

## Chapter 37e Drug Dealer's Liability Act

### 58-37e-1 Title.

This chapter is known as the "Drug Dealer's Liability Act."

Enacted by Chapter 349, 1997 General Session

### 58-37e-2 Definitions.

As used in this chapter:

- (1) "Illegal drug" means a drug or controlled substance whose distribution is a violation of state law.
- (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 in Section 58-37e-7.
- (4) "Individual drug user" means the individual whose illegal drug use is the basis of an action brought under this chapter.
- (5) "Level 1 offense" means possession of 16 ounces or more or distribution of four ounces or more of a mixture containing a specified illegal drug or possession of 16 pounds or more or 100 plants or more or distribution of 10 pounds or more of marijuana.
- (6) "Level 2 offense" means possession of eight ounces or more, but less than 16 ounces, or distribution of two ounces or more, but less than four ounces, of a mixture containing a specified illegal drug or possession of eight pounds or more or 75 plants or more, but less than 16 pounds or 100 plants, or distribution of more than five pounds, but less than 10 pounds of marijuana.
- (7) "Level 3 offense" means possession of four ounces or more, but less than eight ounces, or distribution of one ounce or more, but less than two ounces, of a mixture containing a specified illegal drug or possession of four pounds or more or 50 plants or more, but less than eight pounds or 75 plants, or distribution of more than one pound, but less than five pounds of marijuana.
- (8) "Level 4 offense" means possession of 1/4 ounce or more, but less than four ounces, or distribution of less than one ounce of a mixture containing a specified illegal drug or possession of one pound or more or 25 plants or more, but less than four pounds or 50 plants, or distribution of less than one pound of marijuana.
- (9) "Participate in the illegal drug market" means to distribute, possess with an intent to distribute, commit an act intended to facilitate the marketing or distribution of, or agree to distribute, possess with an intent to distribute, or commit an act intended to facilitate the marketing and distribution of an illegal drug. "Participate in the illegal drug market" does not include the purchase or receipt of an illegal drug for personal use only.
- (10) "Period of illegal drug use" means, in relation to the individual drug user, the time of the individual's first use of an illegal drug to the accrual of the cause of the action. The period of illegal drug use is presumed to commence two years before the cause of action accrues unless the defendant proves otherwise by clear and convincing evidence.
- (11) "Person" means an individual, governmental entity, corporation, firm, trust, partnership, or incorporated or unincorporated association, existing under or authorized by the laws of this state, another state, or foreign country.
- (12) "Place of illegal drug activity" means, in relation to the individual drug user, each county in which the individual possesses or uses an illegal drug or in which the individual resides,

attends school, or is employed during the period of the individual's illegal drug use, unless the defendant proves otherwise by clear and convincing evidence.

- (13) "Place of participation" means, in relation to a defendant in an action brought under this chapter, each county in which the person participates in the illegal drug market or in which the person resides, attends school, or is employed during the period of the person's participation in the illegal drug market.
- (14) "Specified illegal drug" means cocaine, heroin, or methamphetamine and any other controlled substance the distribution of which is a violation of state law.

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**58-37e-3 Liability for participation in the illegal drug market.**

- (1) A person who knowingly participates in the illegal drug market within this state is liable for civil damages as provided in this chapter. A person may recover damages under this chapter for injury resulting from an individual's use of an illegal drug.
- (2) A law enforcement officer or agency, the state, or a person acting at the direction of a law enforcement officer or agency or the state is not liable for participating in the illegal drug market, if the participation is in furtherance of an official investigation.

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**58-37e-4 Recovery of damages.**

- (1) One or more of the following persons may bring an action for damages caused by an individual's use of an illegal drug:
  - (a) a parent, legal guardian, child, spouse, or sibling of the individual drug user;
  - (b) an individual who was exposed to an illegal drug in utero;
  - (c) an employer of the individual drug user;
  - (d) a medical facility, insurer, governmental entity, employer, or other entity that funds a drug treatment program or employee assistance program for the individual drug user or that otherwise expended money on behalf of the individual drug user; or
  - (e) a person injured as a result of the willful, reckless, or negligent actions of an individual drug user.
- (2) A person entitled to bring an action under this section may seek damages from one or more of the following:
  - (a) a person who knowingly distributed, or knowingly participated in the chain of distribution of, an illegal drug that was actually used by the individual drug user;
  - (b) a person who knowingly participated in the illegal drug market if:
    - (i) the place of illegal drug activity by the individual drug user is within the illegal drug market target community of the defendant;
    - (ii) the defendant's participation in the illegal drug market was connected with the same type of illegal drug used by the individual drug user; and
    - (iii) the defendant participated in the illegal drug market at any time during the individual drug user's period of illegal drug use.
- (3) A person entitled to bring an action under this section may recover all of the following damages:
  - (a) economic damages, including 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 illegal drug use;

- (b) noneconomic damages, including physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services and consortium, and other nonpecuniary losses proximately caused by an individual's use of an illegal drug;
- (c) exemplary damages;
- (d) reasonable attorney's fees; and
- (e) costs of suit, including reasonable expenses for expert testimony.

