

Act No. 27
Public Acts of 1994
Approved by the Governor
February 24, 1994
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February 28, 1994

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Senators Welborn Dillingham Bouchard and DiNello

ENROLLED SENATE BILL No. 229

AN ACT to provide actions for civil damages against persons who participate in illegally marketing controlled substances and to prescribe parties procedures and damages regarding that action

The People of the State of Michigan enact

Sec 1 (1) This act shall be known and may be cited as the drug dealer liability act

(2) The purpose of this act is to provide for actions for civil damages against persons who participate in illegal marketing of controlled substances for injuries caused by illegal use of controlled substances in order to do all of the following

- (a) Compensate persons injured as a result of illegal marketing of controlled substances
- (b) Assess the cost of illegal marketing of controlled substances against persons who profit from that market
- (c) Provide an incentive for individual abusers to identify persons from whom the abusers have acquired illegally marketed controlled substances and to seek payment for the abusers own treatment

Sec 2 For the purposes of this act the words and phrases defined in sections 3 and 4 have the meanings ascribed to them in those sections

Sec 3 (1) Controlled substance means that term as defined in section 7104 of the public health code Act No 368 of the Public Acts of 1978 being section 333 7104 of the Michigan Compiled Laws

(2) Individual abuser means an individual who uses a controlled substance that is not obtained directly from or pursuant to a valid prescription or order of a practitioner who is acting in the course of the practitioner s professional practice or which use is not otherwise authorized under article 7 of the public health code Act No 368 of the Public Acts of 1978 being sections 333 7101 to 333 7544 of the Michigan Compiled Laws

(3) Level 1 participation means participating in illegal marketing of 650 or more grams of a mixture containing a specified controlled substance or of 16 or more pounds or 100 or more plants of marihuana

(4) Level 2 participation means participating in illegal marketing of 225 or more grams but less than 650 grams of a mixture containing a specified controlled substance or of 8 or more pounds or 75 or more plants but less than 16 pounds or 100 plants of marihuana

(5) Level 3 participation means participating in illegal marketing of 50 or more grams but less than 225 grams of a mixture containing a specified controlled substance or of 4 or more pounds or 50 or more plants but less than 8 pounds or 75 plants of marihuana

(6) Level 4 participation means participating in illegal marketing of less than 50 grams of a mixture containing a specified controlled substance or of 1 or more pounds or 25 or more plants but less than 4 pounds or 50 plants of marijuana

Sec 4 (1) Market area means the area in which a person is presumed to have participated in illegal marketing of a market area controlled substance as described in section 9

(2) Market area controlled substance means a specified controlled substance or marijuana

(3) Participate in illegal marketing means doing any of the following in violation of state or federal law

(a) Manufacturing or delivering or attempting or conspiring to manufacture or deliver a controlled substance

(b) Possessing or attempting or conspiring to possess a controlled substance with the intent to manufacture or deliver a controlled substance

(4) Person means an individual governmental entity sole proprietorship corporation limited liability company firm trust partnership or incorporated or unincorporated association existing under or authorized by the laws of this state another state or a foreign country

(5) Practitioner means that term as defined in section 7109 of the public health code Act No 368 of the Public Acts of 1978 being section 333 7109 of the Michigan Compiled Laws

(6) Specified controlled substance means a controlled substance described in section 7212(1)(b) or section 7214(a)(iv) or (c)(iv) of the public health code Act No 368 of the Public Acts of 1978 being sections 333 7212 and 333 7214 of the Michigan Compiled Laws

Sec 5 (1) A person injured by an individual abuser may bring an action under this act for damages against a person who participated in illegal marketing of the controlled substance actually used by the individual abuser

(2) If a plaintiff in an action under this section proves that the defendant participated in illegal marketing of the controlled substance actually used by the individual abuser who injured the plaintiff the defendant is presumed to have injured the plaintiff and to have acted willfully and wantonly

Sec 6 (1) Subject to subsection (2) an individual abuser may bring an action under this act for damages against a person who participated in illegal marketing of the controlled substance actually used by the individual abuser

(2) An individual abuser shall not recover damages under this section unless the individual abuser meets all of the following conditions

(a) Not less than 6 months before filing the action the individual personally discloses to law enforcement authorities all of the information the individual knows regarding his or her source of illegally marketed controlled substances

(b) The individual has not used an illegally marketed controlled substance within the 6 months before filing the action

(c) The individual does not use an illegally marketed controlled substance during the pendency of the action

Sec 7 (1) Other than an individual abuser a person injured by an individual abuser may bring an action for damages against a person who participated in illegal marketing of the market area controlled substance used by the individual abuser In an action brought under this section participation in illegal marketing shall be proven by clear and convincing evidence

(2) If the plaintiff in an action under this section proves a defendant's participation in illegal marketing of a market area controlled substance and the plaintiff is 1 of the following the defendant is presumed to have injured the plaintiff and to have acted willfully and wantonly

