

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1759

Short Title: Drug Dealer Liability Act. (Public)

Sponsors: Representative McComas.

Referred to: Judiciary I, if favorable, Appropriations.

May 12, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE A CIVIL REMEDY FOR DAMAGES TO PERSONS IN A
3 COMMUNITY INJURED BY AN INDIVIDUAL'S USE OF ILLEGAL
4 CONTROLLED SUBSTANCES AND TO APPROPRIATE FUNDS TO HELP
5 IMPLEMENT THIS ACT.

6 The General Assembly of North Carolina enacts:

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

"Article 5D.

"Drug Dealer Liability Act.

11 **"§ 90-113.48. Title of Article.**

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

13 **"§ 90-113.49. Purpose.**

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

23 **"§ 90-113.50. Definitions.**

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

26 (2) 'Individual user' means the individual whose use of an illegal
27 controlled substance that is not obtained directly from, or pursuant to,
28 a valid prescription or order of a licensed physician or practitioner is
29 the basis of an action brought under this Article.

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