

SENATE, No. 2338

STATE OF NEW JERSEY

INTRODUCED DECEMBER 15, 1997

By Senator MATHEUSSEN

1 AN ACT concerning civil actions against drug dealers and
2 supplementing Title 2C of the New Jersey Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. This act shall be known and may be cited as the "Drug Dealer
8 Liability Act."

9

10 2. The Legislature finds and declares:

11 a. Although the criminal justice system is an important weapon in
12 the battle against controlled dangerous substances, the civil justice
13 system can and must also be used. The civil justice system can provide
14 an avenue of compensation for those who have suffered harm as a
15 result of the marketing and distribution of controlled dangerous
16 substances. The persons who have joined the marketing of controlled
17 dangerous substances should bear the cost of the harm caused by that
18 market in the community.

19 b. The threat of liability under this act serves as an additional
20 deterrent to a recognizable segment of the network for marketing
21 controlled dangerous substances. Because of this threat, a person who
22 has assets unrelated to the sale of controlled dangerous substances,
23 who markets controlled dangerous substances at the workplace, who
24 encourages friends to become users, is likely to decide that the added
25 cost of entering the market is not worth the benefit. This is
26 particularly true for a first-time, casual dealer who has not yet made
27 substantial profits.

28 c. This act is intended to provide a mechanism whereby the costs
29 of the injuries caused by illegal drug use will be borne by those who
30 benefit from illegal drug dealing.

31 d. This act imposes liability against all participants in the marketing
32 of controlled dangerous substances, including small dealers,
33 particularly those in the workplace, who are not usually the focus of
34 criminal investigations. Small dealers increase the number of users and
35 ultimately are the people who become large dealers. It is these small
36 dealers who are most likely to be deterred by the threat of liability.

1 3. As used in this act:

2 a. "Marketing of controlled dangerous substances" means the illegal
3 distributing, dispensing, or possessing with intent to distribute, a
4 specified controlled dangerous substance.

5 b. "Individual user of controlled dangerous substance" means the
6 individual whose illegal use of a specified controlled dangerous
7 substance is the basis of an action brought under this act.

8 c. "Level 1 offense" means:

9 (1) possessing with intent to distribute less than four ounces of a
10 specified controlled dangerous substance as defined in this section;

11 (2) distributing or dispensing less than one ounce of a specified
12 controlled dangerous substance as defined in this section;

13 (3) possessing with intent to distribute 25 or more but less than 50
14 marijuana plants;

15 (4) possessing with intent to distribute less than four pounds of
16 marijuana, or

17 (5) distributing or dispensing more than 28.5 grams of marijuana.

18 d. "Level 2 offense" means:

19 (1) possessing with intent to distribute four ounces or more but
20 less than eight ounces of a specified controlled dangerous substance
21 as defined in this section;

22 (2) distributing or dispensing one ounce or more but less than two
23 ounces of a specified controlled dangerous substance as defined in this
24 section;

25 (3) possessing with intent to distribute 50 or more but less than 75
26 marijuana plants;

27 (4) possessing with intent to distribute four pounds or more but
28 less than eight pounds of marijuana, or

29 (5) distributing or dispensing more than one pound but less than
30 five pounds of marijuana.

31 e. "Level 3 offense" means:

32 (1) possessing with intent to distribute eight ounces or more but
33 less than 16 ounces of a specified controlled dangerous substance as
34 defined in this section;

35 (2) distributing or dispensing two ounces or more but less than
36 four ounces of a specified controlled dangerous substance as defined
37 in this section;

38 (3) possessing with intent to distribute 75 or more but less than
39 100 marijuana plants;

40 (4) possessing with intent to distribute eight pounds or more but
41 less than 16 pounds of marijuana, or

42 (5) distributing or dispensing more than five pounds but less than
43 10 pounds of marijuana.

