

**CIVIL ACTION FOR DAMAGES RELATED TO
ADDICTION FROM ILLEGAL DRUG SALE**

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christopher N. Herrod

Senate Sponsor: Curtis S. Bramble

Cosponsors:
Jackie Biskupski

Keith Grover

Brian S. King

LONG TITLE

General Description:

This bill modifies the Judicial Code regarding civil causes of action.

Highlighted Provisions:

This bill:

- provides that the estate of a person who becomes addicted to 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 addicted person; and

- provides for treble damages, punitive damages, and costs of addiction treatment or rehabilitation.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-3-801, as enacted by Laws of Utah 2008, Chapter 331

78B-8-201, as last amended by Laws of Utah 2008, Chapters 260, 331 and renumbered

30 and amended by Laws of Utah 2008, Chapter 3



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

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

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

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

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

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

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

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

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

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

56 ~~[(3)]~~ (4) The burden is on the estate or the addicted person to prove the causal
57

58 connection between the death or addiction, any substances provided or administered to the
59 deceased or addicted person, and the defendant.

60 ~~[(4)]~~ (5) This section does not establish liability of or create a cause of action
61 regarding:

62 (a) a parent or guardian of a person younger than 18 years of age who acts in violation
63 of this section, unless the parent or guardian acts in violation of this section~~[-];~~ or

64 (b) a person who is licensed under Title 58, Chapter 17b, Pharmacy Practice Act, and
65 who acts in accordance with the act.

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

67 **78B-8-201. Basis for punitive damages awards -- Section inapplicable to DUI**
68 **cases or providing illegal controlled substances -- Division of award with state.**

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

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

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

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

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

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

86 under Section 78B-3-108.

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

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

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

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

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

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

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

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

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

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

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

113 (B) The state is liable to pay its proportionate share only to the extent it receives

114 payment toward its judgment.

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

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

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

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

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

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

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

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

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

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

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