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**DEATH CAUSED BY ILLEGAL DRUGS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Christopher N. Herrod**

Senate Sponsor: \_\_\_\_\_

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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 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.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



28 AMENDS:

29 78-18-1, as last amended by Laws of Utah 2006, Chapter 48

30 ENACTS:

31 78-16a-1, Utah Code Annotated 1953



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

34 Section 1. Section 78-16a-1 is enacted to read:

35 **78-16a-1. Cause of action for death caused by use or ingestion of illegal controlled**  
36 **substances -- Damages.**

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

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

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

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

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

49 Section 2. Section 78-18-1 is amended to read:

50 **78-18-1. Basis for punitive damages awards -- Section inapplicable to DUI cases**  
51 **-- Division of award with state.**

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

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

59           (i) operation of a motor vehicle or motorboat while voluntarily intoxicated or under the  
60 influence of any drug or combination of alcohol and drugs as prohibited by Section  
61 41-6a-502[-];

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

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

67           (c) The award of a penalty under Section 78-11-15 or 78-11-16 regarding shoplifting is  
68 not subject to the prior award of compensatory or general damages under Subsection (1)(a)  
69 whether or not restitution has been paid to the merchant prior to or as a part of a civil action  
70 under Section 78-11-15 or 78-11-16.

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

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

78           (b) Subsection (2)(a) does not apply to any claim for punitive damages arising out of:

79           (i) the tortfeasor's operation of a motor vehicle or motorboat while voluntarily  
80 intoxicated or under the influence of any drug or combination of alcohol and drugs as  
81 prohibited by Section 41-6a-502[-];

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

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

87           (3) (a) In any case where punitive damages are awarded, the judgment shall provide  
88 that 50% of the amount of the punitive damages in excess of \$20,000 shall, after an allowable  
89 deduction for the payment of [attorneys'] attorney fees and costs, be remitted by the judgment

90 debtor to the state treasurer for deposit into the General Fund.

91 (b) For the purposes of this Subsection (3), an "allowable deduction for the payment of  
92 [attorneys'] attorney fees and costs" shall equal the amount of actual and reasonable [attorneys']  
93 attorney fees and costs incurred by the judgment creditor minus the amount of any separate  
94 judgment awarding [attorneys'] attorney fees and costs to the judgment creditor.

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

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

- 102 (i) compensatory damages, and any applicable [attorneys'] attorney fees and costs;
- 103 (ii) the initial \$20,000 punitive damages; and
- 104 (iii) the balance of the punitive damages.

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**Legislative Review Note**  
**as of 1-29-08 4:07 PM**

**Office of Legislative Research and General Counsel**

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**H.B. 187 - 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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