

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE DRH50397-LA-15 (5/8)

Short Title: Drug Dealer Liability Act. (Public)

Sponsors: Representative McComas.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A CIVIL REMEDY FOR DAMAGES TO PERSONS IN A  
COMMUNITY INJURED BY AN INDIVIDUAL'S USE OF ILLEGAL  
CONTROLLED SUBSTANCES AND TO APPROPRIATE FUNDS TO HELP  
IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 90 of the General Statutes is amended by adding a  
new Article to read:

"Article 5D.

"Drug Dealer Liability Act.

**"§ 90-113.48. Title of Article.**

This Article shall be known and may be cited as the 'Drug Dealer Liability Act'.

**"§ 90-113.49. Purpose.**

The purpose of this Article is to provide a civil remedy for damages to persons in a  
community injured by an individual's use of illegal drugs. It establishes a cause of  
action against drug dealers for damages for monetary, noneconomic, and physical losses  
incurred as a result of an individual's use of an illegal controlled substance. This Article  
will shift the cost of the damage caused by the marketing of illegal drugs to those who  
illegally profit from that market, as well as deter others from entering the illegal drug  
market by subjecting them to substantial monetary loss. This Article will also provide  
an incentive for individual users to identify drug marketers and recover from them the  
costs of their own drug treatment.

**"§ 90-113.50. Definitions.**

(1) 'Illegal controlled substance' means a controlled substance as defined  
and covered under Article 5 of this Chapter.

(2) 'Individual user' means the individual whose use of an illegal  
controlled substance that is not obtained directly from, or pursuant to,

- 1                    a valid prescription or order of a licensed physician or practitioner is  
2                    the basis of an action brought under this Article.
- 3                    (3)                'Level one offense' means the illegal possession with the intent to  
4                    distribute less than four ounces or the illegal distribution of less than  
5                    one ounce of an illegal controlled substance.
- 6                    (4)                'Level two offense' means the illegal possession with intent to  
7                    distribute four ounces or more but less than eight ounces, or the illegal  
8                    distribution of one ounce or more, but less than two ounces, of an  
9                    illegal controlled substance.
- 10                  (5)                'Level three offense' means the illegal possession with intent to  
11                  distribute eight ounces or more but less than 16 ounces, or the illegal  
12                  distribution of two ounces or more, but less than four ounces, of an  
13                  illegal controlled substance.
- 14                  (6)                'Level four offense' means the illegal possession with intent to  
15                  distribute 16 ounces or more, or the illegal distribution of four ounces  
16                  or more, of an illegal controlled substance.
- 17                  (7)                'Marketing of an illegal controlled substance' means the possession  
18                  with intent to distribute or distribution of a specified illegal controlled  
19                  substance which is a violation of Article 5 of this Chapter.
- 20                  (8)                'Participate in the marketing of an illegal controlled substance' means  
21                  to distribute, possess with intent to distribute, commit an act intended  
22                  to facilitate the marketing or distribution of, or agree to distribute,  
23                  possess with an intent to distribute, or commit an act intended to  
24                  facilitate the marketing and distribution of an illegal drug. 'Participate  
25                  in the marketing of an illegal controlled substance' does not include the  
26                  purchase or receipt of an illegal controlled substance for personal use  
27                  only.
- 28                  (9)                'Period of illegal use' means, in relation to the individual user of an  
29                  illegal controlled substance, the time from the individual's first illegal  
30                  use of an illegal controlled substance to the accrual of the cause of  
31                  action.
- 32                  (10)               'Person' means a natural person, governmental entity, or corporation,  
33                  partnership, firm, trust, or incorporated or unincorporated association,  
34                  existing under or authorized by the laws of this State, another state, or  
35                  a foreign country.
- 36                  (11)               'Place of illegal activity' means, in relation to the individual user of an  
37                  illegal controlled substance, each county in which the individual  
38                  illegally possesses or uses an illegal controlled substance during the  
39                  period of the individual's use of an illegal controlled substance.
- 40                  (12)               'Place of participation' means, in relation to a defendant in an action  
41                  brought under this Article, each county in which the person  
42                  participates in the marketing of illegal controlled substances during the  
43                  period of the person's participation in the marketing of illegal  
44                  controlled substances.

1           (13) 'Conviction' means a conviction, guilty plea, or plea of nolo contendere  
2           and includes being convicted of a violation of a law of any other state  
3           or a city or county ordinance.

4           (14) 'Prior convictions' means felonies and misdemeanors, prior convictions  
5           not classified at the time of convictions, federal or out-of-state  
6           convictions, and juvenile adjudications if the offenses would be  
7           felonies if committed by an adult.

