



# SENATE BILL No. 229

January 26, 1993, Introduced by Senators WELBORN, DILLINGHAM, BOUCHARD and DI NELLO and referred to the Committee on Family Law, Criminal Law, and Corrections.

A bill to provide an action for civil damages against persons who cause injury by their participation in the illegal drug market; and to prescribe parties and procedures regarding that action.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act shall be known and may be cited as the  
2 "drug dealer liability act".

3       Sec. 2. The purpose of this act is to provide an action for  
4 civil damages against persons who participate in the illegal drug  
5 market for injuries caused by illegal drug use in order to do all  
6 of the following:

- 7       (a) Compensate persons injured by the illegal drug market.  
8       (b) Assess the cost of the illegal drug market against  
9 persons who profit from that market.

1 (c) Provide an incentive for illegal drug users to identify  
2 persons from whom the users have acquired illegal drugs and to  
3 seek payment for the users' own drug treatment.

4 Sec. 3. The legislature finds and declares all of the  
5 following:

6 (a) Every community in the country is impacted by the mar-  
7 keting and distribution of illegal drugs. A vast amount of state  
8 and local resources are expended in coping with the financial,  
9 physical, and emotional toll that results from the existence of  
10 the illegal drug market. Families, employers, insurers, and  
11 society in general bear the substantial costs of coping with the  
12 marketing of illegal drugs. Drug babies and parents, particu-  
13 larly those of adolescent illegal drug users, suffer significant  
14 non-economic injury as well.

15 (b) Although the criminal justice system is an important  
16 weapon against the illegal drug market, the civil justice system  
17 can and must also be used. The civil justice system can provide  
18 an avenue of compensation for those who have suffered harm as a  
19 result of the marketing and distribution of illegal drugs. The  
20 persons who have joined the illegal drug market should bear the  
21 cost of the harm caused by that market in the community.

22 (c) The threat of liability under this act serves as an  
23 additional deterrent to a recognizable segment of the illegal  
24 drug network. A person who has non-drug related assets, who  
25 markets illegal drugs at the workplace, and who encourages  
26 friends to become users, among others, is likely to decide that  
27 the added cost of entering the market is not worth the benefit.

1 This is particularly true for a first-time, casual dealer who has  
2 not yet made substantial profits. The act provides a mechanism  
3 for the cost of the injury caused by illegal drug use to be borne  
4 by those who benefit from illegal drug dealing.

5 (d) This act imposes liability against all participants in  
6 the illegal drug market, including small dealers, particularly  
7 those in the workplace, who are not usually the focus of criminal  
8 investigations. The small dealers increase the number of users  
9 and are the people who become large dealers. These small dealers  
10 are most likely to be deterred by the threat of liability.

11 (e) A parent of an adolescent illegal drug user often  
12 expends considerable financial resources, typically in the tens  
13 of thousands of dollars, for the child's drug treatment. Local  
14 and state governments provide drug treatment and related medical  
15 services made necessary by the distribution of illegal drugs.  
16 The treatment of drug babies is a considerable cost to local and  
17 state governments. Insurers pay large sums for medical treatment  
18 relating to drug addiction and use. Employers suffer losses as a  
19 result of illegal drug use by employees due to lost productivity,  
20 employee drug-related workplace accidents, employer contributions  
21 to medical plans, and the need to establish and maintain employee  
22 assistance programs. Large employers, insurers, and local and  
23 state governments have existing legal staffs that can bring civil  
24 suits against those involved in the illegal drug market, in  
25 appropriate cases, if a clear legal mechanism for liability and  
26 recovery is established.

1 (f) Drug babies, who are clearly the most innocent and  
2 vulnerable of those affected by illegal drug use, are often the  
3 most physically and mentally damaged due to the existence of an  
4 illegal drug market in a community. For many of these babies,  
5 the only possible hope is extensive medical and psychological  
6 treatment, physical therapy, and special education. All of these  
7 potential remedies are expensive. These babies, through their  
8 legal guardians and through court appointed guardians ad litem,  
9 should be able to recover from those in the community who have  
10 entered and participated in the marketing of the types of illegal  
11 drugs that have caused their injuries.

12 (g) In theory, civil actions for damages for distribution of  
13 illegal drugs can be brought under existing law. They are not.  
14 Several barriers account for this. Under existing tort law, only  
15 those dealers in the actual chain of distribution to a particular  
16 user could be sued. Drug babies, parents of adolescent illegal  
17 drug users, and insurers are not likely to be able to identify  
18 the chain of distribution to a particular user. Furthermore,  
19 drug treatment experts largely agree that users are unlikely to  
20 identify and bring suit against their own dealers, even after  
21 they have recovered, given the present requirements for a civil  
22 action. Recovered users are similarly unlikely to bring suit  
23 against others in the chain of distribution, even if they are  
24 known to the user. A user is unlikely to know other dealers in  
25 the chain of distribution. Unlike the chain of distribution for  
26 legal products, in which records identifying the parties to each  
27 transaction in the chain are made and shared among the parties,

1 the distribution of illegal drugs is clandestine. Its  
2 participants expend considerable effort to keep the chain of dis-  
3 tribution secret.

