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Abstract: In *Hansen v. Friend,* the Washington Supreme Court held that a host who furnishes alcohol to a minor in a social setting is liable for all resulting injuries to the minor. In reaching this result, the court limited the cause of action to minors, denying all third parties injured by intoxicated minors a claim against social hosts. Additionally, the court allowed intoxicated minors to bring an action for injuries resulting from any type of hazard they encountered while intoxicated. This Note examines the *Hansen* decision and proposes that, given the court's decision to impose civil liability upon hosts, the court should extend a cause of action to third parties but limit liability to injuries resulting from automobile accidents.

When fifteen-year-old Keith Hansen drowned in Lake Jameson after drinking at a nearby campsite, his twenty-one-year-old companions faced liability for Hansen's wrongful death.[1] In *Hansen v. Friend,*[2] the Washington Supreme Court held that as social hosts[3] who supplied liquor to a minor, both twenty-one-year-old companions may be liable for the resulting death of their fifteen-year-old friend. This decision is the first Washington case to hold social hosts liable for injuries caused by serving alcohol.

This Note argues that the *Hansen* court arrived at its decision through flawed analysis, and concludes that the court should apply this holding only to cases where intoxicated minors injure themselves or third parties in automobile accidents. Part I examines the development of host liability in Washington and illustrates the court's reluctance to impose liability on social hosts. Part II critically analyzes the Washington Supreme Court's decision in *Hansen* on two grounds. First, the court lacked legislative support to create a civil cause of action against social hosts. Second, the court used faulty analysis to find that the hosts owed a duty of care to Hansen because he was a minor. Finally, this Note proposes that, given the court's decision to create a civil cause of action, the legislature should intervene and limit civil liability to hosts who serve minors who subsequently injure themselves or third parties in automobile accidents.

1. Hansen v. Friend, 118 Wash. 2d 476, 824 P.2d 483 (1992).

2. 118 Wash. 2d 476, 824 P.2d 483 (1992).

3. Social hosts are those who provide alcohol to others for no cost and with no future business expectations. *See* Halvorson v. Birchfield Boiler, Inc., 76 Wash. 2d 759, 458 P.2d 897 (1969).

I. EXAMINATION OF SOCIAL HOST LIABILITY IN WASHINGTON

A. Legislative Enactments

Two types of legislative enactments give rise to host liability: dramshop acts and alcoholic beverage control (ABC) acts.[4] Dramshop acts impose civil liability upon commercial hosts[5] who furnish liquor to consumers who later injure themselves or others. Although dramshop acts vary between states, dramshop liability in most jurisdictions does not extend to social hosts.[6] Similarly, ABC acts regulate the distribution or sale of intoxicating liquor to individuals who pose a potentially high risk of danger to the general public.[7] ABC acts, however, apply to both commercial and social hosts. While violations of ABC statutes are criminal misdemeanor offenses,[8] courts have recently relied on these criminal statutes to impose civil liability for injuries caused by an intoxicated person served in violation of an ABC act.[9]

1. Dramshop Acts

Dramshop acts first appeared in the Prohibition era.[10] Prohibitionists lobbied state legislatures to enact dramshop acts in order to control liquor traffic and protect against the "evils" of intoxicating liquor.[11] Due to these efforts, legislatures passed statutes that imposed civil liability on suppliers for damages caused by persons to whom they supplied liquor.[12] Prohibitionists' efforts[13] were fully realized when the Eighteenth Amendment to the Constitution was ratified in 1919, establishing Prohibition.[14]

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4. Carla K. Smith, Note, *Social Host Liability for Injuries Caused by the Acts of an Intoxicated Guest,* 59 N.D. L. REV. 445, 446–47 (1983).

5. Commercial hosts are those who sell alcohol. *See* WASH. REV. CODE ANN. § 66.04.010 (West 1985).

6. For cases refusing to extend liability to social hosts, see Smith, *supra* note 4, at 455 n.99.

7. *Id.* at 459. For a complete list of state statutes, see Mary M. French et al., Special Project, *Social Host Liability for the Negligent Acts of Intoxicated Guests,* 70 CORNELL L. REV. 1058, 1076 n.135 (1985).

8. *See, e.g.,* WASH. REV. CODE ANN. §§ 66.44.180, .300 (West 1985); *see also* Smith, *supra* note 4, at 459.

9. *See, e.g.,* Baughn v. Malone, 33 Wash. App. 592, 656 P.2d 1118 (1983).

10. In the 1830s, prohibitionists abandoned the belief that individual drinkers would reform themselves and turned to the state legislatures in an attempt to cut off the liquor supply to the general public. Smith, *supra* note 4, at 448.

11. *Id.* at 448–49.

12. *Id.* at 449.

13. For a discussion of the temperance movement, see 9 ENCYCLOPAEDIA BRITANNICA 722–23 (15th ed. 1989).

14. The Eighteenth Amendment provides in part, "After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation

In 1905, the Washington Legislature enacted its Dramshop Act.[15] This Act provided a civil cause of action to those injured by an intoxicated person against anyone who provided liquor to the intoxicated person.[16] Before the legislature enacted the Dramshop Act, common law did not impose civil liability upon those who furnished intoxicating liquor; courts considered such injuries too remote from the sale or furnishing of the liquor to be actionable.[17] The Dramshop Act indoctrinated the causal link between the service of alcohol and the injury upon which civil liability was based.[18] The Dramshop Act not only punished those who sold alcohol, but also provided a remedy to the injured party where one generally did not exist under common law.[19] By providing such a remedy, the legislature articulated the causal connection between the furnishing of alcohol and the resulting injury. Additionally, the courts recognized this causality and interpreted the Dramshop Act very liberally, applying it even to assaults by an intoxicated person.[20]

2. *Washington's Alcoholic Beverage Control Act*

After Congress repealed Prohibition in 1933,[21] many states repealed their dramshop acts.[22] Washington followed suit, repealing its Dramshop Act in 1955.[23] The Washington Legislature, however, subsequently passed the Washington Alcoholic Beverage Control (WABC)

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thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited." U.S. CONST. amend. XVIII, § 1.

15. Dramshop Act, ch. 62, § 1, 1905 Wash. Laws 120 (repealed 1955).

16. The Dramshop Act provided:

> Every husband, wife, child, parent, guardian, employe [sic], or other person who shall be injured in person or property, or means of support, by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, shall have a right of action, in his or her own name, severally or jointly, against any person or persons who shall, by selling or giving intoxicating liquors, have caused the intoxication of such person, for all damages sustained, and the same may be recovered in a civil action in any court of competent jurisdiction.

Id.