8 **"§ 90-113.51. Persons who may bring action; persons against whom actions may**  
9 **be brought; damages recoverable.**

10         (a) Any one or more of the following persons may bring an action for damages  
11 caused by an individual's use of an illegal controlled substance against those persons  
12 enumerated in subsection (b) of this section:

13           (1) A parent, legal guardian, child, spouse, or sibling of the individual  
14 user;

15           (2) An individual who was exposed to an illegal controlled substance in  
16 utero;

17           (3) An employer of the individual user;

18           (4) A medical facility, insurer, employer, governmental entity, or other  
19 legal entity that funds a drug treatment program or other employee  
20 assistance program for, or that otherwise expends money on, behalf of  
21 the individual user; or

22           (5) A person injured as a result of the willful, reckless, or negligent  
23 actions of an individual user.

24         (b) A person entitled to bring an action pursuant to subsection (a) of this section  
25 may seek damages from one or more of the following:

26           (1) A person who sold, administered, or furnished an illegal controlled  
27 substance to the individual user; or

28           (2) A person who knowingly participated in the marketing of an illegal  
29 controlled substance, if all of the following apply:

30           a. The place of illegal activity by the individual user is within the  
31 municipality, county, or unincorporated area of the county in  
32 which the defendant's place of participation is situated.

33           b. The defendant's participation in the marketing of illegal  
34 controlled substances was connected with the same type of  
35 illegal controlled substance used by the individual user and the  
36 defendant has been convicted of an offense for that type of  
37 specified illegal controlled substance, which the defendant  
38 committed in the same county as the individual user's place of  
39 use.

40           c. The defendant participated in the marketing of illegal controlled  
41 substances at anytime during the period in which the individual  
42 user used the illegal controlled substance.

43         (c) As used in subdivision (b)(2) of this section, 'knowingly participated in the  
44 marketing of an illegal controlled substance' means an individual was convicted of

1 possession with the intent to distribute or distribution of an illegal controlled substance  
2 in violation of Chapter 90 of the General Statutes.

3 (d) A person entitled to bring an action under this section may recover all of the  
4 following damages:

5 (1) Economic damages including, but not limited to, the cost of treatment  
6 and rehabilitation, medical expenses, loss of economic or educational  
7 potential, loss of productivity, absenteeism, support expenses,  
8 accidents or injury, and any other pecuniary loss proximately caused  
9 by the use of an illegal controlled substance;

10 (2) Noneconomic damages including, but not limited to, physical and  
11 emotional pain and suffering, physical impairment, emotional distress,  
12 mental anguish, disfigurement, loss of enjoyment, loss of  
13 companionship, services, and consortium, and other nonpecuniary  
14 losses proximately caused by an individual's use of an illegal  
15 controlled substance;

16 (3) Exemplary damages;

17 (4) Reasonable attorney fees; and

18 (5) Costs of suit including, but not limited to, reasonable expenses for  
19 expert testimony.

20 **"§ 90-113.52. Actions by individual users; damages recoverable.**

21 (a) An individual user is entitled to bring an action for damages caused by the  
22 use of an illegal controlled substance only if all of the following conditions are met:

23 (1) Not less than six months before filing the action, the individual  
24 personally discloses to a law enforcement agency all of the  
25 information known to the individual regarding the individual's sources  
26 of illegal controlled substances.

27 (2) The individual has not used an illegal controlled substance within 30  
28 days before filing the action.

29 (3) The individual does not use an illegal controlled substance while the  
30 action is pending.

31 (b) The individual user entitled to bring an action under this section may recover  
32 only the following damages:

33 (1) Economic damages including, but not limited to, the cost of treatment,  
34 rehabilitation, and medical expenses, loss of economic or educational  
35 potential, loss of productivity, absenteeism, accidents or injury, and  
36 any other pecuniary loss proximately caused by the person's use of an  
37 illegal controlled substance;

38 (2) Reasonable attorney fees; and

39 (3) Costs of suit including, but not limited to, reasonable expenses for  
40 expert testimony.

41 (c) The individual user entitled to bring an action under this section may seek  
42 damages only from a person who distributed or possessed with the intent to distribute  
43 the illegal controlled substance actually used by the individual user.

44 **"§ 90-113.53. Assignment of cause of action.**

1        A cause of action authorized by this Article shall not be assigned, either expressly,  
2 by subrogation, or by any other means, directly or indirectly, to any public or publicly  
3 funded agency or institution.

