

By Representative Merchant

1 A bill to be entitled
2 An act relating to illegal drug dealers;
3 creating the Drug Dealer Liability Act;
4 providing a purpose; providing definitions;
5 providing liability for participation in the
6 illegal drug market; providing for recovery of
7 damages; limiting recovery of damages under
8 certain circumstances; providing third-party
9 liability; providing for joinder of parties;
10 providing for comparative responsibility of
11 individual drug users; providing for
12 contribution among defendants; providing a
13 standard of proof; providing for prejudgment
14 attachment and execution on judgments;
15 providing a statute of limitations; providing
16 for the representation of governmental agencies
17 and for stays of actions; providing an
18 effective date.

19
20 WHEREAS, every community in the country is impacted by
21 the marketing and distribution of illegal drugs. A vast amount
22 of state and local resources are expended in coping with the
23 financial, physical, and emotional toll that results from the
24 existence of the illegal drug market. Families, employers,
25 insurers, and society in general bear the substantial costs of
26 coping with the marketing of illegal drugs. Drug babies and
27 their parents, and particularly the offspring of adolescent
28 illegal drug users, suffer significant noneconomic injury as
29 well, and

30 WHEREAS, although the criminal justice system is an
31 important weapon against the illegal drug market, the civil

1 justice system must also be used. The civil justice system can
2 provide an avenue of compensation for those who have suffered
3 harm as a result of the marketing and distribution of illegal
4 drugs. The persons who have joined the illegal drug market
5 should bear the cost of the harm caused by that market in the
6 community, and

7 WHEREAS, the threat of civil liability serves as an
8 additional deterrent to a recognizable segment of the illegal
9 drug network. A person who has non-drug-related assets, who
10 markets illegal drugs at the workplace, who encourages friends
11 to become users, among others, is likely to decide that the
12 added cost of entering the market is not worth the benefit.
13 This is particularly true for a first-time casual dealer who
14 has not yet made substantial profits. There is a state
15 interest in placing the cost of the injury caused by illegal
16 drug use on those who benefit from illegal drug dealing, and

17 WHEREAS, this act imposes liability against all
18 participants in the illegal drug market, including small
19 dealers, particularly those in the workplace, who are not
20 usually the focus of criminal investigations. The small
21 dealers increase the number of users and are the people who
22 become large dealers. These small dealers are most likely to
23 be deterred by the threat of liability, and

24 WHEREAS, a parent of an adolescent illegal drug user
25 often expends considerable financial resources for the child's
26 drug treatment. Local and state governments provide drug
27 treatment and related medical services made necessary by the
28 distribution of illegal drugs. The treatment of drug babies is
29 a considerable cost to local and state governments. Insurers
30 pay large sums for medical treatment relating to drug
31 addiction and use. Employers suffer losses as a result of

1 illegal drug use by employees due to lost productivity,
2 employee drug-related workplace accidents, employer
3 contributions to medical plans, and the need to establish and
4 maintain employee assistance programs. Large employers,
5 insurers, and local and state governments have existing legal
6 staffs that can bring civil suits against those involved in
7 the illegal drug market, in appropriate cases, if a clear
8 legal mechanism for liability and recovery is established, and
9 WHEREAS, drug babies, who are clearly the most innocent
10 and vulnerable of those affected by illegal drug use, are
11 often the most physically and mentally damaged due to the
12 existence of an illegal drug market in a community. For many
13 of these babies, the only possible hope is extensive medical
14 and psychological treatment, physical therapy, and special
15 education. All of these potential remedies are expensive.
16 These babies, through their legal guardians and through
17 court-appointed guardians ad litem, should be able to recover
18 damages from those in the community who have entered and
19 participated in the marketing of the types of illegal drugs
20 that have caused their injuries, and
21 WHEREAS, in theory, civil actions for damages for
22 distribution of illegal drugs may be brought under existing
23 law, but, in reality, they are not brought. Several barriers
24 account for this. Under existing tort law, only those dealers
25 in the actual chain of distribution to a particular user could
26 be sued. Drug babies, parents of adolescent illegal drug
27 users, and insurers are not likely to be able to identify the
28 chain of distribution to a particular user. Furthermore, drug
29 treatment experts largely agree that users are unlikely to
30 identify and bring suit against their own dealers, even after
31 they have recovered, given the present requirements for a