17. French et al., *supra* note 7, at 1066.

18. *Id.*

19. Christen v. Lee, 113 Wash. 2d 479, 493, 780 P.2d 1307, 1313–14 (1989).

20. *See, e.g.*, Woodring v. Jacobino, 54 Wash. 504, 103 P. 809 (1909) (holding a drinking establishment liable to a patron's estate where an intoxicated patron assaulted an individual, who in self-defense killed the patron).

21. Congress repealed the Eighteenth Amendment by enacting the Twenty-first Amendment in 1933. U.S. CONST. amend. XXI, § 1 ("The eighteenth article of amendment to the Constitution of the United States is hereby repealed.").

22. French et al., *supra* note 7, at 1067.

23. Act of March 21, 1955, ch. 372, § 1, 1955 Wash. Laws 1538.

Act.[24] This Act still exists today. In part, this Act forbids selling liquor to any person apparently under the influence of alcohol,[25] giving or otherwise supplying liquor to any minor,[26] and selling intoxicating liquor to any minor.[27] The legislature explicitly provided criminal sanctions for violations of the WABC Act.[28] The legislature remained silent on the issue of civil penalties, however, neither expressly denying nor permitting such a civil cause of action.[29]

a. The WABC Act Protects the Drinker as Well as Innocent Third Parties

Historically, the courts interpreted as safety statutes those WABC provisions barring the service of alcohol to those persons posing a potentially high risk to the public.[30] When interpreting the provision barring the sale of alcohol to an obviously intoxicated person,[31] the Washington Supreme Court held that the provision provided both the injured third party[32] and the intoxicated person[33] a cause of action against the host.[34] In essence, the WABC statute seeks to protect the drinker as well as to promote public safety by giving both the drinker and the third party a cause of action.

b. WABC Act Defines Minors as Those Under Twenty-One Years of Age

In 1984, Congress signed the National Minimum Drinking Age (NMDA) Act into law.[35] This Act provided incentives for each state to raise its minimum drinking age to a nationally uniform age of twenty-one[36] in an effort to reduce the disproportionate number of

24. WASH. REV. CODE ANN. §§ 66.04.010–.98.100 (West 1985 & Supp. 1992) (commonly referred to as the Washington State Liquor Act).

25. *Id.* § 66.44.200 (West 1985).

26. *Id.* § 66.44.270 (West Supp. 1992).

27. *Id.* § 66.44.320 (West 1985).

28. *See, e.g., id.* § 66.44.180 (West Supp. 1992).

29. The dearth of legislative history on the WABC Act adds to courts' inability to ascertain whether the legislature intended to allow a civil action.

30. The Washington Legislature passed the WABC Act to protect the "welfare, health, peace, morals, and safety of the people of the state." WASH. REV. CODE ANN. § 66.08.010 (West 1985).

31. *Id.* § 66.44.200.

32. *See, e.g.,* Purchase v. Meyer, 108 Wash. 2d 220, 737 P.2d 661 (1987).

33. *See, e.g.,* Young v. Caravan Corp., 99 Wash. 2d 655, 663 P.2d 834 (1983).

34. The courts treat this provision as a safety statute, especially in cases where the obviously intoxicated person is a minor. *See Purchase,* 108 Wash. 2d at 220, 737 P.2d at 661.

35. 23 U.S.C. § 158 (1984).

36. Those states that did not comply faced a reduction in the highway funds allocated to them under the Federal Highway Aid Act. 23 U.S.C. § 104 (1984); Kevin Kadlec, Note, *The National*

drunk driving accidents among youths.[37] Heeding Congress' recommendation and incentives, states began to raise their drinking age to twenty-one.[38] In Washington, the WABC Act defines a minor as anyone under the age of twenty-one.[39] Upon a challenge of age discrimination by those persons over the age of majority (eighteen) yet under twenty-one, the Washington Supreme Court in *Houser v. State*[40] upheld the twenty-one-year-old age restriction finding that a rational relationship exists between the regulation of liquor and drunk driving.[41] Thus, Washington and Congress explicitly recognize that those persons ordinarily considered adults for most purposes, may be prohibited from consuming alcohol for the sole purpose of preventing drunk driving.

B. Judicially Created Civil Liability in Washington

Since the repeal of the Dramshop Act, the Washington courts have denied intoxicated persons and parties injured by intoxicated persons a cause of action against the liquor supplier, despite the supplier's illegal actions.[42] While following the general common law rule of non-liabil-

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Minimum Drinking Age Act of 1984: Once Again Congress Mails Home Another Fist, 34 CLEV. ST. L. REV. 637, 639 n.11 (1985–86).

37. H.R. REP. NO. 606, 98th Cong., 2d Sess. 2 (1984). The purpose of the NMDA Act was to save lives of Americans who travel on highways and, in particular, to alleviate the disproportionate number of fatal accidents among young people each year. *Id.* at 2–4.

38. Prior to 1971, when the voting age in the United States was 21, many states set a minimum drinking age at 21. When the Twenty-sixth Amendment lowered the national voting age to 18 in 1971, several states also reduced the age of majority for most purposes to 18. Kadlec, *supra* note 36, at 637. These states believed that if 18- to 20-year-olds could "vote [in national elections], marry, and serve in the armed forces, they were old enough to drink responsibly." *Id.* Accordingly, these states lowered their drinking age to 18. *Id.* Washington, however, maintained its drinking age at 21. *See* WASH. REV. CODE ANN. § 26.28.080 (West 1985).

39. WASH. REV. CODE ANN. § 66.44.270 (West Supp. 1992) (prohibiting the giving, or otherwise supplying, of alcohol to anyone under the age of 21); *id.* § 66.44.300 (prohibiting the selling of alcohol to anyone under the age of 21).

40. 85 Wash. 2d 803, 540 P.2d 412 (1975), *overruled on other grounds,* State v. Smith, 93 Wash. 2d 329, 610 P.2d 869, *cert. denied,* 449 U.S. 873 (1980).

41. *Id.* at 808–09, 540 P.2d at 415. The court found that the minimum drinking age protected minors from the hazards of drunk driving. The plaintiff provided studies indicating that (1) lowering the drinking age to 18 would not lead to increased alcohol consumption, juvenile delinquency or alcoholism, and (2) persons between 18 and 20 are not less able to consume alcohol in moderation than others. *Id.* at 808 n.7, 540 P.2d at 415 n.7. State agencies offered evidence solely reflecting highway accident statistics: (1) a positive correlation between youth and drinking and traffic accidents, (2) a greater incidence of accidents in states where the drinking age has been lowered, and (3) increased vulnerability of 18- to 20-year-olds to traffic accidents at a given blood alcohol level. *Id.* at 808 nn.6–7, 540 P.2d at 415 nn.6–7.

