

Two stacks of red plastic cups, one on the left and one on the right, with the text 'Social Host Laws in Illinois' overlaid in the center.

Social Host Laws in Illinois

Overview

- The over-consumption of alcoholic beverages, especially by minors, can be very dangerous and may lead to tragic incidents resulting in serious bodily harm and death.
- Over many decades, governments have interceded to protect persons from the dangers of over-consumption by establishing a 21 and over drinking age, increasing penalties for drunk driving and holding licensed businesses to a zero tolerance underaged sales standard.
- Other laws have also been strengthened to increase the accountability of social hosts who may serve or permit the consumption of alcoholic beverages on their privately owned or leased property.
- This presentation will introduce you to the multiple ways that a social host or a provider of alcoholic liquor can be liable for irresponsible behavior leading to the dangerous over-consumption of alcoholic beverages.

Social Host Liability Background

- Who qualifies as a social host?
 - A social host is anyone who furnishes alcohol to another in a social setting.
- In what kind of setting does social hosting occur?
 - Social hosting can occur in any kind of setting, but the most common setting is the home.
- Is it safer to drink at home, or at a bar?
 - Some see it as a distinction between “supervised underage drinking” vs. “unsupervised underage drinking.” Each has its own set of distinct risks.
 - Responsibility of Voluntary Undertaking. When one voluntarily takes on the care of a helpless, injured, or ill person, they are under a legal obligation to exercise reasonable care and prudence in what they do. This also applies to underage drinking under supervision.
 - Insurance coverage.

Social Host Liability Background

- Studies show that social hosting laws play a critical role in curbing underage drinking. Because of the ease of access to alcohol, alcohol is the most commonly used drug for underage youth in the United States.
- The statistics on where underage individuals get their alcohol:
 - 55% house parties.
 - 44% from their parents WITH their permission.
 - 30% by an adult other than their parents.
 - 24% by an older sibling.
 - 27% SAMs (Sale of Alcohol to a Minor).
 - 13% Given or purchased from a stranger.

Social Host Liability Background

- Social Host in Illinois – Historical Perspective
 - Long common law tradition that **alcohol providers are not liable** for incidents resulting from the host providing alcohol to invitees.
 - No proximate cause – It was considered that providing alcohol to an invitee could not be deemed a proximate cause to an incident that later occurred that may or may not have been the result of drinking.
 - Post-Civil War – Illinois passed the Dramshop Act (1872) which established liability for person in the alcohol beverage trade or who sold alcoholic beverages (e.g. license holders).
 - The law strictly limited alcohol beverage liability to sellers. The legislature did not intend to extend liability to a social host "who, in **his own house**, or elsewhere, **gives a glass of intoxicating liquor to a friend as a mere act of courtesy and politeness.**" The court emphasized that under the common law rule, no liability attached to **one who furnished alcohol to another person.** *Cruse v. Aden*, 127 Ill. 231, 239, 20 N.E. 73 (1889).

Social Host Liability Background

- Social Host in Illinois – Historical Perspective
 - 1961 – There is no other civil remedy for holding an alcohol beverage provider liable than the Dramshop Act. **No social host liability of any kind.** Cunningham v. Brown, 22 Ill.2d 23, 174 N.E.2d 153 (1961),
 - 1995 – Seigfried v. Charles, 651 N.E.2d 154 (1995); 165 Ill.2d 482; 209 Ill.Dec. 226.
 - “For over one century, this court has spoken with a **single voice** to the effect that **no social host liability exists in Illinois.**...that the legislature has preempted the field of alcohol-related liability; and that any change in the law governing alcohol-related liability should be made by the General Assembly, or not at all.”

Social Host Liability Background

- Seigfried v. Charles, 651 N.E.2d 154 (1995); 165 Ill.2d 482; 209 Ill.Dec. 226.
 - Two separate consolidated cases with similar facts.
 - In one case, the social host served alcoholic beverages to a 16 year old girl visiting the private residence of a social host. The 16 year old girl left the party intoxicated driving a vehicle. The 16 year old girl died in a car crash after leaving the social host home. 16 year old had a .299 BAC.
 - In other case, the social host “furnished” alcoholic beverages to 15 year old girl and another underaged boy in a private residence. 15 year old girl and underaged boy became inebriated and left the home in a vehicle driven by underage boy. Both were killed in a car accident caused by the underaged boy.
 - Plaintiffs asked the Court “to recognize a common law cause of action when a social host serves alcoholic beverages to a minor.”
 - Supreme Court rejected the plaintiffs argument because of the established common law decisions against social host liability of any kind, **even if host served persn under 18.**

Social Host Liability Background

- End of Twentieth Century – Two well established principles
 1. No liability is imposed on a person who gives alcohol to another person who later harms a third party while intoxicated.
 2. Dramshop Act imposes liability **only on those persons officially engaged in the business of selling liquor** in the State of Illinois.

