



28 and amended by Laws of Utah 2008, Chapter 3

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

31 Section 1. Section **78B-3-801** is amended to read:

32 **78B-3-801. Cause of action for death caused by use or ingestion of illegal**  
 33 **controlled substances -- Damages.**

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

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

39 (2) A person is subject to a civil action by a person or an estate under Subsection (3)  
 40 who:

41 (a) [~~who~~] unlawfully provided to or administered to the deceased person or the  
 42 addicted person any substance that caused or contributed to the person's addiction or to the  
 43 death of the deceased person; or

44 (b) [~~who~~] ~~H→~~ unlawfully ~~←H~~ provided any substance to any person in the chain of  
 44a transfer of the substance  
 45 that connects directly to the person who subsequently provided or administered the illegal  
 46 controlled substance to the addicted person or to the deceased person under Subsection (2)(a).

47 (3) (a) A civil action for treble damages and punitive damages may be brought against  
 48 any person under Subsection (2) by the estate of a person whose death was caused in whole or  
 49 in part by ingestion or other exposure to any illegal controlled substance.

50 (b) A civil action for treble damages, punitive damages, and costs of addiction  
 51 treatment or rehabilitation may be brought against any person under Subsection (2) by a person  
 52 who has become or is addicted to any illegal controlled substance and the addiction was caused  
 53 in whole or in part by ingestion of any illegal controlled substance.

54 [~~(3)~~] (4) The burden is on the estate or the addicted person to prove the causal  
 55 connection between the death or addiction, any substances provided or administered to the  
 56 deceased or addicted person, and the defendant.

57 [~~(4)~~] (5) This section does not establish liability of or create a cause of action regarding H→ :

58 (a) ←H a parent or guardian of a person younger than 18 years of age who acts in violation of  
 58a this

59 section, unless the parent or guardian acts in violation of this section ~~H→~~ ; or  
 59a (b) a person who is licensed under Title 58, Chapter 17b, Pharmacy Practice Act, and  
 59b who acts in accordance with the act ←H .

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

61 **78B-8-201. Basis for punitive damages awards -- Section inapplicable to DUI**  
 62 **cases or providing illegal controlled substances -- Division of award with state.**

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

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

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

72 (ii) causing death of another person by providing or administering an illegal controlled  
 73 substance to the person under Section 78B-3-801; or

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

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

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

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

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

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

92 (ii) causing death of another person or causing a person to be addicted by providing or  
93 administering an illegal controlled substance to the person under Section 78B-3-801; or

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

97 (3) (a) In any case where punitive damages are awarded, the court shall enter judgment  
98 as follows:

99 (i) for the first \$50,000, judgment shall be in favor of the injured party; and

100 (ii) any amount in excess of \$50,000 shall be divided equally between the state and the  
101 injured party, and judgment to each entered accordingly.

102 (b) (i) The actual and bona fide attorney fees and costs incurred in obtaining and  
103 collecting the judgment for punitive damages shall be considered to have been incurred by the  
104 state and the injured party in proportion to the judgment entered in each party's behalf.

105 (A) The state and injured party shall be responsible for each one's proportionate share  
106 only.

107 (B) The state is liable to pay its proportionate share only to the extent it receives  
108 payment toward its judgment.

109 (ii) If the court awards attorney fees and costs to the injured party as a direct result of  
110 the punitive damage award, the state shall have a corresponding credit in a proportionate  
111 amount based on the amounts of the party's respective punitive damage judgments. This credit  
112 may be applied as an offset against the amount of attorney fees and costs charged to the state  
113 for obtaining the punitive damage judgment.

114 (c) The state shall have all rights due a judgment creditor to collect the full amounts of  
115 both punitive damage judgments until the judgments are fully satisfied.

116 (i) Neither party is required to pursue collection.

117 (ii) In pursuing collection, the state may exercise any of its collection rights under  
118 Section 63A-3-301 et seq., Section 63A-8-201 et seq., and any other statutory provisions. Any  
119 amounts collected on these judgments by either party shall be held in trust and distributed as  
120 set forth in Subsection (3)(e).

121 (d) Unless all affected parties, including the state, expressly agree otherwise, collection  
122 on the punitive damages judgment shall be deferred until all other judgments have been fully  
123 paid. Any payment by or on behalf of any judgment debtor, whether voluntary, by execution,  
124 or otherwise, shall be distributed and applied in the following order:

125 (i) to the judgment for compensatory damage and any applicable judgment for attorney  
126 fees and costs;

127 (ii) to the initial \$50,000 of the punitive damage judgment;

128 (iii) to any judgment for attorney fees and costs awarded as a direct result of the  
129 punitive damages; and

130 (iv) to the remaining judgments for punitive damages.

131 (e) Any partial payments shall be distributed equally between the state and injured  
132 party.

133 (f) After the payment of attorney fees and costs, all amounts paid on the state's  
134 judgment shall be remitted to the state treasurer to be deposited into the General Fund.

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**Legislative Review Note**  
**as of 2-11-10 5:13 PM**

**Office of Legislative Research and General Counsel**

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**Fiscal Note****H.B. 409 - Civil Action for Damages Related to Addiction from Illegal Drug Sale**

2010 General Session

State of Utah

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**State Impact**

Enactment of this bill will require an appropriation of \$5,200 per year from the General Fund to the Courts beginning FY 2011. The bill will also generate \$3,000 per year in new General Fund revenue beginning FY 2011, for a net General Fund cost of \$2,200 per year.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	\$5,200	\$5,200	\$0	\$3,000	\$3,000
<b>Total</b>	<b>\$0</b>	<b>\$5,200</b>	<b>\$5,200</b>	<b>\$0</b>	<b>\$3,000</b>	<b>\$3,000</b>

**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.