

**BILL TEXT:****STATE OF NEW YORK**

497

2005-2006 Regular Sessions

**IN ASSEMBLY**

January 12, 2005

Introduced by M. of A. KOON -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to prohibiting recovery in tort in favor of those injured while driving drunk or committing a felony; and to repeal section 1413 of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Section 1413 of the civil practice law and rules is  
 2 REPEALED and a new section 1413 is added to read as follows:  
 3 § 1413. Applicability. Notwithstanding any other provision of law, no  
 4 action in tort may be brought by any person, or by the heirs or repre-  
 5 sentatives of any person, for the recovery of damages for injuries or  
 6 death resulting in whole or in part from that person's driving while  
 7 intoxicated, as defined in subdivision two or three of section eleven  
 8 hundred ninety-two of the vehicle and traffic law, or driving while his  
 9 or her ability is impaired by drugs, as defined in subdivision four of  
 10 section eleven hundred ninety-two of the vehicle and traffic law.  
 11 § 2. This act shall take effect immediately.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD02659-01-5

**SPONSORS MEMO:**

**NEW YORK STATE ASSEMBLY  
 MEMORANDUM IN SUPPORT OF LEGISLATION  
 submitted in accordance with Assembly Rule III, Sec 1(e)**

**BILL NUMBER:** A497

**SPONSOR:** Koon

**TITLE OF BILL:** An act to amend the civil practice law and rules, in relation to prohibiting recovery in tort in favor of those injured while driving drunk or committing a felony; and to repeal section 1413 of such law relating thereto

**PURPOSE OR GENERAL IDEA OF BILL:** To prohibit recovery in tort in favor of those injured while driving drunk or committing a felony.

**SUMMARY OF SPECIFIC PROVISIONS:** Section 1 repeals section 1413 of the civil practice law and rules and a new section 1413 is added to prohibit action in tort that may be brought by any person, or by the heirs or representatives of any person, for the recovery of damages for injuries or death resulting in whole or in part from that person's driving while intoxicated or driving while ability is impaired, as defined by provisions of the Vehicle and Traffic Law.

. Sets the effective date.

**JUSTIFICATION:** The carnage that drunk driving has caused on our roadways has been well documented. The mayhem such conduct causes in terms of injuries and insurance losses is staggering. Every branch of government, at both the Federal and State level, has advocated against this totally preventable horror and have taken steps to increase the punishment and reduce the societal tolerance for drunk driving. That overriding principle guides this bill.

This bill would overturn the determination of the New York Court of Appeals in

**ALAMI V. VOLKSWAGEN OF AMERICA, INC.**, 97 N.Y.2d 281(2002), clarify the rule previously established by that Court in

**BARKER V.**

**KALLASH**, 63 N.Y.2d 19 (1984), and

**MANNING V. BROWN**, 72 N.Y.2d 972

(1988), and reemphasize this State's abhorrence of and its unwillingness to accept the horrors perpetrated by those who drive while intoxicated.

In

**BARKER**, the Court held that, notwithstanding the "comparative negligence" rule (CPLR 1411), one who commits a serious violation of law (there, an infant stuffing gunpowder from firecrackers into a pipe) cannot sue anyone (there, the gunpowder supplier) to recover for injuries sustained as a result of that criminal conduct. In

**MANNING**, the

Court applied that rule to prevent a teenager who participated in what the Court viewed as the serious criminal offense of "joyriding" from suing her friend, whose negligent driving actually caused the accident. Nevertheless, in

**ALAMI**, the Court permitted the family of a drunk driver (driving with a blood alcohol level twice that necessary to convict for driving while intoxicated) to sue the manufacturer of the automobile he was driving for alleged defects that supposedly "enhanced" the drunk driver's injuries, notwithstanding that the one-vehicle accident itself was caused entirely by the drunk driver.

Drunk driving is certainly a serious criminal act, and this legislation would prevent drunk drivers (or their heirs or representatives) from using the courts of New York to seek recovery in damages for injuries caused by their actions. The bill requires that the drunk driving be a cause, at least in part, of the accident; however, where that is so, the drunk driver is barred from suing those who might also have been in part a cause of the injury.

Manufacturers (and the State) are amply deterred from defectively designing their products by the potential for suit by those using the product in a reasonably appropriate manner. Indeed, had there been a passenger in the Alami vehicle, he or she would be permitted to sue, with comparative fault governing the outcome. The need for deterrence provides no reason for allowing drunk drivers to use our courtrooms to seek recovery for injuries which they caused.

Furthermore, with increased penalties and stricter provisions regulating the rights of drunk drivers to receive financial settlements, this legislation continues to stress the importance of the seriousness of

RETRIEVE BILL

drunk driving.

PRIOR LEGISLATIVE HISTORY:

2003-04: A.9625/S.4002

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: This act shall take effect immediately.

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