1 civil action, and recovered users are similarly unlikely to
2 bring suit against others in the chain of distribution, even
3 if they are known to the user, and

4 WHEREAS, a user is unlikely to know other dealers in
5 the chain of distribution. Unlike the chain of distribution
6 for legal products, in which records identifying the parties
7 to each transaction in the chain are made and shared among the
8 parties, the distribution of illegal drugs is clandestine. Its
9 participants expend considerable effort to keep the chain of
10 distribution secret, and

11 WHEREAS, those involved in the illegal drug market in a
12 community are necessarily interrelated and interdependent,
13 even if their identities are unknown to one another. Each new
14 dealer obtains the benefit of the existing illegal drug
15 distribution system to make illegal drugs available to him or
16 her. In addition, the existing market aids a new entrant by
17 the prior development of people as users. Many experts on the
18 illegal drug market agree that each participant in a given
19 community is likely to be indirectly related to the others.
20 That is, beginning with any one dealer, given the theoretical
21 ability to identify every person known by that dealer to be
22 involved in illegal drug trafficking, and in turn each of such
23 others known to them, and so on, the illegal drug market in a
24 community could ultimately be fully revealed, and

25 WHEREAS, market liability has been created with respect
26 to legitimate products by judicial decision in some states.
27 Such liability provides for civil recovery by plaintiffs who
28 are unable to identify the particular manufacturer of the
29 product that is claimed to have caused them harm, allowing
30 recovery from all manufacturers of the product who
31 participated in that particular market. The market liability

1 theory has been shown to be destructive of market initiative
2 and product development when applied to legitimate markets.
3 Because of its potential for undermining markets, this act
4 expressly adopts a form of liability for those who
5 intentionally join the illegal drug market. The liability
6 established by this act grows out of but is distinct from
7 existing judicially crafted market liability, and

8 WHEREAS, the prospect of a future suit for the costs of
9 drug treatment may drive a wedge between prospective dealers
10 and their customers by encouraging users to turn on their
11 dealers. Therefore, liability for those costs, even to the
12 user, is imposed under this act as long as the user identifies
13 and brings suit against his or her own dealers, and

14 WHEREAS, allowing dealers who face a civil judgment for
15 their illegal drug marketing to bring suit against their own
16 sources for contribution may also drive a wedge into the
17 relationships among some participants in the illegal drug
18 distribution network, and

19 WHEREAS, while not all persons who have suffered losses
20 as a result of the marketing of illegal drugs will pursue an
21 action for damages, at least some individuals, guardians of
22 drug babies, government agencies that provide treatment,
23 insurance companies, and employers will find such an action
24 worthwhile. These persons deserve the opportunity to recover
25 their losses. And some new entrants to retail illegal drug
26 dealing are likely to be deterred even if only a few of these
27 suits are actually brought, NOW, THEREFORE,

28
29 Be It Enacted by the Legislature of the State of Florida:

30
31

1 Section 1. This act may be cited as the Drug Dealer
2 Liability Act.

3 Section 2. Purpose.--The purpose of this act is to
4 provide a civil remedy for damages to a person injured as a
5 result of illegal drug use. These persons include parents,
6 employers, insurers, governmental entities, and others who pay
7 for drug treatment or employee assistance programs, as well as
8 infants injured as a result of exposure to drugs in utero. The
9 act will enable a person to recover damages from those persons
10 who participate in the illegal drug market. Further purposes
11 of the act are to shift the cost of the damage caused by the
12 existence of the illegal drug market to those who illegally
13 profit from that market, and to establish the prospect of
14 substantial monetary loss as a deterrent to those who have not
15 yet entered into the illegal drug market. An additional
16 purpose is to establish an incentive for illegal drug users to
17 identify and seek payment for their own drug treatment from
18 those dealers who have sold drugs to the user in the past.