4 (h) Those involved in the illegal drug market in a community  
5 are necessarily interrelated and interdependent, even if their  
6 identity is unknown to one another. Each new dealer obtains the  
7 benefit of the existing illegal drug distribution system to make  
8 illegal drugs available to him or her. In addition, the existing  
9 market aids a new entrant by the prior development of people as  
10 users. Many experts on the illegal drug market agree that each  
11 participant ultimately is likely to be indirectly related to each  
12 other. That is, beginning with any 1 dealer, given the theoretic-  
13 al ability to identify every person known by that dealer to be  
14 involved in illegal drug trafficking, and in turn each of such  
15 others known to them, and so on, the illegal drug market in a  
16 community would ultimately be fully revealed.

17 (i) Market liability has been created with respect to legit-  
18 imate products by judicial decision in some states. It provides  
19 for civil recovery by plaintiffs who are unable to identify the  
20 particular manufacturer of the product that is claimed to have  
21 caused them harm, allowing recovery from all manufacturers of the  
22 product who participated in that particular market. The market  
23 liability theory has been shown to be destructive of market ini-  
24 tiative and product development when applied to legitimate  
25 markets. Because of its potential for undermining markets, this  
26 act expressly adopts a legislatively crafted form of market

1 liability for those who intentionally join the illegal drug  
2 market.

3 (j) The prospect of a future suit for the costs of drug  
4 treatment may drive a wedge between prospective dealers and their  
5 customers by encouraging users to turn on their dealers.  
6 Therefore, liability for those costs, even to the user, is  
7 imposed under this act as long as the user identifies and brings  
8 suit against his or her own dealers.

9 (k) Allowing dealers who face a civil judgment for their  
10 illegal drug marketing to bring suit against their own sources  
11 for contribution may also drive a wedge into the relationships  
12 among some participants in the illegal drug distribution  
13 network.

14 (l) While not all persons who have suffered losses as a  
15 result of the marketing of illegal drugs will pursue an action  
16 for damages, at least some individuals, guardians of drug babies,  
17 government agencies that provide treatment, insurance companies,  
18 and employers will find such an action worthwhile. These persons  
19 deserve the opportunity to recover their losses. Some new  
20 entrants to retail illegal drug dealing are likely to be deterred  
21 even if only a few of these suits are actually brought.

22 Sec. 4. For the purposes of this act, the words and phrases  
23 defined in sections 5 and 6 have the meanings ascribed to them in  
24 those sections.

25 Sec. 5. (1) "Illegal drug" means a drug whose distribution  
26 is a violation of state law or the comprehensive drug abuse

1 prevention and control act of 1970, Public Law 91-513, 84  
2 Stat. 1236.

3 (2) "Illegal drug market" means the support system of ille-  
4 gal drug related operations, from production to retail sales,  
5 through which an illegal drug reaches the user.

6 (3) "Illegal drug market target community" is the area  
7 described under section 11.

8 (4) "Individual drug user" means the individual whose ille-  
9 gal drug use is the basis of an action brought under this act.

10 (5) "Level 1 offense" means possession of 1/4 ounce or more,  
11 but less than 4 ounces, or distribution of less than 1 ounce of a  
12 specified illegal drug or possession of 1 pound or more or 25  
13 plants or more, but less than 4 pounds or 50 plants, or distribu-  
14 tion of less than 1 pound of marihuana.

15 (6) "Level 2 offense" means possession of 4 ounces or more,  
16 but less than 8 ounces, or distribution of 1 ounce or more, but  
17 less than 2 ounces, of a specified illegal drug or possession of  
18 4 pounds or more or 50 plants or more, but less than 8 pounds or  
19 75 plants, or distribution of more than 1 pound, but less than 5  
20 pounds, of marihuana.

21 (7) "Level 3 offense" means possession of 8 ounces or more,  
22 but less than 16 ounces, or distribution of 2 ounces or more, but  
23 less than 4 ounces, of a specified illegal drug or possession of  
24 8 pounds or more or 75 plants or more, but less than 16 pounds or  
25 100 plants, or distribution of more than 5 pounds, but less than  
26 10 pounds, of marihuana.

1 (8) "Level 4 offense" means possession of 16 ounces or more  
2 or distribution of 4 ounces or more of a specified illegal drug  
3 or possession of 16 pounds or more or 100 plants or more or dis-  
4 tribution of 10 pounds or more of marihuana.

