

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**  
4 **By: Senator Walters**

# A Bill

**ACT 896 OF 1995**  
**SENATE BILL 742**

## For An Act To Be Entitled

"AN ACT TO ESTABLISH THE DRUG DEALER LIABILITY ACT; AND  
FOR OTHER PURPOSES."

### Subtitle

"DRUG DEALER LIABILITY ACT"

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

SECTION 2. As used in this act:

(1) "Illegal drug" means a drug whose distribution is a violation of the *Uniform Controlled Substances Act*;

(2) "Illegal drug market" means the support system of illegal drug-related operations, from production to retail sales, through which an illegal drug reaches the user;

(3) "Illegal drug market target community" is the area described under Section 7 of this act;

(4) "Individual drug user" means the individual whose illegal drug use is the basis of an action brought under this act;

(5) "Level one offense" means possession of one quarter (1/4) ounce or more, but less than four (4) ounces, or distribution of less than one (1) ounce of a specified illegal drug, or possession of one (1) pound or twenty-five plants or more, but less than four pounds or fifty plants, or distribution of less than one (1) pound of marijuana;

(6) "Level two offense" means possession of four (4) ounces or more, but less than eight (8) ounces, or distribution of one (1) ounce or more, but less than two (2) ounces, of a specified illegal drug, or possession of four

1 (4) pounds or more or fifty plants or more, but less than eight (8) pounds or  
2 seventy-five plants, or distribution of more than one (1) pound but less than  
3 ten (10) pounds of marijuana;

4 (7) "Level three offense" means possession of eight (8) ounces or more,  
5 but less than sixteen (16) ounces, or distribution of two (2) ounces or more,  
6 but less than four (4) ounces, of a specified illegal drug or possession of  
7 eight (8) pounds or more or seventy-five plants or more, but less than sixteen  
8 (16) pounds or one hundred plants, or distribution of more than five (5)  
9 pounds but less than ten (10) pounds of marijuana;

10 (8) "Level four offense" means possession of sixteen (16) ounces or  
11 more or distribution of four (4) ounces or more of a specified illegal drug or  
12 possession of sixteen (16) pounds or more or one hundred plants or more or  
13 distribution of ten (10) pounds or more of marijuana;

14 (9) "Participate in the illegal drug market" means to distribute,  
15 possess with an intent to distribute, commit an act intended to facilitate the  
16 marketing or distribution of, or agree to distribute, possess with an intent  
17 to distribute, or commit an act intended to facilitate the marketing and  
18 distribution of an illegal drug. "Participate in the illegal drug market"  
19 does not include the purchase or receipt of an illegal drug for personal use  
20 only;

21 (10) "Person" means an individual, a governmental entity, corporation,  
22 firm, trust, partnership, or incorporated or unincorporated association,  
23 existing under or authorized by the laws of this state, another state, or a  
24 foreign country;

25 (11) "Period of illegal drug use" means, in relation to the individual  
26 drug user, the time of first use by an individual of an illegal drug to the  
27 accrual of the cause of action. The period of illegal drug use is presumed to  
28 commence two (2) years before the cause of action accrues unless the defendant  
29 proves otherwise by clear and convincing evidence;

30 (12) "Place of illegal drug activity" means, in relation to the  
31 individual drug user, each county in which the individual possesses or uses an  
32 illegal drug or in which the individual resides, attends school, or is  
33 employed during the period of the illegal drug use of the individual, unless  
34 the defendant proves otherwise by clear and convincing evidence;

35 (13) "Place of participation" means, in relation to a defendant in an

1 action brought under the Drug Dealer Liability Act, each county in which the  
2 person participates in the illegal drug market or in which the person resides,  
3 attends school, or is employed during the period of the participation in the  
4 illegal drug market by the person; and

5 (14) "Specified illegal drug" means cocaine, heroin, or methamphetamine  
6 and any other drug the distribution of which is a violation of state law."

7

8 SECTION 3. (a) A person who knowingly participates in the illegal drug  
9 market is liable for civil damages as provided for in this act. A person may  
10 recover damages under this act for injury resulting from use of an illegal  
11 drug by that person.