19 Section 3. Definitions.--As used in this act, the
20 term:

21 (1) "Illegal drug" means cocaine, heroin,
22 methamphetamine, and any other drug whose distribution is
23 prohibited by law.

24 (2) "Illegal drug market" means the support system of
25 illegal drug-related operations, from production to retail
26 sales, through which an illegal drug reaches the user.

27 (3) "Individual drug user" means an individual who
28 uses illegal drugs.

29 (4) "Level 1 offense" means possession of 1/4 ounce or
30 more but less than 4 ounces, or distribution of less than 1
31 ounce of an illegal drug, or possession of 1 pound or more

1 than 25 plants or more but less than 4 pounds or 50 plants, or
2 distribution of less than 1 pound of marijuana.

3 (5) "Level 2 offense" means possession of 4 ounces or
4 more but less than 8 ounces, or distribution of 1 ounce or
5 more but less than 2 ounces, of an illegal drug, or possession
6 of 4 pounds or more or 50 plants or more, but less than 8
7 pounds or 75 plants, or distribution of more than 1 pound but
8 less than 5 pounds, of marijuana.

9 (6) "Level 3 offense" means possession of 8 ounces or
10 more but less than 16 ounces, or distribution of 2 ounces or
11 more but less than 4 ounces, of an illegal drug, or possession
12 of 8 pounds or more or 75 plants or more but less than 16
13 pounds or 100 plants, or distribution of more than 5 pounds,
14 but less than 10 pounds, of marijuana.

15 (7) "Level 4 offense" means possession of 16 ounces or
16 more or distribution of 4 ounces or more of an illegal drug,
17 or possession of 16 pounds or more or 100 plants or more, or
18 distribution of 10 pounds or more of marijuana.

19 (8) "Participate in the illegal drug market" means to
20 distribute, possess with an intent to distribute, facilitate
21 the marketing or distribution of, or agree to distribute,
22 possess with an intent to distribute, or facilitate the
23 marketing or distribution of an illegal drug. Participation in
24 the illegal drug market does not include the purchase or
25 receipt of an illegal drug for personal use only.

26 (9) "Period of illegal drug use" means the time period
27 that begins with an individual's first use of an illegal drug
28 to the time of the accrual of a cause of action. The period of
29 illegal drug use is presumed to commence 2 years before the
30 cause of action accrues unless the defendant proves otherwise
31 by clear and convincing evidence.

1 (10) "Person" means an individual, governmental
2 entity, corporation, firm, trust, partnership, or incorporated
3 or unincorporated association authorized by the laws of this
4 state, another state, or a foreign country.

5 Section 4. Liability for participation in the illegal
6 drug market.--

7 (1) A person who knowingly participates in the illegal
8 drug market is liable for civil damages as provided in this
9 act. A person may recover damages for injury resulting from an
10 individual's use of an illegal drug.

11 (2) A state or local agency, a state or local law
12 enforcement officer, or a person acting at the direction of a
13 law enforcement officer or agency is not liable for
14 participating in the illegal drug market if the participation
15 is in furtherance of an official investigation.

16 Section 5. Recovery of damages.--

17 (1) The following persons may bring an action for
18 damages caused by an individual's use of an illegal drug:

19 (a) A parent, legal guardian, child, spouse, or
20 sibling of the individual drug user.

21 (b) An individual who was exposed to an illegal drug
22 in utero.

23 (c) An employer of the individual drug user.

24 (d) A medical facility, insurer, governmental entity,
25 employer, or other entity that funds a drug treatment program
26 or employee assistance program for the individual drug user or
27 that otherwise has expended money on behalf of the individual
28 drug user.

29 (e) A person injured as a result of the willful,
30 reckless, or negligent actions of an individual drug user.

