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CHAPTER 54.

 DRUG DEALER LIABILITY ACT

**SECTION 44‑54‑10.** Short title.

This chapter may be cited as the “Drug Dealer Liability Act”.

**SECTION 44‑54‑20.** Purpose.

The purpose of this chapter is to provide a civil remedy for damages to persons in a community injured by an individual’s use of illegal Controlled I substances. It establishes a cause of action against drug dealers for damages for monetary, noneconomic, and physical losses incurred as a result of an individual’s use of an illegal controlled substance. This chapter will shift the cost of the damage caused by the marketing of illegal drugs to those who illegally profit from that market, as well as deter others from entering the illegal drug market by subjecting them to substantial monetary loss. This chapter will also provide an incentive for individual users to identify illegal drug marketers and recover from them the costs of their own drug treatment.

**SECTION 44‑54‑30.** Definitions.

As used in this chapter, unless the context requires otherwise:

(1) “Illegal controlled substance” means a controlled substance as defined and covered by Chapter 53 of Title 44, Poisons, Drugs, and Other Controlled Substances, Section 44‑53‑10, et seq.

(2) “Individual user” means the individual whose use of an illegal controlled substance that is not obtained directly from or pursuant to a valid prescription or order of a licensed physician or practitioner is the basis of an action brought under this chapter.

(3) “Level one offense” means the illegal possession with intent to distribute less than four ounces or the illegal distribution of less than one ounce of an illegal controlled substance.

(4) “Level two offense” means the illegal possession with intent to distribute four ounces or more but less than eight ounces, or the illegal distribution of one ounce or more, but less than two ounces, of an illegal controlled substance.

(5) “Level three offense” means the illegal possession with intent to distribute eight ounces or more but less than sixteen ounces, or the illegal distribution of two ounces or more, but less than four ounces, of an illegal controlled substance.

(6) “Level four offense” means the illegal possession with intent to distribute sixteen ounces or more, or the illegal distribution of four ounces or more, of an illegal controlled substance.

(7) “Marketing of an illegal controlled substance” means the possession with intent to distribute or distribution of a specified illegal controlled substance which is a violation of Chapter 53 of Title 44, Poisons, Drugs, and Other Controlled Substances, Section 44‑53‑10, et seq.

(8) “Participate in the marketing of an illegal controlled substance” means to transport, import into this State, possess with intent to distribute, distribute an illegal controlled substance or offer to transport, import into this State, possess with the intent to distribute, or distribute an illegal controlled substance. “Participate in the marketing of an illegal controlled substance” does not include the purchase or receipt of an illegal controlled substance for personal use only.

(9) “Period of illegal use” means, in relation to the individual user of an illegal controlled substance, the time from the individual’s first illegal use of an illegal controlled substance to the accrual of the cause of action.

(10) “Person” means a natural person, governmental entity, or corporation, partnership, firm, trust, or incorporated or unincorporated association, existing under or authorized by the laws of this State, another state, or a foreign country.

(11) “Place of illegal activity” means, in relation to the individual user of an illegal controlled substance, each county in which the individual illegally possesses or uses an illegal controlled substance during the period of the individual’s use of an illegal controlled substance.

(12) “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 marketing of illegal controlled substances during the period of the person’s participation in the marketing of illegal controlled substances.

(13) “Conviction” means a conviction, guilty plea, or plea of nolo contendere and includes being convicted of a violation of a law of any other state or a city or county ordinance.

(14) “Prior convictions” means felonies and misdemeanors, prior convictions not classified at the time of conviction, federal or out‑of‑state convictions, circuit, magistrate, and municipal court convictions, and juvenile adjudications if the offenses would be felonies if committed by an adult.

**SECTION 44‑54‑40.** Persons who may bring action; persons against whom actions may be brought; damages recoverable.

(A) Any one or more of the following persons may bring an action for damages caused by an individual’s use of an illegal controlled substance against those persons enumerated in subsection (B) of this section:

(1) a parent, legal custodian, child, spouse, or sibling of the individual user;

(2) an individual who was exposed to an illegal controlled substance in utero;

(3) an employer of the individual user;

(4) a medical facility, insurer, employer, governmental entity, or other legal entity that funds a drug treatment program or other employee assistance program for or that otherwise expends money on behalf of the individual user; or

(5) a person injured as a result of the wilful, reckless, or negligent actions of an individual user.

(B) A person entitled to bring an action pursuant to subsection (A) of this section may seek damages from one or more of the following:

(1) a person who sold, administered, or furnished an illegal controlled substance to the individual user; or

(2) a person who knowingly participated in the marketing of an illegal controlled substance, if all of the following apply:

(a) The place of illegal activity by the individual user is within the municipality, county, or unincorporated area of the county in which the defendant’s place of participation is situated.

(b) The defendant’s participation in the marketing of illegal controlled substances was connected with the same type of illegal controlled substance used by the individual user, and the defendant has been convicted of an offense for that type of specified illegal controlled substance, which he committed in the same county as the individual user’s place of use.

(c) The defendant participated in the marketing of illegal controlled substances at any time during the period in which the individual user used the illegal controlled substance.

(C) As used in paragraph B(2) of this section, “knowingly participated in the marketing of an illegal controlled substance” means an individual was convicted of possession with the intent to distribute or distribution of an illegal controlled substance in violation of Chapter 53 of Title 44, Poisons, Drugs, and Other Controlled Substances, Section 44‑53‑10, et seq.

(D) A person entitled to bring an action under this section may recover all of the following damages:

(1) economic damages including, but not limited to, 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 use of an illegal controlled substance;

(2) noneconomic damages including, but not limited to, physical and emotional pain and 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 controlled substance;

(3) exemplary damages;

(4) reasonable attorney fees; and

(5) costs of suit including, but not limited to, reasonable expenses for expert testimony.