Courts had not adopted a negligence standard related to social host type cases.

Negligence Standard

- *Wakulich v. Mraz* (322 Ill. App. 3d 768, 255 Ill. Dec. 907, 571 N.E. 2d 1 (2001))
 - Facts of the Case
 - On June 15, 1997, Elizabeth Wakulich (16 y.o.) was at the home of Michael (21 y.o.) and Brian Mraz (18 y.o.). They encouraged her to drink a quart bottle of Goldschlager through the offering of money, goading, and other social pressures.
 - She fell unconscious and, while on the couch, began vomiting and producing gargling noises. Both Michael and Jason failed to drive her home, contact her parents, or seek medical attention. Instead, they removed her blouse (which had been covered in vomit) and placed a pillow under her head to prevent aspiration.
 - The next morning, their father, Dennis Mraz (who was present the entire time), ordered the brothers to remove Elizabeth Wakulich from their home, which they did. Elizabeth died later that day.
 - Michael Mraz was later convicted of “Contributing to the Delinquency of a Minor.”

Negligence Standard

- *Wakulich v. Mraz* (322 Ill. App. 3d 768, 255 Ill. Dec. 907, 571 N.E. 2d 1 (2001))
 - Facts of the Case
 - Wakulich's family filed suit on wrongful death due to the negligent provision of alcohol to a minor.
 - The court dismissed the suit on the ground that there was no social host liability beyond the Dramshop Act. An appellate court, affirmed in part, but also concluded that enough cause existed when the brothers attempted to care for the intoxicated minor, and a suit on the grounds of "failure to exercise due care" could proceed.

Negligence Standard

- *Wakulich v. Mraz* (322 Ill. App. 3d 768, 255 Ill. Dec. 907, 571 N.E. 2d 1 (2001))
 - Court upheld prior precedent (e.g. Seigfried) that there is no social host responsibility beyond the Dramshop Act.
 - BUT the Court opened the door to an alternative liability - Voluntary Undertakings Theory
 - Voluntary Undertakings Theory is not Social Host Liability but it does state that a person could expose themselves to liability if they offer care to another person but negligently administer such care. (e.g. sidewalk shoveling)
 - In *Wakulich*, the defendant's sons voluntarily attempted to help the victim after she lost consciousness.
 - They took "complete and exclusive charge of [her] care after she became unconscious."

Negligence Standard

- *Wakulich v. Mraz* (322 Ill. App. 3d 768, 255 Ill. Dec. 907, 571 N.E. 2d 1 (2001))
 - Court held that the boys' took affirmative actions to care for the deceased established a duty to her.
 - Because of the affirmative actions taken to care for the deceased, there is a requirement that the caregiver not negligently undertake such actions.
 - Court did not hold defendant liable under social host law.
 - Court held defendant liable under voluntary undertaking tort law (negligence).

Illinois Social Hosting Law

- 2004 - Drug or Alcohol Impaired Minor Act (740 ILCS 58/1)
 - Provides that anyone, at least 18 years or older, who **willfully supplies alcohol or drugs to a person under 18** and causes the impairment of the same, is liable for any death or injury that results from the impaired minor's actions.
 - Also applies to an person over the age of 18 who **willfully permits** a person under 18 to consume alcoholic beverages on **non-residential** property owned or controlled by the person over 18.
 - The intoxicated person can be the victim and seek damages.
 - A plaintiff can file claim economic damages, including the cost of rehabilitation, medical expenses, loss of educational and economic potential, loss of productivity, absenteeism, support expenses, accidents or injury or any other pecuniary loss that is the proximate cause of the impaired person. In addition, but not limited to, any compensation for physical or emotional pain, attorney fees, and cost of the overall litigation

Illinois Social Hosting Law

- Drug or Alcohol Impaired Minor Act (740 ILCS 58/1)
 - Established Social Host Liability - Overturned 130 years of common law jurisprudence that persons were not liable for damages caused to persons or property as a result of providing alcoholic beverages to another person.
 - No defense of contributory negligence or willful and wanton conduct on the part of the injured party is allowed under the Act.
 - Both economic and non-economic damages are allowed under the Act, including damages for emotional distress, loss of companionship, disfigurement, and the cost of future medical care.
 - Still, the extent of the Social Host Liability is limited and may not apply to many incidents.