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**58-37e-5 Limited recovery of damages.**

- (1) An individual drug user may not bring an action for damages caused by the use of an illegal drug, except as otherwise provided in this section. An individual drug user may bring an action for damages caused by the use of an illegal drug only if all of the following conditions are met:
  - (a) the individual personally discloses to narcotics enforcement authorities, more than six months before filing the action, all of the information known to the individual regarding all that individual's sources of illegal drugs;
  - (b) the individual has not used an illegal drug within the six months before filing the action; and
  - (c) the individual continues to remain free of the use of an illegal drug throughout the pendency of the action.
- (2) A person entitled to bring an action under this section may seek damages only from a person who distributed, or is in the chain of distribution of, an illegal drug that was actually used by the individual drug user.
- (3) A person entitled to bring an action under this section may recover only the following damages:
  - (a) economic damages, including 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 illegal drug use;
  - (b) reasonable attorney's fees; and
  - (c) costs of suit, including reasonable expenses for expert testimony.

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**58-37e-6 Third party cases.**

A third party may not pay damages awarded under this chapter, or provide a defense or money for a defense, on behalf of an insured under a contract of insurance or indemnification.

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**58-37e-7 Illegal drug market target community.**

A person whose participation in the illegal drug market constitutes the following level offense shall be considered to have the following illegal drug market target community:

- (1) Level 4: the county in which the defendant's place of participation is situated;
- (2) Level 3: the target community described in Subsection (1) plus all counties with a border contiguous to that target community;
- (3) Level 2: the target community described in Subsection (2) plus all counties with a border contiguous to that target community;
- (4) Level 1: the state.

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**58-37e-8 Joinder of parties.**

- (1) Two or more persons may join in one action under this chapter as plaintiffs if their respective actions have at least one place of illegal drug activity in common and if any portion of the period of illegal drug use overlaps with the period of illegal drug use for every other plaintiff.
- (2) Two or more persons may be joined in one action under this chapter as defendants if those persons are liable to at least one plaintiff.
- (3) A plaintiff need not be interested in obtaining and a defendant need not be interested in defending against all the relief demanded. Judgment may be given for one or more plaintiffs according to their respective rights to relief and against one or more defendants according to their respective liabilities.

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**58-37e-9 Comparative responsibility.**

- (1) An action by an individual drug user is governed by the principles of comparative responsibility. Comparative responsibility attributed to the plaintiff does not bar recovery but diminishes the award of compensatory damages proportionally, according to the measure of responsibility attributed to the plaintiff.
- (2) The burden of proving the comparative responsibility of the plaintiff is on the defendant, which shall be shown by clear and convincing evidence.
- (3) Comparative responsibility may not be applied in an action brought by a third party who was not an individual drug user.

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**58-37e-10 Contribution among and recovery from multiple defendants.**

A person subject to liability under this chapter has a right of action for contribution against another person subject to liability under this chapter. 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 chapter and existing law against a person whom a defendant has asserted a right of contribution.

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**58-37e-11 Standard of proof -- Effect of criminal drug conviction.**

- (1) Proof of participation in the illegal drug market in an action brought under this chapter shall be shown by clear and convincing evidence. Except as otherwise provided in this chapter, other elements of the cause of action shall be shown by a preponderance of the evidence.
- (2) A person against whom recovery is sought who has a criminal conviction pursuant to state drug laws or the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. 91-513, 84 Stat. 1236, codified at 21 U.S.C. Sec. 801 et seq., is estopped from denying participation in the illegal drug market. A conviction is also prima facie evidence of the person's participation in the illegal drug market during the two years preceding the date of an act giving rise to a conviction.
- (3) The absence of a criminal drug conviction of a person against whom recovery is sought does not bar an action against that person.

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**58-37e-12 Prejudgment attachment and execution on judgments.**

- (1) A plaintiff under this chapter, subject to Subsection (3), may request an ex parte prejudgment writ of attachment from the court pursuant to Utah Rules of Civil Procedure, Rule 64A against all assets of a defendant sufficient to satisfy a potential award. If attachment is instituted, a defendant is entitled to an immediate hearing. Attachment may be lifted if the defendant demonstrates that the assets will be available for a potential award or if the defendant posts a bond sufficient to cover a potential award.
- (2) A person against whom a judgment has been rendered under this chapter is not eligible to exempt any property, of whatever kind, from process to levy or process to execute on the judgment, unless the property is exempt by operation of law.
- (3) Any assets sought to satisfy a judgment under this chapter that are named in a forfeiture action or have been seized for forfeiture by any state or federal agency may not be used to satisfy a judgment unless and until the assets have been released following the conclusion of the forfeiture action or released by the agency that seized the assets.

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**58-37e-13 Statute of limitations.**

- (1) Except as otherwise provided in this section, a claim under this chapter may not be brought more than two years after the cause of action accrues. A cause of action accrues under this chapter when a person who may recover has reason to know of the harm from illegal drug use that is the basis for the cause of action and has reason to know that the illegal drug use is the cause of the harm.
- (2)
  - (a) For a plaintiff, the statute of limitations under this section is tolled while the individual potential plaintiff is incapacitated by the use of an illegal drug to the extent that the individual cannot reasonably be expected to seek recovery under this chapter or as otherwise provided by law.
  - (b) For a defendant, the statute of limitations under this section is tolled until six months after the individual potential defendant is convicted of a criminal drug offense or as otherwise provided by law.
- (3) The statute of limitations under this chapter for a claim based on participation in the illegal drug market that occurred prior to the effective date of this chapter does not begin to run until the effective date of this chapter.

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**58-37e-14 Representation of governmental entities -- Stay of action.**

- (1) A county attorney, district attorney, or city attorney may represent any political subdivision of the state, and the attorney general may represent the state in an action brought under this chapter.
- (2) On motion by a governmental agency involved in a drug investigation or prosecution, an action brought under this chapter shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of the action.

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