12 (b) A law enforcement officer or agency, the state, or a person acting  
13 at the direction of a law enforcement officer or agency of the state is not  
14 liable for participating in the illegal drug market, if the participation is  
15 in furtherance of an official investigation.

16

17 SECTION 4. (a) One or more of the following persons may bring an  
18 action in Circuit Court for damages caused by use of an illegal drug by an  
19 individual:

20 (1) A parent, legal guardian, child, spouse, or sibling of the  
21 individual drug user;

22 (2) An individual who was exposed to an illegal drug in utero;

23 (3) An employer of the individual drug user; and

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

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

30 (1) A person who knowingly distributed, or knowingly participated  
31 in the chain of distribution of, an illegal drug that was actually used by the  
32 individual drug user;

33 (2) A person who knowingly participated in the illegal drug  
34 market if:

35 (A) the place of the illegal drug activity by the

1 individual drug user is within the illegal drug market target community of the  
2 defendant;

3 (B) the participation of the defendant in the illegal drug  
4 market was connected with the same type of illegal drug used by the individual  
5 user; and

6 (C) the defendant participated in the illegal drug market  
7 at any time during the illegal drug use of the individual user.

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

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

15 (2) Non-economic damages, including, but not limited to, physical  
16 and emotional pain, suffering, physical impairment, emotional distress, mental  
17 anguish, disfigurement, loss of enjoyment, loss of companionship, services and  
18 consortium, and other nonpecuniary losses proximately caused by an  
19 individual's use of an illegal drug;

20 (3) Exemplary damages;

21 (4) Reasonable attorney fees; and

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

24

25 SECTION 5. (a) An individual drug user shall not bring an action for  
26 damages caused by the use of an illegal drug, except as otherwise provided in  
27 this subsection. An individual drug user may bring an action for damages  
28 caused by the use of an illegal drug only if all of the following conditions  
29 are met:

30 (1) The individual personally discloses to narcotics enforcement  
31 authorities, more than six (6) months before filing the action, all the  
32 information known to the individual regarding their source of illegal drugs;

33 (2) The individual has not used an illegal drug within the six  
34 (6) months before filing the action; and

35 (3) The individual continues to remain free of the use of an

1 illegal drug throughout the pendency of the action.

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

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

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

11 (2) Reasonable attorney fees; and

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

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15 *SECTION 6. A third party including an insurance company shall not be*  
16 *required to pay damages awarded under this act, nor shall any person be*  
17 *vicariously liable for the act of another, nor shall a third party be made a*  
18 *party to any action brought under this act.*

19

20 *SECTION 7. A person whose participation in the illegal drug market*  
21 *constitutes the following level offense shall be considered to have the*  
22 *following illegal drug market target community:*

23 (1) For a level one offense, the county in which the place of  
24 participation of the defendant is situated;

25 (2) For a level two offense, the target community described in  
26 paragraph one (1) of this section along with all counties with a border  
27 contiguous to that target community;

28 (3) For a level three offense, the target community described in  
29 paragraph two (2) of this section plus all counties with a border contiguous  
30 to that target community; and

31 (4) For a level four (4) offense, *anywhere.*

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33 *SECTION 8. (a) Two or more persons may join in one action under this*  
34 *act as plaintiffs in their respective actions have at least one place of*  
35 *illegal drug activity in common and if any portion of the period of illegal*

1 drug use overlaps with the period of illegal drug use for every other  
2 plaintiff.

3 (b) Two or more persons may be joined in one action under this act as  
4 defendants if those persons are liable to at least one (1) plaintiff.

5 (c) A plaintiff need not be interested in obtaining and a defendant  
6 need not be interested in defending against all the relief demanded. Judgment  
7 may be given for one (1) or more plaintiffs according to their respective  
8 liabilities.

9

10 SECTION 9. A person subject to liability under this act has a right of  
11 action for contribution against another person subject to liability under the  
12 Drug Dealer Liability Act. Contribution may be enforced either in the  
13 original action or by a separate action brought for that purpose. A plaintiff  
14 may seek recovery in accordance with this act and existing law against a  
15 person whom a defendant has asserted a right of contribution.