31

- 1 (2) A person entitled to bring an action under this
2 section may seek damages from:
- 3 (a) A person who knowingly distributed, or knowingly
4 participated in the chain of distribution of, an illegal drug
5 that was actually used by the individual drug user.
- 6 (b) A person who knowingly participated in the illegal
7 drug market if:
- 8 1. The place of illegal drug activity by the
9 individual drug user is within the illegal drug market target
10 community of the defendant;
- 11 2. The defendant's participation in the illegal drug
12 market was connected with the same type of illegal drug used
13 by the individual drug user; and
- 14 3. The defendant participated in the illegal drug
15 market at any time during the individual drug user's period of
16 illegal drug use.
- 17 (3) A person entitled to bring an action under this
18 section may recover the following damages and costs:
- 19 (a) Economic damages, including, but not limited to,
20 the cost of treatment and rehabilitation, medical expenses,
21 loss of economic or educational potential, loss of
22 productivity, absenteeism, support expenses, accidents or
23 injury, and any other pecuniary loss proximately caused by the
24 illegal drug user.
- 25 (b) Noneconomic damages, including, but not limited
26 to, physical and emotional pain; suffering; physical
27 impairment; emotional distress; mental anguish; disfigurement;
28 loss of enjoyment; loss of companionship, services, and
29 consortium; and other nonpecuniary losses proximately caused
30 by the illegal drug user.
- 31 (c) Exemplary damages.

1 (d) Reasonable attorney's fees.

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

4 Section 6. Limited recovery of damages; individual
5 drug user.--

6 (1) An individual drug user may bring an action for
7 damages caused by the use of an illegal drug if:

8 (a) The individual drug user personally discloses to
9 narcotics enforcement authorities, more than 6 months before
10 filing the action, all of the information known to the
11 individual drug user regarding that individual's sources of
12 illegal drugs;

13 (b) The individual drug user has not used an illegal
14 drug within the 6 months before filing the action; and

15 (c) The individual drug user continues to remain free
16 of the use of an illegal drug throughout the pendency of the
17 action.

18 (2) An individual drug user may seek damages only from
19 a person who distributed, or is in the chain of distribution
20 of, an illegal drug that was actually used by the individual
21 drug user.

22 (3) An individual drug user may recover the following
23 damages:

24 (a) Economic damages, including, but not limited to,
25 the cost of treatment, rehabilitation, and medical expenses,
26 loss of economic or educational potential, loss of
27 productivity, absenteeism, accidents or injury, and any other
28 pecuniary loss proximately caused by the person's illegal drug
29 use.

30 (b) Reasonable attorney's fees.

31

1 (c) Costs of suit, including, but not limited to,
2 reasonable expenses for expert testimony.

3 Section 7. Third party liability.--A third party is
4 not liable for damages awarded under this act and may not
5 provide a defense or money for a defense on behalf of an
6 insured under a contract of insurance or indemnification.

7 Section 8. Joinder of parties.--

8 (1) Two or more persons may join in one action under
9 this act as plaintiffs if their respective actions have at
10 least one place of illegal drug activity in common and if any
11 portion of the period of illegal drug use overlaps with the
12 period of illegal drug use for every other plaintiff.

13 (2) Two or more persons may be joined in one action
14 under this act as defendants if those persons are liable to at
15 least one plaintiff.

16 (3) A plaintiff need not be interested in obtaining
17 and a defendant need not be interested in defending against
18 all the relief demanded. Judgment may be given for one or more
19 plaintiffs according to their respective rights to relief and
20 against one or more defendants according to their respective
21 liabilities.

22 Section 9. Comparative responsibility; individual drug
23 user.--

24 (1) An action by an individual drug user is governed
25 by the principles of comparative responsibility. Comparative
26 responsibility attributed to the plaintiff does not bar
27 recovery but diminishes the award of compensatory damages
28 proportionally, according to the measure of responsibility
29 attributed to the plaintiff.

30
31

1 (2) The burden of proving the comparative
2 responsibility of the plaintiff is on the defendant, which
3 shall be shown by clear and convincing evidence.

4 (3) Comparative responsibility may not be attributed
5 to a plaintiff who is not an individual drug user.

6 Section 10. Contribution among and recovery from
7 multiple defendants.--A person subject to liability under this
8 act has a right of action for contribution against another
9 person subject to liability under this act. Contribution may
10 be enforced either in the original action or by a separate
11 action brought for that purpose. A plaintiff may seek recovery
12 in accordance with this act and existing law against a person
13 whom a defendant has asserted a right of contribution.

