

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

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Christopher N. Herrod**

6 Senate Sponsor: Curtis S. Bramble

8 **LONG TITLE**

9 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

13 ▶ provides that the estate of a person who becomes addicted to an illegal controlled
14 substance may bring a civil action against any person who illegally provided or
15 administered the substance, and against any person who illegally provided the
16 substance to any person in the direct chain of supply of providing the substance to
17 the person who provided the substance to the addicted person; and

18 ▶ provides for treble damages, punitive damages, and costs of addiction treatment or
19 rehabilitation.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 **AMENDS:**

26 **78B-3-801**, as enacted by Laws of Utah 2008, Chapter 331

27 **78B-8-201**, as last amended by Laws of Utah 2008, Chapters 260, 331 and renumbered



28 and amended by Laws of Utah 2008, Chapter 3



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~~] 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 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
58 a parent or guardian of a person younger than 18 years of age who acts in violation of this

59 section, unless the parent or guardian acts in violation of this section.

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.

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

Office of Legislative Research and General Counsel

Fiscal Note**H.B. 409 - Civil Action for Damages Related to Addiction from Illegal Drug Sale**2010 General Session
State of Utah

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
Total	\$0	\$5,200	\$5,200	\$0	\$3,000	\$3,000

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.