42. Wilson v. Steinbach, 98 Wash. 2d 434, 437–38, 656 P.2d 1030, 1032 (1982); Halvorson v. Birchfield Boiler, Inc., 76 Wash. 2d 759, 762, 458 P.2d 897, 899 (1969); Hulse v. Driver, 11 Wash. App. 509, 513, 524 P.2d 255, 258, *review denied,* 84 Wash. 2d 1011 (1974).

ity,[43] the Washington Supreme Court recognized exceptions in limited situations: where the intoxicated person is (1) obviously intoxicated, (2) in a state of helplessness, or (3) in a special relationship to the furnisher of the intoxicant.[44] Only in these exceptional circumstances has the court held commercial hosts civilly liable for violating the WABC Act.[45] The court has never held social hosts who serve adults or minors liable to first parties[46] or third parties,[47] however, until *Hansen v. Friend.*[48]

1. No Social Host Liability for Third Parties Injured by an Intoxicated Adult or Minor

The Washington Supreme Court first barred third parties from suing a social host for injuries caused by an intoxicated, able-bodied adult guest in *Halvorson v. Birchfield Boiler, Inc.*[49] The *Halvorson* court refused to hold a company liable when it furnished liquor to an employee who later injured the plaintiff in an automobile accident.[50] The court based its holding on the common law rule that the consumption—not the furnishing—of intoxicating liquor proximately causes such injury.[51] Thus, an injured third party had no cause of action against a social host. Carving out an exception to this common law rule, the court indicated a willingness to impose liability on those persons who sold or gave liquor to an individual "in such a state of helplessness or debauchery as to be deprived of his will power or responsibility for his behavior."[52]

Later, in *Hulse v. Driver,*[53] the court again faced a situation where a plaintiff injured by an intoxicated driver brought suit against the social host who served alcohol to the driver. The intoxicated driver in this

43. *Halvorson,* 76 Wash. 2d at 762, 458 P.2d at 899.

44. The *Halvorson* court created an exception for those persons in a "state of helplessness or debauchery as to be deprived of [their] will power or responsibility for [their] behavior." *Id.* The *Wilson* court later clarified these exceptions and expressed them as the three categories. *See Wilson,* 98 Wash. 2d at 438, 656 P.2d at 1032.

45. *See, e.g.,* Purchase v. Meyer, 108 Wash. 2d 220, 737 P.2d 661 (1987); Young v. Caravan Corp., 99 Wash. 2d 655, 663 P.2d 834 (1983).

46. A first party is a person to whom the social host serves alcohol. *See* BLACK'S LAW DICTIONARY 1122 (6th ed. 1990) (defining "party").

47. A third party is a person injured by one to whom the social host serves alcohol. *See id.* at 1479 (defining "third party").

48. 118 Wash. 2d 476, 824 P.2d 483 (1992).

49. 76 Wash. 2d 759, 458 P.2d 897 (1969).

50. *Id.* at 765, 458 P.2d at 900.

51. *Id.* at 762–65, 458 P.2d at 899–900.

52. *Id.* at 762, 458 P.2d at 900 (quoting 30 AM. JUR. *Intoxicating Liquors* § 520 (1958)).

53. 11 Wash. App. 509, 524 P.2d 255, *review denied,* 84 Wash. 2d 1011 (1974).

case, however, was a minor.[54] Applying *Halvorson,* the *Hulse* court ruled that no cause of action exists against one who furnishes alcohol to a minor in a social context.[55] The court flatly stated that imposing such liability should be a legislative decision.[56] Thus, whether injured by an intoxicated, able-bodied adult or minor guest, third parties could not recover against a social host.

2. *No Social Host Liability for Injuries to an Intoxicated Adult*

The Washington Supreme Court addressed social host liability to an injured first party in *Burkhart v. Harrod.*[57] In *Burkhart,* the court held that defendants who furnished alcohol to an adult in a social setting were not liable as a matter of law, reiterating prior holdings that a social host could not be liable for furnishing alcohol.[58] Additionally, the court acknowledged that imposing social host liability was a legislative decision,[59] not a judicial determination.[60] The court opined that imposing common law liability on social hosts would be unwise because social hosts are not as capable of monitoring their guests' alco-

54. *Id.* at 510, 524 P.2d at 256–57.

55. *Id.* at 513–14, 524 P.2d at 258–59.

56. *Id.* at 514, 524 P.2d at 259 ("At present, there is no legislation imposing civil liability; if such is to be imposed, it should be by legislative mandate.").

> It may be that the social and economic consequences of 'mixing gasoline and liquor' should lead to a rule of accountability by those who furnish intoxicants to one who becomes a tortfeasor by reason of intoxication, *but such a policy decision should be made by the legislature after full investigation, debate and examination of the relative merits of the conflicting positions.*

Id. at 513–14, 524 P.2d at 258–59 (quoting *Halvorson,* 76 Wash. 2d at 765, 458 P.2d at 900) (emphasis in *Hulse*).

57. 110 Wash. 2d 381, 755 P.2d 759 (1988). A string of cases preceding *Burkhart* all addressed the *Halvorson* exception in a commercial or a quasi-commercial setting where the person served was obviously intoxicated upon leaving the party or the tavern. *See, e.g.,* Dickinson v. Edwards, 105 Wash. 2d 457, 716 P.2d 814 (1986) (holding a quasi-commercial host liable for serving alcohol to an obviously intoxicated adult); Young v. Caravan Corp., 99 Wash. 2d 655, 663 P.2d 834 (1983) (holding a commercial vendor liable for selling alcohol to an obviously intoxicated minor); Halligan v. Pupo, 37 Wash. App. 84, 678 P.2d 1295 (1984) (holding a quasi-commercial host liable for providing alcohol to an obviously intoxicated adult). In each of these cases, the court avoided the question of social host liability, reserving "comment on the potential liability of hosts in a purely social setting." *Dickinson,* 105 Wash. 2d at 466, 716 P.2d at 819.

58. *Burkhart,* 110 Wash. 2d at 384–85, 755 P.2d at 760.

59. *Id.* at 386, 755 P.2d at 761 ("If substantial financial liability is to be attached to the hosting of a social gathering, heretofore considered an innocuous act, it should only be done after careful consideration of all the effects on society and it should be imposed as a comprehensive measure. The Legislature can do this, we cannot.").

60. *Id.* at 385, 755 P.2d at 761 ("The nature of the judicial role prevents us from capably deciding the relative merits of social host liability.").

hol consumption as their commercial and quasi-commercial[61] counterparts.[62] Additionally, the court recognized that social host liability has more wide-sweeping and unpredictable implications than commercial host liability. Because social drinking touches most adults on a frequent basis, a legally imposed responsibility on one party for another's actions would strongly affect personal relationships.[63] Thus, the court declined to impose liability on social hosts for injuries to intoxicated first party adults that result from the hosts' service.