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17 SECTION 10. (a) Proof of participation in the illegal drug market in  
18 an action brought under the Drug Dealer Liability Act shall be shown by clear  
19 and convincing evidence. Except as otherwise provided in this act, other  
20 elements of the cause of action shall be shown by a preponderance of the  
21 evidence.

22 (b) A person against whom recovery is sought who has a criminal  
23 conviction pursuant to state drug laws or the Comprehensive Drug Abuse  
24 Prevention and Control Act of 1970 (Public Law 91-513, 84 Stat. 1236, codified  
25 at 21 U.S.C., Section 801 et seq.) is estopped from denying participation in  
26 the illegal drug market. Such a conviction is also prima facie evidence of  
27 the participation of the person in the illegal drug market during the two (2)  
28 years preceding the date of an act giving rise to a conviction.

29 (c) The absence of criminal drug conviction of a person against whom  
30 recovery is sought does not bar an action against that person.

31

32 SECTION 11. (a) A plaintiff under the Drug Dealer Liability Act,  
33 subject to Subsection (c) of this section, may request an ex parte prejudgment  
34 attachment order from the court against all assets of a defendant sufficient  
35 to satisfy a potential award. If attachment is instituted, a defendant is

1 entitled to an immediate hearing. Attachment may be lifted if the defendant  
2 demonstrates that the assets will be available for a potential award or if the  
3 defendant posts a bond sufficient to cover a potential award.

4 (b) A person against whom a judgment has been rendered under the Drug  
5 Dealer Liability Act is not eligible to exempt any property, of whatever kind,  
6 from process to levy or process to execute on the judgment.

7 (c) Any assets sought to satisfy a judgment under the Drug Dealer  
8 Liability Act that are named in a forfeiture section or have been seized for  
9 forfeiture by any state or federal agency may not be used to satisfy a  
10 judgment unless and until the assets have been released following the  
11 conclusion of the forfeiture action or released by the agency that seized the  
12 assets.

13

14 SECTION 12. (a) Except as otherwise provided in this section, a claim  
15 under the Drug Dealer Liability Act shall not be brought more than *three (3)*  
16 years after the cause of action accrues. A cause of action accrues under the  
17 Drug Dealer Liability Act when a person who may recover has reason to know of  
18 the harm from illegal drug use that is the basis for the cause of action and  
19 has reason to know that the illegal drug use is the cause of the harm.

20 (b) For a plaintiff, the statute of limitations under this section is  
21 tolled when the individual potential plaintiff is incapacitated by the use of  
22 an illegal drug to the extent that the individual cannot reasonably be  
23 expected to seek recovery under this act or as otherwise provided for by law.  
24 For a defendant, the statute of limitations under this section is tolled  
25 until six (6) months after the individual potential defendant is convicted of  
26 a criminal drug offense as otherwise provided for by law.

27 (c) The statute of limitations under the Drug Dealer Liability Act for  
28 a claim based on participation in the illegal drug market that occurred prior  
29 to the effective date of the Drug Dealer Liability Act does not begin to run  
30 until the effective date of this act.

31

32 SECTION 13. (a) The Attorney General may represent the state or a  
33 political subdivision of the state in an action under this act.

34 (b) On motion by a governmental agency involved in a drug investigation  
35 or prosecution, an action brought under this act shall be stayed until the

1 completion of the criminal investigation or prosecution that gave rise to the  
2 motion for the stay of the action.

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4 SECTION 14. All provisions of this act of a general and permanent  
5 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
6 Code Revision Commission shall incorporate the same in the Code.

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8 SECTION 15. If any provision of this act or the application thereof to  
9 any person or circumstance is held invalid, such invalidity shall not affect  
10 other provisions or applications of the act which can be given effect without  
11 the invalid provision or application, and to this end the provisions of this  
12 act are declared to be severable.

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14 SECTION 16. All laws and parts of laws in conflict with this act are  
15 hereby repealed.

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17 /s/Walters

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19 APPROVED: 4-4-95

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