4 **"§ 90-113.54. Responsibility for damages; level of offense.**

5        Any person whose participation in the marketing of illegal controlled substances  
6 constitutes any of the following levels of offense shall be subject to a rebuttal  
7 presumption of responsibility in the following amounts:

8            (1)    For a level one offense, twenty-five percent (25%) of the damages;

9            (2)    For a level two offense, fifty percent (50%) of the damages;

10          (3)    For a level three offense, seventy-five percent (75%) of the damages;

11            or

12          (4)    For a level four offense, one hundred percent (100%) of the damages.

13 **"§ 90-113.55. Multiple parties to action; relief according to respective liabilities.**

14        (a)    Two or more persons may join in one action under this Article as plaintiffs if  
15 their respective actions have at least one market for illegal controlled substances in  
16 common and if any portion of the period of use of an illegal controlled substance is  
17 concurrent with the period of use of an illegal controlled substance for every other  
18 plaintiff.

19        (b)    Two or more persons may be joined in one action under this Article as  
20 defendants if those persons are liable to at least one plaintiff.

21        (c)    A plaintiff need not participate in obtaining, and a defendant need not  
22 participate in defending, against all of the relief demanded. Judgment may be given for  
23 one or more plaintiffs according to their respective rights to relief and against one or  
24 more defendants according to their respective liabilities.

25 **"§ 90-113.56. Standard of proof; effect of conviction for distribution of controlled**  
26 **substance.**

27        (a)    Proof of liability in an action brought under this Article shall be by a  
28 preponderance of the evidence.

29        (b)    A person against whom recovery is sought who has been convicted of the  
30 distribution of an illegal controlled substance under Chapter 90 of the General Statutes  
31 or under the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21  
32 U.S.C. § 801, et seq., is precluded from denying participation in the marketing of an  
33 illegal controlled substance.

34 **"§ 90-113.57. Defense; liability of law enforcement officer or agency.**

35        (a)    It is a defense to any action brought under this Article that the person who  
36 possessed with the intent to distribute or distributed an illegal controlled substance did  
37 so under the authority of law as a licensed physician or practitioner, as an ultimate user  
38 of the illegal controlled substance pursuant to a lawful prescription, or as a person  
39 otherwise authorized by law.

40        (b)    A law enforcement officer or agency, the State, or any person acting at the  
41 direction of a law enforcement officer or agency of the State is not liable for  
42 participating in the marketing of an illegal controlled substance if the participation is in  
43 furtherance of an illegal investigation.

44 **"§ 90-113.58. Seizure of property; injunctions.**

1        A person authorized to file an action under this Article may seek a seizure or  
2 injunction or other remedial action against all assets of a defendant sufficient to satisfy a  
3 potential award, except an asset named in or seized pursuant to a forfeiture action by the  
4 State or federal agency before a plaintiff commences an action pursuant to this Article,  
5 unless the asset is released by the agency that seized it.

6 **"§ 90-113.59. Statute of limitations.**

7        (a) Except as otherwise provided in this section, a cause of action under this  
8 Article shall not be brought more than two years after the cause of action accrues. A  
9 cause of action accrues under this Article when a person who may recover has reason to  
10 know of the harm from illegal drug use that is the basis for the cause of action and has  
11 reason to know that the illegal drug use is the cause of the harm.

12        (b) For a plaintiff, the statute of limitation under this section is tolled while the  
13 individual potential plaintiff is incapacitated by the use of an illegal controlled  
14 substance to the extent that the individual cannot reasonably be expected to seek  
15 recovery under this Article or as otherwise provided by law. For a defendant, the statute  
16 of limitation under this section is tolled until six months after the individual potential  
17 defendant is convicted under Chapter 90 of the General Statutes or as otherwise  
18 provided by law.

19 **"§ 90-113.60. Continuance pending completion of criminal investigation.**

20        On motion by a governmental entity involved in an investigation or prosecution  
21 involving an illegal controlled substance, an action brought under this Article shall be  
22 continued until the completion of the criminal investigation or prosecution that gave rise  
23 to the motion for a continuance of the action."

24        **SECTION 2.** The Administrative Office of the Courts shall develop forms  
25 needed to a file a cause of action under this Article and provide training to judicial  
26 personnel.

27        **SECTION 3.** There is appropriated from the General Fund to the  
28 Administrative Office of the Courts the sum of fifty thousand dollars (\$50,000) to be  
29 used to develop forms, to train judicial personnel, and to otherwise implement this  
30 Article.

31        **SECTION 4.** This act becomes effective December 1, 2005.