3. *Social Host Liability for Injuries to an Intoxicated Minor*

The issue of social host liability for injuries to an intoxicated minor remained unresolved until the court's recent decision in *Hansen v. Friend.*[64] Previously, a minor's estate raised this issue in *Wilson v. Steinbach.*[65] The *Wilson* court, however, dismissed the case on other grounds, never reaching a conclusion on whether social hosts are liable for serving alcohol to a minor in violation of the WABC Act.[66] *Hansen v. Friend* provided the court with an opportunity to finally address the issue of social host liability for service to minors in Washington. Deviating from the rule of non-liability, this case is the first to impose liability on a social host.

C. Hansen v. Friend

In *Hansen v. Friend,* fifteen-year-old Keith Hansen fell into a lake and drowned after consuming alcohol on a camping trip.[67] His estate subsequently brought suit against the two companions who furnished the alcohol.[68] The Washington Court of Appeals found that the defendants violated the WABC Act by serving a minor[69] but, adhering

61. The court defined quasi-commercial hosts as those hosts "who do not sell alcohol but who otherwise had business interests in furnishing alcohol to their guests." *Id.* at 383–84, 755 P.2d at 760. *See, e.g.,* Dickinson v. Edwards, 105 Wash. 2d 457, 716 P.2d 814 (1986) (finding that hosting a holiday party as a corporate business deduction was an example of a quasi-commercial setting, although this label was not used at that time).

62. *Burkhart,* 110 Wash. 2d at 386, 755 P.2d at 761. A person in the business of selling and serving alcohol is usually better equipped to control patrons and has the financial capability and incentive to do so. *Id.* (citing Settlemyer v. Wilmington Veterans Post 49, Am. Legion, Inc., 464 N.E.2d 521 (Ohio 1984)).

63. *Id.* at 386–87, 755 P.2d at 761–62.

64. 118 Wash. 2d 476, 824 P.2d 483 (1992).

65. 98 Wash. 2d 434, 656 P.2d 1030 (1982).

66. *Id.*

67. *Hansen,* 118 Wash. 2d at 478, 824 P.2d at 484.

68. *Id.*

69. Hansen v. Friend, 59 Wash. App. 236, 797 P.2d 521 (1990), *rev'd* 118 Wash. 2d 476, 824 P.2d 483 (1992).

to the *Burkhart* holding, the court refused to impose civil liability upon the hosts.[70] The Washington Supreme Court reversed the court of appeals and held that civil liability may be imposed on hosts who furnish alcohol in violation of the WABC Act.[71]

1. The Facts Surrounding Hansen v. Friend

In *Hansen v. Friend,* fifteen-year-old Keith Hansen stole liquor from his parents' house and brought it to the house of twenty-one-year-old Robert Friend where they drank the liquor together.[72] The next morning, when twenty-one-year-old Robert Petty arrived at Friend's house, Friend and Hansen appeared visibly intoxicated.[73] Nevertheless, the three left for a fishing trip, stopping at a store where Petty bought beer.[74] At the campsite, Petty and Friend drank beer; whether Hansen also drank at that point, however, is unclear.[75] Petty soon went to sleep, leaving Hansen unrestricted access to the beer at the campsite.[76] Later that evening Hansen and Friend, visibly and severely intoxicated, entered another campsite to steal beer.[77] Shortly thereafter, Hansen went to yet another campsite to steal more beer.[78] After nearby campers heard a loud splash, Petty and other campers fruitlessly searched the lake for Hansen, but Hansen had drowned.[79]

Hansen's mother, as executrix of her son's estate, sued for the wrongful death of her son, alleging that two adult social hosts negligently furnished liquor to a minor, thereby causing his intoxication and death.[80] The court of appeals summarily dismissed the suit, holding that social hosts are not liable as a matter of law.[81] On appeal, the Washington Supreme Court reversed and remanded the case.[82]

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70. *Id.*

71. This was a close decision with only five justices voting to impose civil liability and four opposing civil liability. Hansen v. Friend, 118 Wash. 2d 476, 824 P.2d 483 (1992).

72. *Id.* at 478, 824 P.2d at 484.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* at 478–79, 824 P.2d at 484.

77. *Id.* at 479, 824 P.2d at 484.

78. *Id.*

79. *Id.* at 479, 824 P.2d at 484–85.

80. *Id.* at 478, 824 P.2d at 484.

81. Hansen v. Friend, 59 Wash. App. 236, 797 P.2d 521 (1990), *rev'd,* 118 Wash. 2d 476, 824 P.2d 483 (1992).

82. *Hansen,* 118 Wash. 2d at 478, 824 P.2d at 484.

2. *Washington Supreme Court Holding*

The *Hansen* court held that social hosts have a civil duty not to serve alcohol to minors.[83] While noting that no express legislative intent to impose civil liability on a social host exists under the WABC Act, the court nevertheless proceeded to infer intent from the Act itself.[84] Concluding that the legislature supports civil liability, the court adopted the standard of care set out by the *Restatement (Second) of Torts* to define the duty of social hosts.[85]

a. *Legislative Intent*

While conceding that the legislature did not expressly provide civil penalties for violations of the WABC Act, the *Hansen* court nonetheless inferred such an intent to impose civil liability on social hosts.[86] The only evidence of legislative intent regarding civil liability of social hosts was the repeal of Washington's Dramshop Act.[87] The court stated that the repeal, in fact, emphasized the legislature's *reluctance* to impose liability upon social hosts.[88] Ignoring the reasons for repealing civil liability imposed by the Dramshop Act, the court nevertheless inferred a legislative intent to impose civil liability from the legislature's imposition of criminal penalties.[89] Noting that the WABC Act specifically prohibits alcohol sales to minors,[90] but not adults,[91] the court distinguished *Burkhart,* which involved an adult plaintiff, from *Hansen,* which involved a minor plaintiff.[92] Based on this distinction, the court allowed Hansen's estate to maintain an action against the defendant social hosts, remanding the case to determine whether the

83. *Id.*

84. *Id.* at 482, 824 P.2d at 486; *see supra* notes 24–29 and accompanying text.

85. RESTATEMENT (SECOND) OF TORTS § 286 (1965). The *Hansen* court was the first to decide the social host issue using the evidence of negligence standard. *Hansen,* 118 Wash. 2d at 483, 824 P.2d at 486–87. Under the evidence of negligence standard, a jury may weigh the statutory violation along with other relevant factors to determine liability. The defendant's violation of a statutory duty, alone, is not conclusive of the defendant's negligence as under the former negligence per se rule. In 1986, the legislature changed the standard from negligence per se to evidence of negligence to eliminate the strict liability character of violations under the negligence per se rule. *See* WASH. REV. CODE ANN. § 5.40.050 (West 1985).

86. *Hansen,* 118 Wash. 2d at 482, 824 P.2d at 486.

87. *Id.* (citing Burkhart v. Harrod, 110 Wash 2d. 381, 755 P.2d 759 (1988)).