5 Sec. 6. (1) "Participate in the illegal drug market" means  
6 to distribute, possess with intent to distribute, commit an act  
7 intended to facilitate the marketing or distribution of, or agree  
8 to distribute, possess with an intent to distribute, or commit an  
9 act intended to facilitate the marketing and distribution of an  
10 illegal drug. Participate in the illegal drug market does not  
11 include the purchase or receipt of an illegal drug for personal  
12 use only.

13 (2) "Period of illegal drug use" means, in relation to the  
14 individual drug user, the time of the individual's first use of  
15 an illegal drug to the accrual of the cause of action. The  
16 period of illegal drug use is presumed to commence 2 years before  
17 the cause of action accrues unless the defendant proves otherwise  
18 by clear and convincing evidence.

19 (3) "Person" means an individual, governmental entity, cor-  
20 poration, firm, trust, partnership, or incorporated or unincor-  
21 porated association, existing under or authorized by the laws of  
22 this state, another state, or a foreign country.

23 (4) "Place of illegal drug activity" means, in relation to  
24 the individual drug user, each county in which the individual  
25 possesses or uses an illegal drug or in which the individual  
26 resides, attends school, or is employed during the period of the

1 individual's illegal drug use, unless the defendant proves  
2 otherwise by clear and convincing evidence.

3 (5) "Place of participation" means, in relation to a  
4 defendant in an action brought under this act, each county in  
5 which the person participates in the illegal drug market or in  
6 which the person resides, attends school, or is employed during  
7 the period of the person's participation in the illegal drug  
8 market.

9 (6) "Specified illegal drug" means cocaine, heroin, or  
10 methamphetamine.

11 Sec. 7. (1) A person who knowingly participates in the  
12 illegal drug market within this state is liable for civil damages  
13 as provided in this act. A person may recover damages under this  
14 act for injury caused by an individual's use of an illegal drug.

15 (2) A law enforcement officer or agency, the state, or a  
16 person acting at the direction of a law enforcement officer or  
17 agency or the state is not liable for participating in the ille-  
18 gal drug market, if the participation is in furtherance of an  
19 official investigation.

20 Sec. 8. (1) One or more of the following persons may bring  
21 an action for damages caused by the use of an illegal drug:

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

24 (b) An individual who was exposed to an illegal drug in  
25 utero.

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

1 (d) A medical facility, insurer, governmental entity,  
2 employer, or other entity that funds a drug treatment program or  
3 employee assistance program for the individual drug user or that  
4 otherwise expended money on behalf of the individual drug user.

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

7 (2) A person entitled to bring an action under this section  
8 may seek damages from any of the following:

9 (a) A person who distributed, or is in the chain of distri-  
10 bution of, an illegal drug that was actually used by the individ-  
11 ual drug user.

12 (b) A person who knowingly participated in the illegal drug  
13 market if all of the following are true:

14 (i) The place of illegal drug activity by the individual  
15 drug user is within the illegal drug market target community of  
16 the defendant.

17 (ii) The defendant's participation in the illegal drug  
18 market was connected with the same type of illegal drug used by  
19 the individual drug user.

20 (iii) The defendant participated in the illegal drug market  
21 at any time during the individual drug user's period of drug  
22 use.

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

25 (a) Economic damages, including, but not limited to, the  
26 cost of treatment and rehabilitation, medical expenses, loss of  
27 economic or educational potential, loss of productivity,

1 absenteeism, support expenses, accidents or injury, and any other  
2 pecuniary loss proximately caused by the illegal drug use.

3 (b) Noneconomic damages, including, but not limited to,  
4 physical and emotional pain, suffering, physical impairment, emo-  
5 tional distress, medical anguish, disfigurement, loss of enjoy-  
6 ment, loss of companionship, services, and consortium, and other  
7 nonpecuniary losses proximately caused by the illegal drug use.

8 (c) Exemplary damages.

9 (d) Reasonable attorney fees.

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

12 Sec. 9. (1) An individual drug user may bring an action for  
13 damages caused by the use of an illegal drug if the individual  
14 has not used an illegal drug within the 6 months before bringing  
15 the action and if the individual continues to remain free of the  
16 use of an illegal drug throughout the pendency of the action.

17 (2) An individual entitled to bring an action under this  
18 section may seek damages from a person who distributed, or is in  
19 the chain of distribution of, an illegal drug that was actually  
20 used by the individual drug user.

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

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

1 (b) Reasonable attorney fees.

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

4 Sec. 10. A third party shall not pay damages awarded under  
5 this act, or provide a defense or money for a defense, on behalf  
6 of an insured under a contract of insurance or indemnification.

