

1 SB526
2 135884-1
3 By Senator Beason
4 RFD: Judiciary
5 First Read: 17-APR-12

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8 SYNOPSIS: This bill would create the Drug Dealer
9 Liability Act.

10 This bill would create a civil cause of
11 action against a person who knowingly participates
12 in the illegal drug market and damages another as a
13 result.

14 This bill would provide that various
15 persons, including a family member of a drug user,
16 a person who was exposed to an illegal drug in
17 utero, and an employer to recover damages against
18 the person who distributed the illegal drug or
19 certain persons who knowingly participated in the
20 illegal drug market.

21 This bill would provide for the types of
22 damages that are recovered.

23 This bill would require a drug user or other
24 person bringing a cause of action to provide
25 certain information to law enforcement.

1 This bill would provide that the principle
2 of contributory negligence applies to certain
3 persons bringing an action under this act.

4 This bill would authorize a plaintiff to
5 attach certain assets of the defendant pending the
6 outcome of the civil action against the defendant.

7 This bill would provide for a two-year
8 statute of limitations, but would toll the statute
9 of limitations under certain conditions.

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT

14
15 To create the Drug Dealer Liability Act; to provide
16 for a civil cause of action against certain persons who
17 distribute illegal drugs or who knowingly participate in the
18 illegal drug market; to authorize a defendant to claim
19 contributory negligence in certain cases; to provide for the
20 types of damages that are recoverable; to authorize certain
21 plaintiffs to attach certain assets; and to provide for a
22 statute of limitations on certain actions.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. This act may be known and may be cited as
25 the Drug Dealer Liability Act.

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

19 Section 3. As used in this act, the following words
20 have the following meanings:

21 (1) ILLEGAL DRUG. A drug whose distribution is a
22 violation of state law.

23 (2) ILLEGAL DRUG MARKET. The support system of
24 illegal drug related operations, from production to retail
25 sales, through which an illegal drug reaches the user.

1 (3) ILLEGAL DRUG MARKET TARGET COMMUNITY. The area
2 described under Section 8 for each level of offense under this
3 act.

4 (4) INDIVIDUAL DRUG USER. The individual whose
5 illegal drug use is the basis of an action brought under this
6 act.

7 (5) LEVEL 1 OFFENSE. Possession of 1/4 ounce or
8 more, but less than four ounces, or distribution of less than
9 one ounce of a specified illegal drug or possession of one
10 pound or 25 plants or more, but less than four pounds or 50
11 plants, or distribution of less than one pound of marijuana.

12 (6) LEVEL 2 OFFENSE. Possession of four ounces or
13 more, but less than eight ounces, or distribution of one ounce
14 or more, but less than two ounces, of a specified illegal drug
15 or possession of four pounds or more or 50 plants or more, but
16 less than eight pounds or 75 plants, or distribution of more
17 than one pound, but less than five pounds, of marijuana.

18 (7) LEVEL 3 OFFENSE. Possession of eight ounces or
19 more, but less than 16 ounces, or distribution of two ounces
20 or more, but less than four ounces, of a specified illegal
21 drug or possession of eight pounds or more or 75 plants or
22 more, but less than 16 pounds or 100 plants, or distribution
23 of more than five pounds, but less than 10 pounds, of
24 marijuana.

25 (8) LEVEL 4 OFFENSE. Possession of 16 ounces or more
26 or distribution of four ounces or more of a specified illegal

1 drug or possession of 16 pounds or more or 100 plants or more
2 or distribution of 10 pounds or more of marijuana.

3 (9) PARTICIPATE IN THE ILLEGAL DRUG MARKET. To
4 distribute, possess with an intent to distribute, commit an
5 act intended to facilitate the marketing or distribution of,
6 or agree to distribute, possess with an intent to distribute,
7 or commit an act intended to facilitate the marketing and
8 distribution of an illegal drug. Participate in the illegal
9 drug market does not include the purchase or receipt of an
10 illegal drug for personal use only.

11 (10) PERSON. An individual, governmental entity,
12 corporation, firm, trust, partnership, or incorporated or
13 unincorporated association, existing under or authorized by
14 the laws of this state, another state, or foreign country.

15 (11) PERIOD OF ILLEGAL DRUG USE. In relation to the
16 individual drug user, the time of the individual's first use
17 of an illegal drug to the accrual of the cause of action. The
18 period of illegal drug use is presumed to commence two years
19 before the cause of action accrues unless the defendant proves
20 otherwise by clear and convincing evidence.

21 (12) PLACE OF ILLEGAL DRUG ACTIVITY. In relation to
22 the individual drug user, each state house legislative
23 district in which the individual possesses or uses an illegal
24 drug or in which the individual resides, attends school, or is
25 employed during the period of the individual's illegal drug

1 use, unless the defendant proves otherwise by clear and
2 convincing evidence.

3 (13) PLACE OF PARTICIPATION. In relation to a
4 defendant in an action brought under this act, each state
5 house legislative district in which the person participates in
6 the illegal drug market or in which the person resides,
7 attends school, or is employed during the period of the
8 person's participation in the illegal drug market.

9 (14) SPECIFIED ILLEGAL DRUG. Cocaine, heroin, or
10 methamphetamine and any other drug the distribution of which
11 is a violation of state law.

12 Section 4. (a) A person who knowingly participates
13 in the illegal drug market within this state is liable for
14 civil damages as provided in this act. A person may recover
15 damages under this act for injury resulting from an
16 individual's use of an illegal drug.

17 (b) A law enforcement officer or agency, the state,
18 or a person acting at the direction of a law enforcement
19 officer or agency or the state is not liable for participating
20 in the illegal drug market, if the participation is in
21 furtherance of an official investigation.

22 Section 5. (a) One or more of the following persons
23 may bring an action for damages caused by an individual's use
24 of an illegal drug:

25 (1) A parent, legal guardian, child, spouse, or
26 sibling of the individual drug user.

1 (2) An individual who was exposed to an illegal drug
2 in utero.

3 (3) An employer of the individual drug user.

4 (4) A medical facility, insurer, governmental
5 entity, employer, or other entity that funds a drug treatment
6 program or employee assistance program for the individual drug
7 user or that otherwise expends money on behalf of the
8 individual drug user.

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

11 (b) A person entitled to bring an action under this
12 section may seek damages from one or more of the following:

13 (1) A person who knowingly distributed, or knowingly
14 participated in the chain of distribution of, an illegal drug
15 that was actually used by the individual drug user.

16 (2) A person who knowingly participated in the
17 illegal drug market if all of the following conditions are
18 present:

19 a. The place of illegal drug activity by the
20 individual drug user is within the illegal drug market target
21 community of the defendant.

22 b. The defendant's participation in the illegal drug
23 market is connected with the same type of illegal drug used by
24 the individual drug user.

1 c. The defendant participated in the illegal drug
2 market at any time during the individual drug user's period of
3 illegal drug use.

4 (c) A person entitled to bring an action under this
5 section may recover all of the following damages:

6 (1) Economic damages, including, but not limited to,
7 the cost of treatment and rehabilitation, medical expenses,
8 loss of economic or educational potential, loss of
9 productivity, absenteeism, support expenses, accidents or
10 injury, and any other pecuniary loss proximately caused by the
11 illegal drug use.

12 (2) Noneconomic damages, including, but not limited
13 to, physical and emotional pain, suffering, physical
14 impairment, emotional distress, mental anguish, disfigurement,
15 loss of enjoyment, loss of companionship, services and
16 consortium, and other nonpecuniary losses proximately caused
17 by an individual's use of an illegal drug.

18 (3) Punitive damages.

19 (4) Reasonable attorney fees.

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

22 Section 6. (a) An individual drug user shall not
23 bring an action for damages caused by the use of an illegal
24 drug, except as otherwise provided in this subsection. An
25 individual drug user may bring an action for damages caused by

1 the use of an illegal drug only if all of the following
2 conditions are met:

3 (1) The individual personally discloses to the
4 appropriate law enforcement authority, more than six months
5 before filing the action, all of the information known to the
6 individual regarding all that individual's sources of illegal
7 drugs.

8 (2) The individual has not used an illegal drug
9 within the six months before filing the action.

10 (3) The individual continues to remain free of the
11 use of an illegal drug throughout the pendency of the action.

12 (b) A person entitled to bring an action under this
13 section may seek damages only from a person who distributed,
14 or is in the chain of distribution of, an illegal drug that
15 was actually used by the individual drug user.

16 (c) A person entitled to bring an action under this
17 section may recover only the following damages:

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

24 (2) Reasonable attorney fees.

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

1 Section 7. A person whose participation in the
2 illegal drug market constitutes the following level offense
3 shall be considered to have the following illegal drug market
4 target community:

5 (1) For a level 1 offense, the state house
6 legislative district in which the defendant's place of
7 participation is situated.

8 (2) For a level 2 offense, the target community
9 described in subdivision (1) plus all state house legislative
10 districts with a border contiguous to that target community.

11 (3) For a level 3 offense, the target community
12 described in subdivision (2) plus all state house legislative
13 districts with a border contiguous to that target community.

14 (4) For a level 4 offense, the state.

15 Section 8. (a) Two or more persons may join in one
16 action under this act as plaintiffs if their respective
17 actions have at least one place of illegal drug activity in
18 common and if any portion of the period of illegal drug use
19 overlaps with the period of illegal drug use for every other
20 plaintiff.

21 (b) Two or more persons may be joined in one action
22 under this act as defendants if those persons are liable to at
23 least one plaintiff.

24 Section 9. (a) Notwithstanding any other provision
25 of law, an action by an individual drug user is governed by
26 the principles of contributory negligence. Contributory

1 negligence attributed to the plaintiff does not bar recovery,
2 but diminishes the award of compensatory damages
3 proportionally, according to the measure of responsibility
4 attributed to the plaintiff.

5 (b) The burden of proving the contributory
6 negligence of the plaintiff is on the defendant, which shall
7 be shown by clear and convincing evidence.

8 (c) Contributory negligence shall not be attributed
9 to a plaintiff who is not an individual drug user.

10 Section 10. A person subject to liability under this
11 act has a right of action for contributory negligence against
12 another person subject to liability under this act.

13 Contributory negligence may be enforced either by joining that
14 person in the original action or by filing a separate action.

15 Section 11. (a) A person against whom recovery is
16 sought who has a criminal conviction pursuant to state drug
17 laws or the Comprehensive Drug Abuse Prevention and Control
18 Act of 1970, Public Law 91-513, 84 Stat. 1236, codified at 21
19 U.S.C. § 801 et seq., is estopped from denying participation
20 in the illegal drug market. Such a conviction is also prima
21 facie evidence of the person's participation in the illegal
22 drug market during the two years preceding the date of an act
23 giving rise to a conviction.

24 (b) The absence of a criminal drug conviction of a
25 person against whom recovery is sought does not bar an action
26 against that person.

1 Section 12. (a) A plaintiff under this act, subject
2 to subsection (c), may request an ex parte prejudgment
3 attachment order from the court against all assets of a
4 defendant sufficient to satisfy a potential award. If
5 attachment is instituted, a defendant is entitled to an
6 immediate hearing. Attachment may be lifted if the defendant
7 demonstrates that the assets will be available for a potential
8 award or if the defendant posts a bond sufficient to cover a
9 potential award.

10 (b) A person against whom a judgment has been
11 rendered under this act is not eligible to exempt any
12 property, of whatever kind, from process to levy or process to
13 execute on the judgment except as provided by federal law or
14 the Constitution of Alabama of 1901.

15 (c) Any assets sought to satisfy a judgment under
16 this act that are named in a forfeiture action or have been
17 seized for forfeiture by any state or federal agency may not
18 be used to satisfy a judgment unless the assets have been
19 released following the conclusion of the forfeiture action or
20 released by the agency that seized the assets.

21 Section 13. (a) Except as otherwise provided in this
22 section, a claim under this act shall not be brought more than
23 two years after the cause of action accrues. A cause of action
24 accrues under this act when a person who may recover has
25 reason to know of the harm from illegal drug use that is the

1 basis for the cause of action and has reason to know that the
2 illegal drug use is the cause of the harm.

3 (b) For a plaintiff, the statute of limitations
4 under this section is tolled while the individual potential
5 plaintiff is incapacitated by the use of an illegal drug to
6 the extent that the individual cannot reasonably be expected
7 to seek recovery under this act or as otherwise provided by
8 law. For a defendant, the statute of limitations under this
9 section is tolled until six months after the individual
10 potential defendant is convicted of a criminal drug offense or
11 as otherwise provided by law.

12 (c) The statute of limitations under this act for a
13 claim based on participation in the illegal drug market that
14 occurred prior to the effective date of this act does not
15 begin to run until the effective date of this act.

16 Section 14. (a) A prosecuting attorney may represent
17 the state or a political subdivision of the state in an action
18 brought under this act.

19 (b) On motion by a governmental agency involved in a
20 drug investigation or prosecution, an action brought under
21 this act shall be stayed until the completion of the criminal
22 investigation or prosecution that gave rise to the motion for
23 a stay of the action.

24 Section 15. This act is not intended to alter the
25 law regarding intra-family tort immunity.

1 Section 16. All laws or parts of laws which conflict
2 with this act are repealed.

3 Section 17. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.