88. *Id.*

89. *Id.*

90. WASH. REV. CODE ANN. § 66.44.270(1) (West Supp. 1992).

91. *See Hansen,* 118 Wash. 2d at 482, 824 P.2d at 486.

92. *Id.* Previously, in *Burkhart,* the court denied the existence of social host civil liability. *See supra* notes 57–63 and accompanying text.

social hosts breached their duty of care and whether the breach proximately caused Hansen's injuries.[93]

b. Washington Adopts the Restatement (Second) of Torts' *Standard for a Statutory Duty of Care*

To establish a claim of negligence, a plaintiff must show the existence of a duty, a breach of this duty, a resulting injury, and causation—that the breach proximately caused the injury.[94] At issue in *Hansen* was whether Friend and Petty owed Hansen a duty of care.[95] Whether one owes a duty of care to another is a question of law;[96] legislation may prescribe this duty.[97]

The Washington courts adopted the *Restatement (Second) of Torts'* four-part test to determine when the court may use a statute to define a reasonable person's standard of conduct.[98] Under the *Restatement,* a statute may define a duty of care if that statute: (1) protects a class of persons (2) against invasion of a particular interest (3) which results in a specific kind of harm (4) through a particular hazard.[99] Only where each of these factors is satisfied can a court use a statute as a basis for defining conduct.

In *Hansen,* the court applied these factors to the WABC provision that prohibits providing alcohol to minors[100] and concluded that a social host owes a civil duty not to serve alcohol to minors.[101] To determine the first prong, the *Hansen* court consulted the definition of "minor" under the WABC Act, which is any person under twenty-one years of age.[102] Recognizing that this minimum age restriction was not a random choice, but rather based on a justified state interest,[103] the court held that persons under twenty-one constituted a protected class under the WABC Act.[104]

93. *Hansen,* 118 Wash. 2d at 486, 824 P.2d at 488.

94. *See* W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 30, at 164–65 (5th ed. 1984).

95. *Hansen,* 118 Wash. 2d at 479, 824 P.2d at 485.

96. *Id.* (citing Pedroza v. Bryant, 101 Wash. 2d 226, 228, 677 P.2d 166, 168 (1984)).

97. *Id.* (citing Young v. Caravan Corp., 99 Wash. 2d 655, 659, 663 P.2d 834, 837 (1983)).

98. *Id.* at 479–80, 824 P.2d at 485 (citing *Young,* 99 Wash. 2d at 659–60, 663 P.2d at 837).

99. RESTATEMENT (SECOND) OF TORTS § 286 (1965).

100. WASH. REV. CODE ANN. § 66.44.270(1) (West Supp. 1992) is a criminal statute which prohibits furnishing alcohol to minors. *See supra* notes 26, 28.

101. *Hansen,* 118 Wash. 2d at 481, 824 P.2d at 485–86.

102. *See supra* notes 35–41 and accompanying text; *see also* WASH. REV. CODE ANN. § 66.44.270(1) (West Supp. 1992).

103. *See supra* notes 40–41 and accompanying text.

104. *Hansen,* 118 Wash. 2d at 481, 824 P.2d at 485–86 (citing Houser v. State, 85 Wash. 2d 803, 808, 540 P.2d 412, 415 (1975), *overruled on other grounds,* State v. Smith, 93 Wash. 2d 329, 610 P.2d 869, *cert. denied,* 449 U.S. 873 (1980)).

The court found the second prong of the *Restatement* test satisfied because Hansen's health and safety interests were invaded by the effects of alcohol.[105] The WABC Act's purpose is to protect the "welfare, health, peace, morals, and safety of the people of the state."[106] Particularly, the statute protects a minor's health and safety against the minor's own inability to drink responsibly.[107] Thus, this interest was precisely the one which the statute was designed to protect.[108]

The court found the third part of the *Restatement* test satisfied. Specifically, the court recognized that restricting service of alcohol to minors protects minors from physical harm caused by their abuse of alcohol.[109] Because Hansen's intoxication resulted in physical harm to himself, the court found the third requirement fulfilled.[110]

Finally, the court found the fourth factor of the *Restatement* test satisfied by concluding that the statute regulates the particular hazard of "alcohol in the hands of minors."[111] Having established that the statute satisfied the *Restatement's* four-part test, the court concluded that the statute set forth an appropriate duty for social hosts.[112] The court then remanded the case to determine the remaining elements of negligence: breach, causation, and damages.[113]

II. CRITIQUE OF *HANSEN*

The *Hansen* court improperly imposed liability on all social hosts who serve alcohol to minors who subsequently injure themselves. First, the *Hansen* court improperly created a civil cause of action against social hosts because the court lacked express legislative authority. Second, the court drew erroneous conclusions from its application of the *Restatement* test to define the duty owed by social hosts. The court defined an unduly narrow, inflexible class that is protected by the statute. Additionally, the court failed to limit the statute's application to a narrowly defined hazard, thereby creating a broad range of

105. *Id.* at 481, 824 P.2d at 486.

106. WASH. REV. CODE ANN. § 66.08.010 (West 1985).

107. *Hansen,* 118 Wash. 2d at 481, 824 P.2d at 486 (citing Callan v O'Neil, 20 Wash. App. 32, 39, 578 P.2d 890, 894 (1978)).

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.* at 482, 824 P.2d at 486.

112. *Id.*

113. The court also remanded the case to determine the extent of Hansen's contributory negligence. *Id.* at 486, 824 P.2d at 488. Contributory negligence arises when a plaintiff's conduct is below the standard to which the plaintiff is legally required to conform for the plaintiff's own protection and which is a contributing cause of the plaintiff's harm. *See* BLACK'S LAW DICTIONARY 1033 (6th ed. 1990).

actionable risks. Given the court's predispostion to allow civil liability, the court should properly apply the *Restatement* test, thereby expanding the protected class to include third parties injured by intoxicated minors and restricting the hazard to a narrowly defined risk such as drunk driving.

A. The Court Erroneously Inferred Legislative Intent

The WABC Act does not explicitly provide for civil liability.[114] Despite this legislative silence, however, the *Hansen* court inferred a civil duty not to serve minors.[115] This inference is unfounded and problematic for several reasons. First, the legislature's silence evidenced an intent *not* to address the issue; because the legislature is active on issues which concern drunk driving, it could have specifically addressed such a related issue, but chose not to.[116] Second, inferring intent to impose civil liability in the context of a statute imposing only criminal liability is dangerous because criminal statutes are not scrutinized as closely before passage,[117] some criminal statutes rely on prosecutorial discretion for their enforcement,[118] and overpunishment may result from imposing civil liability in addition to existing criminal penalties.[119] The legislature abolished civil liability with the repeal of the Dramshop Act and, without any evidence that the criminal penal-

114. *See supra* text accompanying note 29.