(a) A parent legal guardian child spouse or sibling of the individual abuser

(b) A child whose mother was an individual abuser while the child was in utero

(c) The individual abuser's employer

(d) A medical facility insurer governmental entity or other legal entity that financially supports a drug treatment or other assistance program for or that otherwise expends money or provides unreimbursed service on behalf of the individual abuser

Sec 8 (1) A plaintiff under section 7 may prove that a defendant participated in illegal marketing of the market area controlled substance used by the individual abuser who injured the plaintiff by proving both of the following

(a) The defendant was participating in the illegal marketing of the market area controlled substance at the time the individual abuser obtained or used that market area controlled substance

(b) The individual abuser obtained or used the market area controlled substance or caused the injury within the defendant's market area

(2) If a person participated in illegal marketing of a market area controlled substance the person's market area for that controlled substance is the following

- (a) For level 4 participation each county in which the person participated in illegal marketing
- (b) For level 3 participation each market area described in subdivision (a) plus all counties with a border contiguous to each of those market areas
- (c) For level 2 participation each market area described in subdivision (b) plus all counties with a border contiguous to each of those market areas
- (d) For level 1 participation the state

Sec 9 (1) If a defendant under this act has a criminal conviction under state or federal law for an act that constitutes participation in illegal marketing of a controlled substance under this act that person is conclusively presumed to have participated in illegal marketing of a controlled substance for the purposes of this act

(2) If a defendant is proven or presumed to have participated in illegal marketing of a controlled substance that defendant is presumed to have participated during the 2 years before and the 2 years after the date of the participation or conviction unless the defendant proves otherwise by clear and convincing evidence

(3) In addition to each county in which a defendant is proven to have actually participated in illegal marketing of a controlled substance the defendant is presumed to have participated in each county in which the defendant resides attends school is employed or does business during the period of participation In addition to the counties in which the individual abuser is proven to have obtained or used the controlled substance the individual abuser is presumed to have obtained or used the controlled substance in each county in which the individual resides attends school or is employed during the period of the individual's abuse of that controlled substance unless the defendant proves otherwise by clear and convincing evidence

Sec 10 (1) A person other than an individual abuser who is entitled to a recovery under this act may recover economic noneconomic and exemplary damages and reasonable attorney fees and costs including but not limited to reasonable expenses for expert testimony An individual abuser entitled to recovery under this act may recover economic damages and reasonable attorney fees and costs including but not limited to reasonable expenses for expert testimony

(2) A third party shall not pay damages awarded under this act or provide a defense or money for a defense on behalf of an insured under a contract of insurance or indemnification

Sec 11 (1) After commencing an action under this act and subject to subsection (4) a plaintiff may seek a writ of attachment by filing an ex parte motion supported by an affidavit setting forth specific facts showing all of the following

- (a) A description of the injury claimed and a statement that the affiant in good faith believes that the defendant is liable to the plaintiff in a stated amount
- (b) The defendant is subject to the judicial jurisdiction of the state
- (c) After diligent effort the plaintiff cannot serve the defendant with process

(2) If attachment is instituted a defendant is entitled to an immediate hearing Attachment may be lifted if the defendant demonstrates that the assets will be available for a potential award or if the defendant posts a bond sufficient to cover a potential award

(3) Unless precluded by the state or federal constitutions a person against whom a judgment has been rendered under this act is not eligible to exempt any property of whatever kind from process to levy or process to execute on the judgment Unless the jury or the court if there is no jury specifically finds otherwise the actions for which a person is found liable under this act are willful and malicious and the judgment is not subject to discharge under federal bankruptcy law as provided in 11 U S C 523

(4) An asset shall not be used to satisfy a judgment under this act if that asset is named in or has been seized for a forfeiture action by a state or federal agency before a plaintiff commences an action under this act unless the asset is released after the forfeiture action or is released by the agency that seized the asset

Sec 12 Except as otherwise provided in this section a cause of action accrues under this act when a person who may recover has reason to know of the harm from use of an illegally marketed controlled substance that is the basis for the cause of action and has reason to know that the controlled substance use is the cause of the harm For a plaintiff the statute of limitations under this section is tolled while the individual potential plaintiff is incapacitated by the use of an illegally marketed controlled substance to the extent that the individual cannot reasonably be expected to seek recovery under this act or as otherwise provided by law

Sec 13 (1) A prosecuting attorney may represent the state or a political subdivision of the state in an action brought under this act

(2) On motion by a governmental agency involved in a controlled substance investigation or prosecution an action brought under this act shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of the action

(3) An action shall not be brought under this act against a law enforcement officer or agency or a person acting in good faith at the direction of a law enforcement officer or agency for participation in illegal marketing of a controlled substance if that participation is in the furtherance of an official investigation

Sec 19 This act shall take effect April 1 1994 This act applies only to an action arising on and after April 1 1994 This act does not preclude an action for damages otherwise available on or after April 1 1994

This act is ordered to take immediate effect

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor