

## CHAPTER 114

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

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

C.2C:35B-1 Short title.

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

C.2C:35B-2 Findings, declarations regarding civil actions against drug dealers.

2. The Legislature finds and declares:

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

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

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

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

C.2C:35B-3 Definitions regarding civil actions against drug dealers.

3. As used in this act:

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

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

- c. "Level 1 offense" means:

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

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

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

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

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

- d. "Level 2 offense" means:

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

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

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

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

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

- e. "Level 3 offense" means:

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

- (2) distributing or dispensing two ounces or more but less than four ounces of a specified

controlled dangerous substance as defined in this section;

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

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

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

f. "Level 4 offense" means:

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

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

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

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

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

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

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

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

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

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

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

C.2C:35B-4 Liability of illegal marketer of controlled dangerous substances.

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

C.2C:35B-5 Action for damages; plaintiffs, offenses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Punitive damages.

(4) Reasonable attorney fees.

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

C.2C:35B-6 Controlled dangerous substance individual user; conditions to bring an action.

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

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

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

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

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

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

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

(2) Reasonable attorney fees.

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

C.2C:35B-7 No third party damage payments; assignment of cause of action restricted.

7. a. 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.

b. A cause of action authorized pursuant to this act may not be assigned, either expressly,

by subrogation, or by any other means, directly or indirectly, to any public or publicly funded agency or institution.

C.2C:35B-8 Damage table.

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

- a. For a level 1 offense, 25 percent of the damages;
- b. For a level 2 offense, 50 percent of the damages;
- c. For a level 3 offense, 75 percent of the damages; and
- d. For a level 4 offense, 100 percent of the damages.

C.2C:35B-9 Joint actions.

9. a. Two or more persons may join in one action under this act as plaintiffs if their respective actions have at least one market for controlled dangerous substances in common and if any portion of the period of use of a controlled dangerous substance overlaps with the period of use of a controlled dangerous substance for every other plaintiff.

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

C.2C:35B-10 Comparative responsibility governing action.

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

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

C.2C:35B-11 Right of action for contribution.

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

C.2C:35B-12 Proof of liability; prima facie evidence.

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

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

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

C.2C:35B-13 Ex parte prejudgment attachment order.

13. A plaintiff under this act may request an ex parte prejudgment attachment order from the court against all assets of a defendant sufficient to satisfy a potential award. Any claim of the State authorized pursuant to chapter 35A and 64 of Title 2C of the New Jersey Statutes shall have priority over an order issued pursuant to this section.

C.2C:35B-14 Cause of action, accrual; statute of limitations on claim.

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

b. Except as provided in subsection a. of this section, a claim under this act shall not be brought more than one year after the defendant distributes, dispenses, or possesses with intent to distribute, the controlled dangerous substance or more than one year after the defendant is convicted of a crime involving controlled dangerous substances, whichever is the later.

C.2C:35B-15 Stay of action pending criminal action.

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

C.2C:35B-16 Satisfaction of judgment after other fines, penalties, etc.

16. Any judgment resulting from a cause of action brought pursuant to this act shall be satisfied only after the satisfaction of any assessment, fine, fee, penalty or restitution imposed by law and enumerated in section 13 of P.L. 1991, c.329 (2C:46-4.1).

C.2C:35B-17 Nonapplicability of act.

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

18. This act shall take effect immediately.

Approved June 26, 2001.