115. *Hansen*, 118 Wash. 2d at 482, 824 P.2d at 486. *See generally* Charles L.B. Lowndes, *Civil Liability Created by Criminal Legislation*, 16 MINN. L. REV. 361, 363–64 (1932).

116. Several recent bills have addressed drunk driving, including: a statute which changes the crime of driving while intoxicated to a broader crime of driving while under the influence of intoxicating liquor or any drug, Act of May 21, 1991, 1991 Wash. Laws 290; a proposal to authorize the revocation of driving privileges for violation of drug and alcohol laws, H.R. 2097, 52d Leg., Reg. Sess. (1991); a proposal to allow punitive damages for injury or wrongful death from driving while intoxicated, H.R. 1676, 52d Leg., Reg. Sess. (1991); and a proposal to change the blood and breath alcohol content standard of intoxication for those persons under the age of 21, S. 5069, 52d Leg., Reg. Sess. (1991).

117. Many criminal statutes are ill-conceived, hastily drawn without adequate investigation, or obsolete. In these criminal statutes, the legislature fails to address the standard of due care necessary in civil suits or set out standards within the statute by which to judge a negligence action. Bauman v. Crawford, 104 Wash. 2d 241, 252, 704 P.2d 1181, 1188 (1985).

118. Enforcement officials exercise discretion when enforcing criminal statutes in situations where literal compliance makes no sense or presents hardship. In civil actions, however, where large damages are often at stake, the injured party is less forgiving and will not jeopardize his claim because of the defendant's hardship. *Id.* at 253, 704 P.2d at 1188.

119. Overpunishment occurs particularly where a statute imposes criminal liability to penalize and discourage violations of the law. By imposing monetary compensation in addition to the criminal penalty, a court essentially increases the penalty upon the host without legislative approval. *See* Clarence Morris, *The Relation of Criminal Statutes to Tort Liability*, 46 HARV. L. REV. 453, 469–70 (1932–33).

ties for violation of the WABC Act are inadequate, the court should not have inferred legislative intent from a criminal statute.

Moreover, by inferring intent, the court went beyond its judicial function and improperly usurped legislative power. Traditionally, the Washington Supreme Court has remained within its judicial role, following the common law rule of non-liability for social and commercial hosts, subject only to certain exceptions.[120] The court has repeatedly refused to broaden these exceptions without legislative mandate.[121] The court should have deferred the issue of social host liability to the legislature which is better equipped to decide broad public policy issues and weigh societal interests.[122]

B. The Hansen *Court Drew Faulty Conclusions from the* Restatement *Test*

The *Hansen* court used faulty reasoning to arrive at its conclusion that social hosts are civilly liable for minors' injuries. Particularly, the court misapplied the *Restatement's* four-part test[123] to determine whether the statute that prohibits providing alcohol to minors prescribes a standard of conduct for social hosts. The *Hansen* court misapplied two factors of the test: the protected class and the particu-

120. These exceptions are set forth in Halvorson v. Birchfield Boiler, Inc., 76 Wash. 2d 759, 458 P.2d 897 (1969). *See supra* note 44 and text accompanying note 52.

121. *See supra* part I.B; *see also* Burkhart v. Harrod, 110 Wash. 2d 381, 388, 755 P.2d 759, 762 (1988) (declining to extend liability to social hosts, deeming the legislature the appropriate body to address such changes in the law); Wilson v. Steinbach, 98 Wash. 2d 434, 441, 656 P.2d 1030, 1034 (1982) (declining to extend the recognized exceptions to include the imposition of a common law duty on a social host for furnishing intoxicating liquor to a minor); Shelby v. Keck, 85 Wash. 2d 911, 915–17, 541 P.2d 365, 369–70 (1975) (declining to alter the exceptions, stating that to do so would be to "adopt a theory of strict liability to be applied against one who furnishes liquor whenever a patron commits a tort while intoxicated").

122. Evaluating the overall merits of social host liability, with its impact on society and personal relationships, requires balancing the costs and benefits for society as a whole, not just the parties of any one case. While courts are limited to reviewing only evidence pertaining to the facts of a particular case and focusing on particular individuals, the legislature is uniquely able to hold hearings, gather crucial information, and learn the full extent of the competing societal interests. The legislature can take time to investigate a wide range of issues that are not before the court in any given case. Thus, in the context of social host liability, committees can investigate the amount of damage caused by drunk drivers, the percentage of that damage for which a social host was responsible, the extent to which automobile insurance of all types already provides a remedy to victims, the effect that the added liability would have on homeowners' and renters' insurance rates, the possibilities of alternative remedies such as having drunk drivers contribute to a statewide fund for victims, the possibilities of limiting the host's liability, and prescribing standards of conduct for social hosts. *Burkhart*, 110 Wash. 2d at 385–86, 755 P.2d at 761.

123. *See supra* note 99 and accompanying text.

lar hazard.[124] The court's definition of the protected class was too inflexible and too narrow. Additionally, the court's definition of the particular hazard was too broad, allowing injury from any type of hazard to be actionable.

1. The Court Created an Inflexible and Narrowly Defined Protected Class

In defining the class protected by the statute,[125] the *Hansen* court enunciated an inflexible and narrow class. By defining the protected class as "minors," the court granted to all those persons under twenty-one, regardless of maturity level, a cause of action against a social host. Additionally, by limiting the protected class to minors, the court denied recovery to third parties injured by the intoxicated minor. The court should expand its definition of the protected class to account for a minor's maturity level as well as grant a cause of action to third parties injured by intoxicated minors.

The *Hansen* court's definition of protected class is too inflexible because it focuses solely on the minor's age. The court defined the protected class as all persons under twenty-one years of age.[126] This age limit ignores the minor's level of maturity, a factor that courts generally consider.[127] Ignoring a minor's maturity level is inconsistent with tort principles that permit courts to treat mature seventeen- to twenty-year-olds according to adult standards. To say, as the court does in *Hansen,* that selling alcohol to a minor of any age in violation

124. The *Restatement* requires that the statute protect a specific class of persons against invasion of a particular interest which results in a specific kind of harm through a particular hazard. *See supra* note 99 and accompanying text.

