter v. Superior Court, 577 P.2d 669, 674 (Cal. 1978) (noting California law's fundamental principle of liability for foreseeable injuries caused by failure to exercise due care).

125 CAL. CIV. CODE § 1714 (West 1985); CAL. BUS. & PROF. CODE § 25602 (West 1985).

126 *See supra* note 19 and accompanying text (discussing relationship between legislature and tort law).

127 To compare legislative treatment of proximate cause in the relevant statutes, see *supra* notes 6, 7, and 10.

128 *See supra* note 10.

cause.[129] Thus, if the legislature's goal is to prevent and deter minors from drinking, then the exception to proximate cause should apply with equal force to anyone who illegally serves alcohol to minors.[130] This equal application would accomplish two legislative goals. First, holding both hosts and vendors liable would further public policy by deterring a larger class of servers from furnishing alcohol to minors. Second, it would enhance the victim's rights against the responsible server, regardless of the server's identity.[131] As section 25602.1 currently stands, it effectuates neither of these goals adequately.

The legislature has two possible courses of action if it wishes to credibly retain common-law proximate causation in sections 1714 and 25602. The legislature can abolish all liquor liability, thereby making common-law proximate causation a constant in all instances. Alternatively, it can justify section 25602.1's exception by extending liability equally to all parties, thereby evincing a sincere attempt to further its defined public interest in preventing minor drinking and driving.[132] Given the legislature's special pol-

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129 *See* Palsgraf v. Long Island R.R. Co., 162 N.E. 99, 101-05 (N.Y. 1928) (Andrews, J., dissenting) (arguing that liability for negligence depends not upon doctrine of causation but upon public policy of preventing excessively risky behavior); *see also* Note, *The Common Law Liability of Minnesota Liquor Vendors for Injuries Arising from Negligent Sales*, 49 MINN. L. REV. 1154, 1162-63 (1965) (discussing theoretical and practical considerations in assessing liability for illegal sale of alcohol).

130 *See supra* note 14.

131 *See* Linn v. Rand, 356 A.2d 15, 18 (N.J. Super. Ct. App. Div. 1976); Weinert, Comment, *supra* note 92, at 869.

132 This Comment proposes that the following deletions be made to § 25602.1 to apply the prohibition against serving minors alcohol equally to all groups:

> Notwithstanding subdivision (b) of Section 25602, a cause of action may be brought by or on behalf of any person who has suffered injury or death against any person [licensed, or required to be licensed, pursuant to Section 23300, or any person authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave,] who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic beverages, and any other person who sells, or causes to be sold, any alcoholic beverage, to any obviously intoxicated minor where the furnishing, sale or giving of that beverage to the minor is the proximate cause of the personal injury or death sustained by that person.

CAL. BUS. & PROF. CODE § 25602.1 (West Supp. 1991) (proposed deletions bracketed).

icy regarding minors, the latter approach appears to be the most meaningful course to follow.

B. Erasing the Vendor-Social Host Distinction in the Minor Context

Arguments against extending liability to social hosts fail when applied to situations involving minors. Legally, drinking alcoholic beverages exists exclusively as an adult activity.[133] The legislature has taken affirmative steps to prevent and deter minor drinking.[134] For example, section 25602.1 illustrates an unequivocally strong legislative interest in preventing minor drinking and driving by imposing civil liability on vendors who sell liquor to obviously intoxicated minors.[135] Moreover, section 25602.1 is both preventive and compensatory in nature.[136] Because of these important interests, the legislature obviously felt it necessary to maintain a cause of action for parties injured as a result of minor drinking and driving.[137] Yet, if the legislature seriously wishes to

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[133] CAL. BUS. & PROF. CODE § 25658 (West Supp. 1991) (making twenty-one legal age for consuming alcohol); *see also* Koback v. Crook, 366 N.W.2d 857, 863 (Wis. 1985) (implying that drinking by its nature is adult activity).

[134] *See generally* Conaway, Comment, *supra* note 1.

[135] CAL. BUS. & PROF. CODE § 25602.1 (West Supp. 1991); *see supra* notes 10-14.

[136] *See supra* note 10 (setting forth text of § 25602.1); *cf.* Kelly v. Gwinnell, 476 A.2d 1219 (N.J. 1984) (holding that compensation to third parties is essential); Tarasoff v. Regents of Univ. of Cal., 551 P.2d 334 (Cal. 1976) (finding that liability should ensue when consequences are grave, risks are foreseeable, and tragic injuries preventable).