Illinois Social Hosting Law

- Drug or Alcohol Impaired Minor Act (740 ILCS 58/1)
 - There are some limits to the 2004 Social Host Law
 - Only applies if a person over 18 **willfully provides** alcoholic beverages to a person **under 18**.
 - Only applies if an adult **willfully provides** alcoholic beverages to a person under 18 if the act is on the **residential property** of the adult provider.
 - If a parent merely **willfully permits** a person under 18 to consume alcoholic beverages on the **residential property**, the adult is not liable
 - On non-residential property like a boat, the adult may be liable for willfully permitting the person under 18 to consume alcoholic beverages. Seemingly, the adult would have to witness consumption by a person under 18. Would not apply to covert consumption by person under 18.

Illinois Social Hosting Law

- Drug or Alcohol Impaired Minor Act (740 ILCS 58/1)
 - Law could apply to businesses holding a license to sell alcohol.
 - Section 20 - allows any person injured to bring a cause of action against a **licensee**, or an employee of a licensee, ONLY IF failed to comply with all applicable provisions of the Liquor Control Act of 1934.
 - If a licensee allows a person under 18 to consume alcoholic liquor and such consumption results in harm, the licensee could be liable.
 - Dramshop liability damage caps may not apply on actions brought against licensees for violations of the Social Host Law. Caps only apply to Dramshop liability cases.
 - If licensee's request identification from a person under 18 and the person produces a fake I.D. (of a reasonable likeness) of a person over 21, then the licensee is likely protected against Social Host, Dramshop Liability lawsuits and Liquor Control Act criminal penalties.

The Liquor Control Act and Social Hosting

- The Liquor Control Act assesses criminal penalties (not civil damages) for providing alcoholic beverages to person under 21 (not under 18 like the Social Host Law).
- 235 ILCS 5/6-16 (a-1) prohibits a parent or legal guardian from “knowingly permit[ing]” person under 21 from unlawfully possessing alcoholic beverages on their residence (or other property under their control).
 - Class A Misdemeanor (\$500 fine); Class 4 Felony if violation results in death or great bodily harm.
 - Under this section, house parties, boat parties, or other parties on an adult's property where underage possession occurs, is prohibited under the LCA.
 - Does not apply to parents’ own children that are supervised by the parent.
 - Does not apply alcohol consumed for religious ceremonies.

Illinois Dramshop

- Illinois Dramshop Liability Section - 235 ILCS 5/6-21
- Applies primarily to liquor licensed holders not social hosts - (Originated in 1872)
- Provides that any individual that is injured, whether that injury be to the individual or their property, by an intoxicated individual has the cause for action against any individual licensed to sell, or give, alcohol if the licensee caused that individual to become intoxicated.
- Act amended many times to include liability for:
 - A property owner who “owns, rents, leases, or permitting a building or premises with the knowledge that alcohol is to be sold therein.”
 - An individual over the age of 21, who pays for a hotel or motel knowing that alcohol will be consumed on the premises by any person under 21 years of age and such consumption causes the intoxication of the person under 21 years of age.

Illinois Dramshop

- Dramshop Law imposes strict liability for damages caused by an intoxicated person if there is proof the licensed business caused the intoxication.
- Dramshop Law applies to businesses that are licensed by the ILCC.
- Dramshop Law does not allow the intoxicated person to prevail in a lawsuit.
- Dramshop Law caps damage awards:
 - Awards increase every year at about the same rate as inflation.
 - Determined by Illinois Comptroller not ILCC

The Liquor Control Act

- 235 ILCS 5/6-20(g)-Religion and Parents
 - A minor may consume alcohol as part of a religious observance
 - A minor may consume alcohol under the direct supervision and approval of their parents in the privacy of their own home

People v. Haase, 2012 IL App (2d) 110220

- Minor consumed alcohol at home with parents
- While still intoxicated left the home and was arrested
- Court found the exception applied even though the minor was still intoxicated outside the home

People v. Finkenbinder 2011 IL App (2d) 100901

- Minor consumed alcohol at home with approval of parents
- Minor was then arrested for being intoxicated
- Court found that although the mother knew about the minor's drinking she was not providing direct supervision "she was unaware of how much defendant drank, the type of alcohol defendant drank, and his whereabouts during the course of the night."