125. WASH. REV. CODE ANN. § 66.44.270(1) (West Supp. 1992) (prohibiting furnishing alcohol to persons under age 21).

126. Hansen v. Friend, 118 Wash. 2d 476, 482, 824 P.2d 483, 486 (1992).

127. Washington applies a special standard of care to children aged 6 to 16; the court measures a child's conduct by the conduct of a reasonably careful child of the same age, intelligence, maturity, training, and experience. Bauman v. Crawford, 104 Wash. 2d 241, 244, 704 P.2d 1181, 1184 (1985). Moreover, the court may treat a 17- or 18-year-old of normal capacity as an adult. *See* Dingwall v. McKerricher, 75 Wash. 2d 352, 355, 450 P.2d 947, 948 (1969) (allowing a defendant to enforce a special child standard, the court stated that "A seventeen-year-old plaintiff is presumed to have sufficient capacity to understand and avoid a clear danger . . . .") (quoting Burgess v. Mattox, 132 S.E.2d 577, 578 (N.C. 1963)); Colwell v. Nygaard, 8 Wash. 2d 462, 476, 112 P.2d 838, 844 (1941) (recognizing that persons 18 years of age should exercise the same judgment and discretion in caring for their own safety as persons more advanced in years). Thus, the special child standard turns on maturity and capacity to appreciate dangers rather than merely the child's age. *Bauman,* 104 Wash. 2d at 244, 704 P.2d at 1184; *see also Dingwall,* 75 Wash. 2d at 355, 450 P.2d at 948 (holding that a person's minority is not an issue for the jury if the person is old enough to appreciate the danger of the particular peril involved).

of the statute is sufficient to impose civil liability without accounting for the minor's level of maturity, contradicts this special child standard.

In deciding whether Petty and Friend were liable for furnishing Hansen with alcohol, the court should have first ascertained Hansen's level of maturity instead of considering just his age. Although the *Hansen* outcome may not have been affected, the court's failure to recognize this standard may unjustly penalize a future host who serves a minor, seventeen or older, acting as an adult.[128] Thus, deciding at the outset whether the minor was acting in the capacity of an adult is a crucial determination for the court.

The court's definition of protected class is too narrow because it precludes recovery by third parties injured by intoxicated minors. The court has continually recognized that the WABC Act seeks to protect the drinker as well as to promote public safety by giving both the drinker and the third party a cause of action against a host.[129] Denying third party recovery is therefore inconsistent with the aim of the WABC Act because it does not protect third parties. Additionally, denying third party recovery leads to an anomolous result, denying the only true innocent victim a cause of action. The court should have allowed third parties to recover, further encouraging social hosts not to serve minors in order to ensure public safety—the goal of the WABC Act.[130]

By defining the protected class as "minors," the *Hansen* court limits recovery to intoxicated minors injured by their own actions. Given its decision to impose liability on social hosts, the court should allow all of those injured by the social host's act of serving alcohol to recover against the host. Allowing first and third parties to recover is consistent with prior interpretations of the WABC Act holding that it is a safety statute.[131] Thus, by unduly restricting the protected class of this statute, the *Hansen* court abandoned the aim of the WABC Act and denied third parties recovery against a social host.

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128. To enforce such a restriction regardless of maturity level may strain personal relationships by making one person responsible for another's actions. This holding would have potentially devastating results if applied to a case with facts similar to Wilson v. Steinbach, 98 Wash. 2d 434, 656 P.2d 1030 (1982), where a 19-year-old bride was drinking alcohol at a holiday party hosted by her future in-laws. It would be unreasonable to make the host responsible for the bride's actions if the bride chooses to drink. Thus, the minor's maturity level should be considered when determining whether she lacks the capacity to use adult judgment.

129. *See supra* notes 30–34 and accompanying text.

130. *See supra* note 30.

131. *See supra* note 34 and accompanying text.

Moreover, the *Hansen* court's decision denying recovery to third parties leads to an anomolous result. Courts that recognize social host liability often do so to fully compensate innocent victims and to prevent persons from drinking and driving. These courts reason that full compensation and deterrence are worth the cost of chilling social activity.[132] Many proponents of social host liability advocate its imposition only in cases of third party injuries[133] because third parties are the only true innocent victims.[134] The *Hansen* decision, however, denies third parties this very remedy. Because the court chose to impose civil liability on social hosts for serving alcohol to minors, it should apply the rule consistently to all injured plaintiffs by expanding the *Hansen* definition of the protected class to allow third parties injured by an intoxicated minor to recover.

2. *The Court's Definition of the Particular Hazard Is Too Broad*

The *Hansen* court also reached a faulty conclusion in specifying the particular hazard that caused the harm.[135] The *Hansen* court broadly defined the particular hazard to be "alcohol in the hands of minors," contrary to the *Restatement's* requirement that the hazard be narrowly restricted.[136] The court's broad interpretation encompasses a large range of potential risks, including those risks which the court has previously excluded.[137]

The *Hansen* court's unrestricted definition of the particular hazard as "alcohol in the hands of minors" does not provide adequate guidance for social hosts. Such a broadly defined hazard would encompass anything that occurs as a result of a minor's drinking. Thus, a minor could conceivably have a cause of action against a host for any slight injury, ranging from a chipped tooth to a hangover. The *Han-*

132. *See* Hilary R. Weinert, *Social Hosts and Drunken Drivers: A Duty to Intervene?,* 133 U. PA. L. REV. 867, 872–73 (1985).

133. *Id.* at 872 ("[T]he lesser blameworthiness of the host dictates that we should impose liability on the host, if at all, only for injuries to innocent victims and not for injuries sustained by the drunken driver herself. . . . [I]t seems obvious that [the driver] should not be able to recover against the secondarily responsible host."); *see also* Mary H. Seminara, *When the Party's over:* McGuiggan v. New England Telephone & Telegraph Co. *and the Emergence of a Social Host Liability Standard in Massachusetts,* 68 B.U. L. REV. 193, 206 (1988).

134. Minors are prohibited from drinking, WASH. REV. CODE ANN. § 66.44.270(2) (West Supp. 1992), and drinking and driving is illegal, *id.* § 46.61.502; therefore, minors are not innocent victims. Similarly, because the host has illegally supplied alcohol to the minor, the host is not an innocent party. *Id.* § 66.44.270(1).

135. *See supra* text accompanying note 111.

136. RESTATEMENT (SECOND) OF TORTS § 286 cmt. i (1965).

137. *See, e.g.,* Christen v. Lee, 113 Wash. 2d 479, 780 P.2d 1307 (1989) (holding that statutes prohibiting the sale of intoxicating liquor to one who appears intoxicated or who is a minor are not intended to protect against the particular hazard of a subsequent criminal assault).

sen court most likely did not intend such absurd results. Applying such a broad hazard standard would also result in allowing minors to pursue an action for all torts that the minor committed while the minor was intoxicated. Such a result is contrary to earlier Washington cases that declined to impose liability when an intoxicated minor intentionally injured a third party.[138] Thus, the court's definition of the specific hazard as "alcohol in the hands of minors" was not a sufficiently restricted hazard.[139] This interpretation, therefore, provides no guidance to a judge for determining the types of risks the statute seeks to protect against as a matter of law.

