

**Representative Christopher N. Herrod** proposes the following substitute bill:

**DEATH CAUSED BY ILLEGAL DRUGS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Christopher N. Herrod**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill sets forth a civil cause of action against persons who provide illegal controlled substances that cause or contribute to the death of a person.

**Highlighted Provisions:**

This bill:

- ▶ provides that the estate of a person who died due to the use of an illegal controlled substance may bring a civil action against any person who illegally provided or administered the substance, and against any person who illegally provided the substance to any person in the direct chain of supply of providing the substance to the person who provided the substance to the deceased person;

- ▶ provides an exemption in these actions regarding certain limitations on punitive damages;

- ▶ provides that this bill does not create or impose liability on the parent or guardian of a minor who acts in violation of the provisions of this bill unless the parent or guardian acts in violation of this bill;

- ▶ provides for treble damages; and

- ▶ provides that the burden is on the party bringing the action to establish the causal connection between the illegal controlled substance and the death.



26 **Monies Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **78B-8-201**, as renumbered and amended by Laws of Utah 2008, Chapter 3

33 ENACTS:

34 **78B-3-801**, Utah Code Annotated 1953



36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **78B-3-801** is enacted to read:

38 **78B-3-801. Cause of action for death caused by use or ingestion of illegal**  
39 **controlled substances -- Damages.**

40 (1) As used in this section, "substance" means any illegal controlled substance under  
41 Title 58, Chapter 37, Utah Controlled Substance Act.

42 (2) The estate of a person whose death was caused in whole or in part by ingestion or  
43 other exposure to any illegal controlled substance may bring a civil action for treble damages,  
44 and also punitive damages, against any person:

45 (a) who unlawfully provided to or administered to the deceased person any substance  
46 that caused or contributed to the death of the deceased person; or

47 (b) who provided any substance to any person in the chain of transfer of the substance  
48 that connects directly to the person who subsequently provided or administered the illegal  
49 controlled substance to the deceased person under Subsection (2)(a).

50 (3) The burden is on the estate to prove the causal connection between the death, any  
51 substances provided or administered to the deceased person, and the defendant.

52 (4) This section does not establish liability of or create a cause of action regarding a  
53 parent or guardian of a person younger than 18 years of age who acts in violation of this  
54 section, unless the parent or guardian acts in violation of this section.

55 Section 2. Section **78B-8-201** is amended to read:

56 **78B-8-201. Basis for punitive damages awards -- Section inapplicable to DUI**

57 cases -- Division of award with state.

58 (1) (a) Except as otherwise provided by statute, punitive damages may be awarded only  
59 if compensatory or general damages are awarded and it is established by clear and convincing  
60 evidence that the acts or omissions of the tortfeasor are the result of willful and malicious or  
61 intentionally fraudulent conduct, or conduct that manifests a knowing and reckless indifference  
62 toward, and a disregard of, the rights of others.

63 (b) The limitations, standards of evidence, and standards of conduct of Subsection  
64 (1)(a) do not apply to any claim for punitive damages arising out of the tortfeasor's:

65 (i) operation of a motor vehicle or motorboat while voluntarily intoxicated or under the  
66 influence of any drug or combination of alcohol and drugs as prohibited by Section

67 41-6a-502[-];

68 (ii) causing death of another person by providing or administering an illegal controlled  
69 substance to the person under Section 78-16a-1; or

70 (iii) providing an illegal controlled substance to any person in the chain of transfer that  
71 connects directly to a person who subsequently provided or administered the substance to a  
72 person whose death was caused in whole or in part by the substance.

73 (c) The award of a penalty under Section 78B-3-108 regarding shoplifting is not  
74 subject to the prior award of compensatory or general damages under Subsection (1)(a) whether  
75 or not restitution has been paid to the merchant prior to or as a part of a civil action under  
76 Section 78B-3-108.

77 (2) Evidence of a party's wealth or financial condition shall be admissible only after a  
78 finding of liability for punitive damages has been made.

79 (a) Discovery concerning a party's wealth or financial condition may only be allowed  
80 after the party seeking punitive damages has established a prima facie case on the record that  
81 an award of punitive damages is reasonably likely against the party about whom discovery is  
82 sought and, if disputed, the court is satisfied that the discovery is not sought for the purpose of  
83 harassment.

84 (b) Subsection (2)(a) does not apply to any claim for punitive damages arising out of  
85 the tortfeasor's:

86 (i) operation of a motor vehicle or motorboat while voluntarily intoxicated or under the  
87 influence of any drug or combination of alcohol and drugs as prohibited by Section

88 41-6a-502[-];

89 (ii) causing death of another person by providing or administering an illegal controlled  
90 substance to the person under Section 78-16a-1; or

91 (iii) providing an illegal controlled substance to any person in the chain of transfer that  
92 connects directly to a person who subsequently provided or administered the substance to a  
93 person whose death was caused in whole or in part by the substance.

94 (3) (a) In any case where punitive damages are awarded, the judgment shall provide  
95 that 50% of the amount of the punitive damages in excess of \$20,000 shall, after an allowable  
96 deduction for the payment of attorney fees and costs, be remitted by the judgment debtor to the  
97 state treasurer for deposit into the General Fund.

98 (b) For the purposes of this Subsection (3), an "allowable deduction for the payment of  
99 attorney fees and costs" shall equal the amount of actual and reasonable attorney fees and costs  
100 incurred by the judgment creditor minus the amount of any separate judgment awarding  
101 attorney fees and costs to the judgment creditor.

102 (c) The state shall have all rights due a judgment creditor until the judgment is  
103 satisfied, and stand on equal footing with the judgment creditor of the original case in securing  
104 a recovery.

105 (d) Unless all affected parties, including the state, expressly agree otherwise or the  
106 application is contrary to the terms of the judgment, any payment on the judgment by or on  
107 behalf of any judgment debtor, whether voluntary or by execution or otherwise, shall be  
108 applied in the following order:

109 (i) compensatory damages, and any applicable attorney fees and costs;

110 (ii) the initial \$20,000 punitive damages; and

111 (iii) the balance of the punitive damages.

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**H.B. 187 1st Sub. (Buff) - Death Caused by Illegal Drugs**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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