Statute of Limitations

- Social Host Law - “an action for damages under this Section is barred unless commenced within 2 years after the right of action rises.”
- Dramshop Liability - Actions brought under a violation of 235 ILCS 5/6-21(a) have a one (1) year statute of limitations, from the time the right of action arises.

Social Host Law Limitations

- Social Host law does not apply if the underaged (under 21) person consuming alcoholic beverages was over 18.
- Social Host law does not apply if the adult providing the alcoholic beverages does not take a **willful action** to give alcoholic beverages to a person under 18 (or willfully permit consumption on a non-residential property)
- Liquor Control Act may still impose criminal liability in these cases.
- Adult may still be liable under the Voluntary Undertakings Theory (explained by case law) but this theory is largely dependent on the facts of each case.

Social Host Law Limitations

- Bell v. Hutsell (955 N.E.2d 1099 (2011); 2011 IL 110724; 353 Ill. Dec. 288)
 - Daniel Bell, 18 years old, died in a car accident as a result of becoming intoxicated at the defendant's home.
 - Prior to the party at their residence, the defendant parents of the residence stated that they would not tolerate drinking BUT:
 - They knew alcohol was brought to the party
 - They knew alcohol was being consumed at the party, even in their presence
 - Their son Jonathon had plead guilty in the past for underage consumption
 - Defendant Jerry Hutsell had spoken at previous parties to underaged persons consuming alcohol requesting they not drive home.
 - The decedent Daniel Bell drank in the presence of the defendants.

Negligence Standard – Voluntary Undertaking

- Bell v. Hutsell (955 N.E.2d 1099 (2011); 2011 IL 110724; 353 Ill. Dec. 288)
 - Social Host law does not apply because the adults did not willfully provide alcoholic beverages to the invitees and the person consuming the alcoholic (Daniel Bell) was 18 or over.
 - Alternatively, the plaintiffs argued that the host "voluntarily undertook the duty" to care for underaged persons by making an affirmative statement about prohibiting the consumption of alcoholic beverages.

Negligence Standard – Voluntary Undertaking

- Bell v. Hutsell (955 N.E.2d 1099 (2011); 2011 IL 110724; 353 Ill. Dec. 288)
 - IL Supreme Court – Host was not liable. Even though the Court agreed that the Voluntary Undertaking could establish liability, no such undertaking occurred in this case.
 - Voluntary undertaking requires an “affirmative act” or an “assertion of control” that places the intoxicated person in a more dangerous position than they were before the act was taken.
 - Defendant act of informing underage partygoers that alcohol consumption was prohibited (and even stating he would monitor to be sure alcohol wasn’t consumed) is not enough to establish a voluntary undertaking.
 - Affirmative Act is required. Examples of an undertaking could have been if the defendant:
 - Attempted but failed to confiscate all alcoholic beverages
 - Asked offenders to leave without monitoring how they will get home.

Negligence Standard – Voluntary Undertaking

- *Simmons v. Homatas*, 236 Ill.2d 459, 338 Ill. Dec. 883, 925 N.E.2d 1089 (2010)
 - Facts of the Case
 - January 4, 2006 - John Homatas and John Chiariello arrived at the Diamonds Gentlemens Club,
 - Homatas and Chiariello then went inside. The two men had brought with them a fifth of rum and a fifth of vodka.
 - Over the course of the next two hours, the two men poured several drinks. They purchased mixers, glasses and ice from the club.
 - Homatas became visibly intoxicated and around 11 p.m. was found by Diamonds' employees to be vomiting in the restroom.
 - The employees immediately ejected Homatas and Chiariello from the club. **They also instructed the valet service to start Homatas's car and bring it to the front door. When the car arrived, employees opened the driver-side front door and directed Homatas to leave the premises**
 - Approximately 15 minutes later, Homatas collided with a vehicle driven by April Simmons. The collision resulted in the deaths of Chiariello, Simmons, and Simmons' unborn daughter, Addison Elizabeth Simmons. Homatas was injured, but has since recovered from those injuries.

Negligence Standard – Voluntary Undertaking

- *Simmons v. Homatas*, 236 Ill.2d 459, 338 Ill. Dec. 883, 925 N.E.2d 1089 (2010)
 - Court Held – No social host liability but Club was negligent. Club took an affirmative act and became negligently liable under voluntary undertakings rule.
 - Court ruled that the club employees took affirmative acts and negligently cared for the victims.
 - Employees instructed the valet service to start Homatas's car and brought it to the front.
 - Employees opened the driver-side front door.
 - Employees directed Homatas to leave the premises