

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

A Bill

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

1 less than two (2) ounces, of a specified illegal drug, or possession of four
2 (4) pounds or more or fifty plants or more, but less than eight (8) pounds or
3 seventy-five plants, or distribution of more than one (1) pound but less than
4 ten (10) pounds of marijuana;

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

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

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

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

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

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

1 (13) "Place of participation" means, in relation to a defendant in an
2 action brought under the Drug Dealer Liability Act, each county in which the
3 person participates in the illegal drug market or in which the person
4 resides, attends school, or is employed during the period of the
5 participation in the illegal drug market by the person; and

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

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

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

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

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

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

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

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

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

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

35 (2) A person who knowingly participated in the illegal drug

1 market if:

2 (A) the place of the illegal drug activity by the
3 individual drug user is within the illegal drug market target community of
4 the defendant;

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

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

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

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

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

22 (3) Exemplary damages;

23 (4) Reasonable attorney fees; and

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

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

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

35 (2) The individual has not used an illegal drug within the six

1 (6) months before filing the action; and

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

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

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

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

15 (2) Reasonable attorney fees; and

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

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

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

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

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

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

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

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2 SECTION 8. (a) Two or more persons may join in one action under this
3 act as plaintiffs in their respective actions have at least one place of
4 illegal drug activity in common and if any portion of the period of illegal
5 drug use overlaps with the period of illegal drug use for every other
6 plaintiff.

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

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

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

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

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

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

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2 SECTION 11. (a) A plaintiff under the Drug Dealer Liability Act,
3 subject to Subsection (c) of this section, may request an ex parte
4 prejudgment attachment order from the court against all assets of a defendant
5 sufficient to satisfy a potential award. If attachment is instituted, a
6 defendant is entitled to an immediate hearing. Attachment may be lifted if
7 the defendant demonstrates that the assets will be available for a potential
8 award or if the defendant posts a bond sufficient to cover a potential award.

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

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

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

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

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

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

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

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

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

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

/s/Walters

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