44 f. "Level 4 offense" means:

45 (1) possessing with intent to distribute 16 ounces or more of a
46 specified controlled dangerous substance as defined in this section;

1 (2) distributing or dispensing four ounces or more of a specified
2 controlled dangerous substance as defined in this section;

3 (3) possessing with intent to distribute 100 or more marijuana
4 plants;

5 (4) possessing with intent to distribute 16 pounds or more of
6 marijuana, or

7 (5) distributing or dispensing more than 10 pounds of marijuana.

8 g. "Participate in the illegal marketing of controlled dangerous
9 substances" means to transport, import into this State, distribute,
10 dispense, sell, possess with intent to distribute, or offer to distribute
11 a controlled dangerous substance, in violation of any of the provisions
12 of chapter 35 of Title 2C of the New Jersey Statutes. "Participate in
13 the marketing of controlled dangerous substances" does not include
14 the purchase or receipt of a controlled dangerous substance for
15 personal use only.

16 h. "Person" means any natural person, association, partnership,
17 corporation or other entity.

18 i. "Period of illegal use" means, in relation to the individual user of
19 a controlled dangerous substance, the time of the individual's first
20 illegal use of a controlled dangerous substance to the accrual of the
21 cause of action.

22 j. "Place of illegal activity" means, in relation to the individual user
23 of a specified controlled dangerous substance, each county in which
24 the individual illegally possess or uses a specified controlled dangerous
25 substance.

26 k. "Place of participation" means, in relation to a defendant in an
27 action brought under this act, each county in which the defendant
28 participates in the marketing of controlled dangerous substances.

29 l. "Specified controlled dangerous substance" means heroin,
30 cocaine, lysergic acid diethylamide, phencyclidine, methamphetamine,
31 phenyl-2-propanone (P2P) and any other controlled dangerous
32 substance specified under the provisions of N.J.S.2C:35-5 as being
33 unlawful to manufacture, distribute, or dispense, or to possess or have
34 under a person's control with intent to manufacture, distribute or
35 dispense.

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37 4. A person who knowingly participates in the illegal marketing of
38 controlled dangerous substances within this State is liable for damages,
39 as provided in this act, for injury resulting from an individual's illegal
40 use of a controlled dangerous substance.

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42 5. a. Any of the following persons may bring an action for
43 damages caused by an individual's illegal use of a controlled dangerous
44 substance:

45 (1) A parent, legal guardian, child, spouse, or sibling of the
46 controlled dangerous substance user.

1 (2) An individual who was exposed to a controlled dangerous
2 substance in utero.

3 (3) An employer of the controlled dangerous substance user.

4 (4) A medical facility, insurer, employer, or other nongovernmental
5 entity that funded a drug treatment program or employee assistance
6 program for the controlled dangerous substance user or that otherwise
7 expended money on behalf of the controlled dangerous substance user.

8 (5) A person injured as a result of the reckless or negligent actions
9 of an individual user of a controlled dangerous substance.

10 No public entity, and no public agency other than a public hospital,
11 shall have a cause of action under this act.

12 b. A person entitled to bring an action under this act may seek
13 damages against:

14 (1) A person who distributed or dispensed a controlled dangerous
15 substance to the individual user of the controlled dangerous substance;
16 or

17 (2) A person who knowingly participated in the marketing of
18 controlled dangerous substances, if all of the following apply:

19 (a) The defendant's place of participation is situated in the same
20 county as the individual user's place of illegal activity;

21 (b) The defendant participated in the marketing of the same type
22 of controlled dangerous substances as those used by the individual
23 user;

24 (c) The defendant was previously convicted of an offense in the
25 State of New Jersey for that type of controlled dangerous substance;
26 and

27 (d) The defendant participated in the marketing of controlled
28 dangerous substances at any time during the period the individual user
29 unlawfully used the controlled dangerous substance.

30 c. A person entitled to bring an action under this section may
31 recover all of the following damages:

32 (1) Economic damages, including, but not limited to, the cost of
33 treatment and rehabilitation, medical expenses, loss of economic or
34 educational potential, loss of productivity, absenteeism, support
35 expenses, accidents or injury, and any other pecuniary loss proximately
36 caused by the use of a controlled dangerous substance.