3. *The Court Should Redefine the Particular Hazard*

The court should impose liability on social hosts only when intoxication is accompanied by an act that becomes proportionately more dangerous when performed while intoxicated.[140] Justice Utter, concurring in *Burkhart,* hinted that a finding of more than just furnishing alcohol to minors might be necessary before liability attaches.[141] He proposed a list of factors to consider in determining whether hosts have satisfied the duty of care toward their guests.[142] Specifically, Justice Utter would consider whether the host (1) provided the alcohol to an obviously intoxicated guest, (2) knew or had reason to know that the guest would drive away from the host's premises, and (3) took reasonable steps to deter the guest from driving, including offering alternative means of transportation, a place to stay until no longer impaired, or money for a taxi.[143] Consideration of these factors suggests that a host breaches a duty of care not only by supplying alcohol to an intoxicated guest, but by supplying alcohol *and* failing to take reasonable steps to bar the door thereafter.[144] Essentially, Justice

138. *See id.*

139. Furthermore, if this particular hazard were applied literally, a minor would be in a hazardous situation when merely holding alcohol. Yet, minors over 18 may act as servers or bartenders. They are permitted under the WABC Act to carry and sell beer in certain establishments. *See* WASH. REV. CODE ANN. §§ 66.44.340–.350 (West Supp. 1992). Because the WABC Act allows some minors to handle alcohol, "alcohol in the hands of minors" cannot be the specific hazard the WABC Act seeks to prevent.

140. *See* Burkhart v. Harrod, 110 Wash. 2d 381, 391, 755 P.2d 759, 764 (1988) (Utter, J., concurring).

141. *Id.* at 399, 755 P.2d at 768 (There is "justice in compensating victims injured or killed as a proximate result of hosts serving truly obviously intoxicated guests alcohol *and then failing to deter their driving on public roads.*") (emphasis added).

142. *Id.*

143. *Id.*

144. *See* Theresa J. Rambosek, *A Wavering Line? Washington's Rules of Liability for Furnishers of Alcohol,* 24 GONZ. L. REV. 167, 196 (1989).

Utter argues that to avoid liability, a host must monitor his guests to prevent them from driving or from engaging in some other specified, dangerous act after the guest becomes intoxicated.[145] The *Hansen* court, however, failed to enunciate such specific guidelines and proscribed no particular act against which social hosts are to protect.

Congress recognizes drunk driving as the hazard against which persons eighteen- to twenty-years-old should be protected. When Congress suggested a minimum drinking age of twenty-one in the NMDA Act, it defined drunk driving as the only acceptable hazard for denying alcohol to those persons eighteen to twenty years of age.[146] Thus, eighteen- to twenty-year-olds are only protected from the hazard of drunk driving.

Washington should adopt drunk driving as the standard hazard for all minors. Adopting this standard would be advantageous for the courts, social hosts, and minors. It would promote judicial economy by allowing recovery only for injuries resulting from a specific occurance—auto accidents. Drunk driving accidents are the most frequent accidents involving alcohol among minors. Adopting drunk driving as the standard would limit recovery to the largest cause of accidents resulting in serious bodily harm to minors as well as members of the public. At the same time, this standard would deny lawsuits over hangovers or death from intoxication. Additionally, by adopting drunk driving as the hazard, the court need not apply two separate hazard standards—drunk driving for those over eighteen and "alcohol in the hands of minors" for those under eighteen.[147] Thus, the distinction between minors under eighteen and those over eighteen becomes irrelevant. This rule would help social hosts avoid lawsuits by providing more guidance and more clearly defined social host duties. Such a rule would also protect minors by proscribing the haz-

145. *Id.*

146. Congress may impose an age restriction over the age of majority (18) only if it is rationally related to a significant state interest; otherwise, the age distinction will violate equal protection laws by unfairly burderning a specific age group. In the NMDA Act, Congress mandated a minimum drinking age of 21. The state interest articulated in the NMDA Act was to protect those persons between the ages of 18 and 20 from drunk driving accidents. The Washington Supreme Court upheld the need to protect this class from auto accidents as a valid state interest. *See* Houser v. State, 85 Wash. 2d 803, 540 P.2d 412 (1975), *overruled on other grounds,* State v. Smith, 93 Wash. 2d 329, 610 P.2d 869, *cert. denied,* 449 U.S. 873 (1980).

147. The court may only impose liability on a social host who serves a person 18- to 20-years-old when this person is injured in an automobile accident. *See supra* notes 40–41 and accompanying text. Under *Hansen,* a court may impose liability on a social host who serves a person under 18 when this person is injured by any hazard. By limiting the *Hansen* decision to only protect against injuries resulting from automobile accidents, the court can eliminate the need to distinguish between those over 18 and those under 18.

ard that produces the most injuries to minors—drunk driving. In essence, this rule would fulfill the purpose of the WABC Act—to protect the "welfare, health, peace, morals, and safety of the people of the state."[148]

Moreover, numerous other jurisdictions have adopted drunk driving as the protected hazard.[149] These courts stress that the only rational purpose for imposing social host liability is to prevent drunk driving.[150] By holding social hosts liable only when they serve a minor who becomes intoxicated, drives an automobile, and causes an injury-producing accident, these jurisdictions provide a predictable and limited set of circumstances where the courts will impose liability as a matter of law.

Given the court's reluctance in *Hansen* to limit this hazard, the legislature should act to prevent courts from imposing liability for risks other than drunk driving. The legislature should also expand the protected class to include innocent third parties injured by intoxicated minors as well as the intoxicated minors. Expanding the class would satisfy the purpose of civil liability—to provide compensation to all victims. The legislature should, therefore, explictly provide for third party recovery against a social host who serves a minor. Under this interpretation of protected class and specific hazard, Friend and Petty, the two twenty-one-year-old friends of Hansen, could not have been liable for Hansen's death. Instead, liability would attach only where a social host knew an intoxicated minor was driving away from a host's premises yet failed to take steps to prevent the minor from leaving.

III. CONCLUSION

In *Hansen v. Friend,* the court chose to follow the national trend and impose liability on social hosts who serve alcohol to minors. Instead of granting a cause of action to anyone harmed from a social host's illegal service to minors, the court limited standing to only the intoxicated minor. Additionally, the court allowed these minors to recover for injuries arising from a wide range of risks.

Given the court's decision to create a civil cause of action, the court should redefine these standards. The court should extend the protected class to encompass all persons injured as a consequence of the

148. *See supra* note 30.

149. *See* Cravens v. Inman, 586 N.E.2d 367, 374–75 (Ill. App. Ct. 1991) (listing 24 states that impose liability in this situation).

150. *See* Kelly v. Gwinnell, 476 A.2d 1219, 1226 (N.J. 1984); Dickinson v. Edwards, 105 Wash. 2d 457, 470–71, 716 P.2d 814, 821 (1986) (Utter, J., concurring).

social host's illegal actions, whether it is the minor or a third party injured by an intoxicated minor. However, the court should impose liability only when intoxication accompanies a specific dangerous act. Because most injuries involving intoxication result from automobile accidents, the court should limit social host liability to injuries resulting from drunk driving.