7 Sec. 11. A person whose participation in the illegal drug  
8 market constitutes the following level offense shall be consid-  
9 ered to have the following illegal drug market target community:

10 (a) For a level 1 offense, the county in which the  
11 defendant's place of participation is situated.

12 (b) For a level 2 offense, the target community described in  
13 subdivision (a) plus all counties with a border contiguous to  
14 that target community.

15 (c) For a level 3 offense, the target community described in  
16 subdivision (b) plus all counties with a border contiguous to  
17 that target community.

18 (d) For a level 4 offense, the state.

19 Sec. 12. (1) Individual drug users may join in 1 action  
20 under this act as plaintiffs if those individuals have at least 1  
21 place of illegal drug activity in common and if any portion of  
22 the period of illegal drug use overlaps with the period of ille-  
23 gal drug use for every other plaintiff.

24 (2) Two or more persons may be joined in 1 action under this  
25 act as defendants if those persons are liable to at least 1  
26 plaintiff.

1 (3) A plaintiff need not be interested in obtaining and a  
2 defendant need not be interested in defending against all the  
3 relief demanded. Judgment may be given for 1 or more plaintiffs  
4 according to their respective rights to relief and against 1 or  
5 more defendants according to their respective liabilities.

6 Sec. 13. (1) An action by an individual drug user is gov-  
7 erned by the principles of comparative responsibility.  
8 Comparative responsibility attributed to the plaintiff does not  
9 bar recovery but diminishes the award of compensatory damages  
10 proportionately, according to the measure of responsibility  
11 attributed to the plaintiff.

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

15 (3) Comparative responsibility shall not be attributed to a  
16 plaintiff who is not an individual drug user.

17 Sec. 14. A person subject to liability under this act has a  
18 right of action for contribution against another person subject  
19 to liability under this act. Contribution may be enforced either  
20 in the original action or by a separate action brought for that  
21 purpose. A plaintiff may seek recovery in accordance with this  
22 act and existing law against a person against whom a defendant  
23 has asserted a right of contribution.

24 Sec. 15. (1) Proof of participation in the illegal drug  
25 market in an action brought under this act shall be shown by  
26 clear and convincing evidence. Except as otherwise provided in

1 this act, other elements of the cause of action shall be shown by  
2 a preponderance of the evidence.

3       (2) A person against whom recovery is sought who has a crim-  
4 inal conviction pursuant to state drug law or the comprehensive  
5 drug abuse prevention and control act of 1970, Public Law 91-513,  
6 84 Stat. 1236, is estopped from denying participation in the  
7 illegal drug market. Such a conviction is also prima facie evi-  
8 dence of the person's participation in the illegal drug market  
9 during the 2 years preceding the date of an act giving rise to  
10 the conviction.

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

14       Sec. 16. (1) A plaintiff under this act may request an ex  
15 parte prejudgment attachment order from the court against all  
16 assets of a defendant sufficient to satisfy a potential award.  
17 If attachment is instituted, a defendant is entitled to an imme-  
18 diate hearing. Attachment may be lifted if the defendant demon-  
19 strates that the assets will be available for a potential award  
20 or if the defendant posts a bond sufficient to cover a potential  
21 award.

22       (2) A person against whom a judgment has been rendered under  
23 this act is not eligible to exempt any property, of whatever  
24 kind, from process to levy or process to execute on the  
25 judgment.

1 (3) A plaintiff shall not enforce a judgment under this act  
2 against assets seized for forfeiture by a state or federal agency  
3 except to the extent provided by existing law.

4 Sec. 17. (1) Except as otherwise provided in this section,  
5 a claim under this act shall not be brought more than 2 years  
6 after the cause of action accrues. A cause of action accrues  
7 under this act when a person who may recover has reason to know  
8 of the harm from illegal drug use that is the basis for the cause  
9 of action and has reason to know that the illegal drug use is  
10 the cause of the harm.

11 (2) For a plaintiff, the statute of limitations under this  
12 section is tolled while the individual potential plaintiff is  
13 incapacitated by the use of an illegal drug to the extent that  
14 the individual cannot reasonably be expected to seek recovery  
15 under this act or as otherwise provided by law. For a defendant,  
16 the statute of limitations under this section is tolled until 6  
17 months after the individual potential defendant is convicted of a  
18 criminal drug offense or as otherwise provided by law.

19 (3) The statute of limitations under this act for a claim  
20 based on participation in the illegal drug market that occurred  
21 prior to the effective date of this act does not begin to run  
22 until the effective date of this act.

23 Sec. 18. (1) A prosecuting attorney may represent the state  
24 or a political subdivision of the state in an action brought  
25 under this act.

26 (2) On motion by a governmental agency involved in a drug  
27 investigation or prosecution, an action brought under this act

1 shall be stayed until the completion of the criminal  
2 investigation or prosecution that gave rise to the motion for a  
3 stay of the action.