37 (2) Noneconomic damages, including but not limited to physical
38 and emotional pain, suffering, physical impairment, physical
39 impairment, emotional distress, disfigurement, loss of enjoyment, loss
40 of companionship, services and consortium, and other nonpecuniary
41 losses proximately caused by an individual's use of a controlled
42 dangerous substance.

43 (3) Punitive damages.

44 (4) Reasonable attorney fees.

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

1 6 .a. An individual user of a controlled dangerous substance may
2 bring an action for damages caused by the use of a controlled
3 dangerous substance only if all of the following conditions are met:

4 (1) The individual personally discloses to narcotics enforcement
5 authorities all of the information known to the individual regarding all
6 that individual's sources of controlled dangerous substances.

7 (2) The individual has not used a controlled dangerous substance
8 within the 30 days before filing the action.

9 (3) The individual continues to remain free of the use of an illegal
10 controlled substance throughout the pendency of the action.

11 b. An individual user entitled to bring an action under this section
12 may seek damages only from a person who transported, imported into
13 this State, distributed, dispensed, sold, possessed with intent to
14 distribute, or offered to distribute, in violation of any of the provisions
15 of chapter 35 of Title 2C of the New Jersey Statutes, the controlled
16 dangerous substance actually used by the individual user of a
17 controlled dangerous substance.

18 c. An individual user entitled to bring an action under this section
19 may recover only the following damages:

20 (1) Economic damages, including, but not limited to, the cost of
21 treatment, rehabilitation and medical expenses, loss of economic or
22 educational potential, loss of productivity, absenteeism , accidents or
23 injury, and any other pecuniary loss proximately caused by the person's
24 use of a controlled dangerous substance.

25 (2) Reasonable attorney fees.

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

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29 7. a. A third party shall not pay damages awarded under this act,
30 or provide a defense or money for a defense, on behalf of an insured
31 under a contract of insurance or indemnification.

32 b. A cause of action authorized pursuant to this act may not be
33 assigned, either expressly, by subrogation, or by any other means,
34 directly or indirectly, to any public or publicly funded agency or
35 institution.

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37 8. A person whose participation in the marketing of controlled
38 dangerous substances is grounds for liability pursuant to this act shall
39 be rebuttably presumed to be liable for damages incurred by the
40 plaintiff in the following percentages:

41 a. For a level 1 offense, 25 percent of the damages;

42 b. For a level 2 offense, 50 percent of the damages;

43 c. For a level 3 offense, 75 percent of the damages; and

44 d. For a level 4 offense, 100 percent of the damages.

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46 9. a. Two or more persons may join in one action under this act as

1 plaintiffs if their respective actions have at least one market for
2 controlled dangerous substances in common and if any portion of the
3 period of use of a controlled dangerous substance overlaps with the
4 period of use of a controlled dangerous substance for every other
5 plaintiff.

6 b. Two or more persons may be joined in one action under this act
7 as defendants if those persons are liable to at least one plaintiff.

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9 10. a. An action by an individual user of a controlled dangerous
10 substance is governed by the principles of comparative responsibility.
11 Comparative responsibility attributed to an individual user does not
12 bar the user's recovery but diminishes the award of damages
13 proportionately, according to the measure of responsibility attributed
14 to the user. The burden of proving comparative responsibility is on
15 the defendant, who shall prove comparative responsibility by clear and
16 convincing evidence.

17 b. Comparative responsibility shall not be attributed to a plaintiff
18 who is not an individual user of a controlled substance, unless that
19 plaintiff knowingly gave the individual user money for the purchase
20 of the controlled dangerous substance.

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22 11. A person subject to liability under this act has a right of action
23 for contribution against another person subject to liability under this
24 act. Contribution may be enforced either in the original action or by
25 a separate action brought for that purpose. A plaintiff may seek
26 recovery in accordance with this act and other laws against a person
27 whom a defendant has asserted a right of contribution.

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29 12. a. Proof of liability in an action brought under this act shall be
30 shown by clear and convincing evidence.