[137] It is unclear whether the statutory scheme is designed solely to protect minors from the vice of drinking. Still, both legislative intent and common sense indicate that its additional purposes are to protect the general public from minors' excessive use of intoxicating beverages and to preserve a cause of action for injuries resulting from such use. *See* Brockett v. Kitchen Boyd Motor Co., 100 Cal. Rptr. 752, 754 (Cal. Ct. App. 1972) (concluding that statutory scheme's policy is to protect general public against injuries resulting from intoxication). § 23001 of the Business and Professions Code states that the purpose of the Alcoholic Beverage Control Act (a forerunner of the current section) was to provide for the safety, health, and welfare of all Californians. CAL. BUS. & PROF. CODE § 23001 (West 1985). § 25658 was enacted as part of this general statutory scheme, which encompassed broad policy objectives. Further, the cause of action preserved under § 25602.1 clearly indicates that the statutory scheme was not enacted solely for protecting minors. *See* CAL. BUS. & PROF. CODE § 25602.1 (West Supp. 1991); *see also* Sagadin v. Ripper, 221 Cal. Rptr. 675, 691 n.12 (Cal. Ct. App. 1985) (questioning whether § 25658 was enacted for sole benefit and protection of minors).

prevent this behavior, it makes little sense to deny a cause of action to an injured victim simply because the server did not "sell" the alcohol. Illegally serving alcohol to minors constitutes the same risk of injury to innocent third parties, regardless of the server's identity.[138]

It is not an unfair burden to require adult hosts to act reasonably when minors and alcohol are concerned.[139] After all, hosts already have an unequivocal duty not to serve alcohol to minors.[140] Once a host breaches this duty, legal blameworthiness attaches.[141] Moreover, the average social host would not face liability. Only the host who knowingly serves alcohol to an obviously intoxicated minor would share responsibility for consequential injuries.[142]

CONCLUSION

The legislature should allow a cause of action against social hosts who choose to ignore the law by serving alcohol to obviously intoxicated minors. Arguments against extending general

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138 *See* Coulter v. Superior Court, 577 P.2d 669 (Cal. 1978) (stating that hosts and vendors pose the same risk to society when serving alcohol to minors).

139 Limiting social host liability to minors avoids the sweeping implications of holding a social host liable for her adult guests' acts. This Comment refrains from expressing any opinion as to the merits of such an extension, as many of the problems associated with adults simply are not present with minors. *See supra* note 14 (discussing necessity of protecting minors).

140 *See* CAL. BUS. & PROF. CODE § 25658 (West 1985) (providing that anyone serving alcohol to minors is criminally liable); *see also Coulter*, 577 P.2d at 676 (Mosk, J., concurring) (stating that "[t]he law frowns upon adding a straw to a camel's back previously broken").

141 *See supra* note 35.

142 Vicky Cloud, acting California Mothers Against Drunk Driving (MADD) Administrator, supports this position: "Responsibility has to go beyond just the drunk driver for his actions; it has to extend to the server and the seller as well. Without liability for those groups, we're not going to see a lot of responsibility . . . ." Savage, *supra* note 45, at 3.

The drinking minor is not relieved of her responsibility under this approach. Rather, the person who knowingly serves the visibly intoxicated minor shares such responsibility for creating a foreseeable risk to the public. Often the drinking minor may be judgment-proof, lack insurance, or lack sufficient means with which to satisfy a monetary damage award. This approach is fair because it provides a victim and her family joint or alternative sources of redress from the responsible parties. *See* Kelly v. Gwinnell, 476 A.2d 1219, 1224 (N.J. 1984).

liability beyond commercial vendors fail when applied to situations involving minors.[143] Serving alcohol to minors involves the same risks, regardless of who dispenses the liquor.[144] Therefore, equal application of civil liability for serving minors is fair. The current statutory exception to California's sweeping immunity from liquor liability remains logically flawed in terms of which acts proximately cause alcohol-related injuries.[145] Furthermore, imposing liability only on vendors ineffectively furthers legislative intent and public policy regarding minor drinking and driving.[146] The California Legislature should take a hard look at section 25602.1 and extend civil liability to social hosts who create a risk to the motoring public by serving alcohol to minors.

Kelly B. Dick

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143 *See supra* notes 92-120 and accompanying text.
144 *See supra* note 42 and accompanying text.
145 *See supra* notes 81-82 and accompanying text.
146 *See supra* notes 87-91 and accompanying text.