14 Section 11. Standard of proof; effect of criminal drug
15 conviction.--

16 (1) A plaintiff must show by clear and convincing
17 evidence that a defendant has participated in the illegal drug
18 market in an action brought under this act. Except as
19 otherwise provided, other elements of the cause of action must
20 be shown by a preponderance of the evidence.

21 (2) A person against whom recovery is sought who has a
22 criminal conviction pursuant to state drug laws or the
23 Comprehensive Drug Abuse Prevention and Control Act of 1970,
24 Public Law 91-513, 84 Stat. 1236, codified at 21 U.S.C., 801
25 et. seq., is estopped from denying participation in the
26 illegal drug market. Such a conviction is also prima facie
27 evidence of the person's participation in the illegal drug
28 market during the 2 years preceding the date of an act giving
29 rise to a conviction.

30
31

1 (3) The absence of a criminal drug conviction of a
2 person against whom recovery is sought does not bar an action
3 against that person.

4 Section 12. Prejudgment attachment and execution on
5 judgments.--

6 (1) A plaintiff may request an ex parte prejudgment
7 attachment order from the court against all assets of a
8 defendant sufficient to satisfy a potential award. If
9 attachment is instituted, a defendant is entitled to an
10 immediate hearing. Attachment may be lifted if the defendant
11 demonstrates that the assets will be available for a potential
12 award or if the defendant posts a bond sufficient to cover a
13 potential award.

14 (2) The property of a person against whom a judgment
15 has been rendered is not exempt from process to levy or
16 process to execute on the judgment.

17 (3) Any assets sought to satisfy a judgment that are
18 named in a forfeiture action or have been seized for
19 forfeiture by any state or federal agency may not be used to
20 satisfy a judgment unless and until the assets have been
21 released following the conclusion of the forfeiture action or
22 released by the agency that seized the assets.

23 Section 13. Statute of limitations.--

24 (1) Except as otherwise provided in this section, a
25 claim may not be brought more than 2 years after the cause of
26 action accrues. A cause of action accrues when a person who
27 may recover has reason to know of the harm from illegal drug
28 use that is the basis for the cause of action and has reason
29 to know that the illegal drug use is the cause of the harm.

30 (2) For a plaintiff, the statute of limitations under
31 this section is tolled while the individual potential

1 plaintiff is incapacitated by the use of an illegal drug to
2 the extent that the individual cannot reasonably be expected
3 to seek recovery. For a defendant, the statute of limitations
4 under this section is tolled until 6 months after the
5 individual potential defendant is convicted of a criminal drug
6 offense.

7 (3) The statute of limitations for a claim based on a
8 defendant's participation in the illegal drug market that
9 occurred prior to the effective date of this act does not
10 begin to run until the effective date of this act.

11 Section 14. Representation of governmental entities;
12 stay of action.--

13 (1) The attorney general may represent the state, and
14 a state attorney may represent a political subdivision of the
15 state in an action brought under this act.

16 (2) On motion by a governmental agency involved in a
17 drug investigation or prosecution, an action brought under
18 this act must be stayed until the completion of the criminal
19 investigation or prosecution that gave rise to the motion for
20 a stay of the action.

21 Section 15. Effect on existing laws.--The provisions
22 of this act are not intended to alter the law regarding
23 intrafamily tort immunity.

24 Section 16. This act shall take effect October 1,
25 1997.

26
27
28
29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

SENATE SUMMARY

Creates the Drug Dealer Liability Act. Provides legislative purpose and definitions. Prescribes liability of persons who participate in the illegal drug market. Provides for the recovery of damages and for a limitation on the recovery of damages by individual drug users. Prohibits a third party from paying damages or providing a defense. Provides for joinder of parties and for comparative responsibility in an action by an individual drug user. Provides for contribution among and recovery from multiple defendants. Provides a standard of proof. Prescribes prejudgment attachment and execution on judgments. Provides a statute of limitation. Authorizes a state attorney to represent a governmental agency in an action under the act. Provides for a stay of actions.