31 b. A person against whom recovery is sought who has been
32 convicted of a violation of N.J.S.2C:35-5, Manufacturing, Distributing
33 or Dispensing, or an equivalent offense under federal law or the law
34 of any other state, is estopped from denying illegal participation in the
35 market for controlled dangerous substances. If such conviction was
36 based upon the same type of controlled dangerous substance as that
37 used by the individual user, the conviction also constitutes prima facie
38 evidence of the person's participation in the marketing of controlled
39 dangerous substance user pursuant to this act.

40 c. The absence of a criminal conviction for a violation of
41 N.J.S.2C:35-5 or an equivalent offense under federal law or the law of
42 any other state does not bar recovery by a plaintiff bringing suit
43 pursuant to section 5 of this act.

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45 13. A plaintiff under this act may request an ex parte prejudgment
46 attachment order from the court against all assets of a defendant

1 sufficient to satisfy a potential award.

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3 14. a. A cause of action accrues under this act when a person has
4 reason to know of the harm from use of a controlled dangerous
5 substance that is the basis for the cause of action and has reason to
6 know that the use of a controlled dangerous substance is the cause of
7 the harm.

8 b. A claim under this act shall not be brought more than one year
9 after the defendant distributes, dispenses, or possesses with intent to
10 distribute, the controlled dangerous substance or more than one year
11 after the defendant is convicted of a crime involving controlled
12 dangerous substances, whichever is the later.

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14 15. On motion by a governmental agency involved in an
15 investigation or prosecution involving a controlled dangerous
16 substance, an action brought under this act shall be stayed until the
17 completion of any underlying criminal investigation or prosecution.

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19 16. No cause of action shall arise based on any act by a defendant
20 which occurred prior to the effective date of this act.

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22 17. This act shall take effect immediately.

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25 STATEMENT

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27 This bill provides a civil remedy for damages to persons injured as
28 a result of the illegal use of controlled dangerous substances. These
29 persons include parents, employers, insurers, government entities, and
30 others who pay for drug treatment or employee assistance programs,
31 as well as infants injured as a result of exposure to illegal drugs in
32 utero. The bill is intended to shift, to the extent possible, the cost of
33 the damage caused by the illegal market for controlled dangerous
34 substances to those persons who profit from that market.

35 The bill provides that parents, children, spouses and siblings of drug
36 users, as well as employers of drug users, medical facilities which treat
37 the drug users, and persons injured by the drug users' actions, would
38 be entitled to sue drug dealers for civil damages.

39 Drug dealers would be liable for such damages in proportion to the
40 scale of their drug dealing, large-scale drug dealers being liable for all
41 damages and smaller-scale dealers being liable for a smaller percentage
42 of damages.

43 A drug seller would be liable even if he did not actually sell the
44 drugs to the particular user, as long as he sells the same type of drug
45 within the same county and has a past criminal conviction for a drug-
46 related offense.

1 However, a drug seller without any past criminal convictions for
2 drug-related offenses would still be liable for damages in those cases
3 where he is identified as having sold drugs to the particular user whose
4 drug use is the basis for the suit.

5 The person suing would be entitled to recover economic damages
6 and noneconomic damages, such as pain, suffering, and emotional
7 distress, as well as punitive damages and attorney fees.

8 In addition, the bill provides that under certain limited
9 circumstances the drug users themselves could sue their own dealers.
10 Users would be eligible to bring suit if they first disclose to law
11 enforcement authorities all of the information they know concerning
12 their sources, if they have not used a controlled dangerous substance
13 within the 30 days before filing the action, and if they continue to
14 remain free of CDS use during the pendency of the action. Drug users
15 would only be allowed to bring suit against the actual dealer who sold
16 them the drug. Users would be entitled to receive economic
17 (compensatory) damages and attorney fees, but could not receive
18 noneconomic damages (such as damages for pain and suffering).

19 The bill bars all government entities from suit, in order to avoid
20 possible constitutional issues of double jeopardy.

21 The bill is modeled on a statute enacted in the state of California in
22 September, 1996.

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27 Establishes civil action against drug dealers.