**SECTION 44‑54‑50.** Actions by individual users; damages recoverable.

(A) An individual user is entitled to bring an action for damages caused by the use of an illegal controlled substance only if all of the following conditions are met:

(1) not less than six months before filing the action, the individual personally discloses to narcotics enforcement authorities all of the information known to the individual regarding the individual’s sources of illegal controlled substances;

(2) the individual has not used an illegal controlled substance within thirty days before filing the action; and

(3) the individual does not use an illegal controlled substance during the pendency of the action.

(B) The individual user entitled to bring an action under this section may recover only the following damages:

(1) economic damages including, but not limited to, 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 use of an illegal controlled substance;

(2) reasonable attorney fees; and

(3) costs of suit including, but not limited to, reasonable expenses for expert testimony.

(C) The individual user entitled to bring an action under this section may seek damages only from a person who distributed or possessed with the intent to distribute the illegal controlled substance actually used by the individual user.

**SECTION 44‑54‑60.** Assignment of cause of action.

A cause of action authorized by this chapter shall not be assigned, either expressly, by subrogation, or by any other means, directly or indirectly, to any public or publicly funded agency or institution.

**SECTION 44‑54‑70.** Responsibility for damages; level of offense.

Any person whose participation in the marketing of illegal controlled substances constitutes any of the following levels of offense shall be subject to a rebuttable presumption of responsibility in the following amounts:

(1) for a level one offense, twenty‑five percent of the damages;

(2) for a level two offense, fifty percent of the damages;

(3) for a level three offense, seventy‑five percent of the damages; or

(4) for a level four offense, one hundred percent of the damages.

**SECTION 44‑54‑80.** Multiple parties to action; relief according to respective liabilities.

(A) Two or more persons may join in one action under this chapter as plaintiffs if their respective actions have at least one market for illegal controlled dangerous substances in common and if any portion of the period of use of an illegal controlled dangerous substance is concurrent with the period of use of an illegal controlled dangerous substance for every other plaintiff.

(B) 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.

(C) A plaintiff need not participate in obtaining and a defendant need not participate in defending against all of 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.

**SECTION 44‑54‑90.** Joinder of claims and persons; recovery against person joined.

A person subject to liability under this chapter has a right of action for joinder of claims under South Carolina Rules of Civil Procedure, Rule 18, or for joinder of persons needed for just adjudication under South Carolina Rules of Civil Procedure, Rule 19, against another person subject to liability under this chapter. Joinder of persons may be enforced either in the original action or by a separate action brought for that purpose. A person may seek recovery in accordance with this chapter and as otherwise provided by law against a person against whom a defendant has asserted a joinder action.

**SECTION 44‑54‑100.** Standard of proof; effect of conviction for distribution of controlled substance.

(A) Proof of liability in an action brought pursuant to this chapter shall be by a preponderance of the evidence.

(B)(1) A person against whom recovery is sought who has been convicted of the distribution of an illegal controlled dangerous substance under state law or under the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. Section 801, et seq., is precluded from denying participation in the marketing of an illegal controlled dangerous substance. Except as provided in paragraph (2) of this subsection, the provisions of this subsection shall not affect a person’s burden of proving the elements required by the South Carolina Rules of Civil Procedure and applicable precedent setting case law.

(2) A conviction specified in paragraph (1) of this subsection shall also be prima facie evidence of the defendant’s participation in the marketing of an illegal controlled substance used by the individual user, where the conviction was based upon the person’s marketing of that same type of illegal controlled substance.

(C) The absence of a criminal conviction of a person pursuant to paragraph B(1) of this section against whom recovery is sought does not bar an action against that person in an action pursuant to any applicable rules of the South Carolina Rules of Civil Procedure.

**SECTION 44‑54‑110.** Defenses; liability of law enforcement officer or agency.

(A) It is a defense to any action brought pursuant to this chapter that the person who possessed with the intent to distribute or distributed an illegal controlled substance did so under the authority of law as a licensed physician or practitioner, as an ultimate user of the illegal controlled substance pursuant to a lawful prescription, or as a person otherwise authorized by law.

(B) A law enforcement officer or agency, the State, or any person acting at the direction of a law enforcement officer or agency of the State is not liable for participating in the marketing of an illegal controlled substance, if the participation is in furtherance of an official investigation.

**SECTION 44‑54‑120.** Seizure of property; injunctions.

A person authorized to file an action under this chapter may seek a seizure or injunction or other remedial action pursuant to the provisions of the South Carolina Rules of Civil Procedure, Rules 64 and 65, respectively, against all assets of a defendant sufficient to satisfy a potential award, except an asset named in or seized pursuant to a forfeiture action by the State or federal agency before a plaintiff commences an action pursuant to this chapter, unless the asset is released by the agency that seized it.

**SECTION 44‑54‑130.** Prescription of cause of action

(A) Except as otherwise provided in this subsection, a cause of action prescribes in one year after a defendant furnishes the illegal controlled substance or a cause of action accrues under this chapter when a person who may recover has reason to know of the harm from the use of an illegal controlled substance that is the basis for the cause of action and has reason to know that the use of an illegal controlled substance is the cause of the harm.

(B) Prescription against a defendant is suspended until one year after the individual potential defendant is convicted of a criminal offense involving an illegal controlled substance or as otherwise provided by law.

**SECTION 44‑54‑140.** Continuance pending completion of criminal investigation.

On motion by a governmental entity involved in an investigation or prosecution involving an illegal controlled substance, an action brought under this chapter shall be continued until the completion of the criminal investigation or prosecution that gave rise to the motion for a continuance of the action.