

DRUG DEALER LIABILITY ACT

Act 27 of 1994

AN ACT to provide actions for civil damages against persons who participate in illegally marketing controlled substances; and to prescribe parties, procedures, and damages regarding that action.

History: 1994, Act 27, Eff. Apr. 1, 1994.

The People of the State of Michigan enact:

691.1601 Short title; purpose of act.

Sec. 1. (1) This act shall be known and may be cited as the "drug dealer liability act".

(2) The purpose of this act is to provide for actions for civil damages against persons who participate in illegal marketing of controlled substances for injuries caused by illegal use of controlled substances in order to do all of the following:

(a) Compensate persons injured as a result of illegal marketing of controlled substances.

(b) Assess the cost of illegal marketing of controlled substances against persons who profit from that market.

(c) Provide an incentive for individual abusers to identify persons from whom the abusers have acquired illegally marketed controlled substances and to seek payment for the abusers' own treatment.

History: 1994, Act 27, Eff. Apr. 1, 1994.

691.1602 Meanings of words and phrases.

Sec. 2. For the purposes of this act, the words and phrases defined in sections 3 and 4 have the meanings ascribed to them in those sections.

History: 1994, Act 27, Eff. Apr. 1, 1994.

691.1603 Definitions; C to L.

Sec. 3. (1) "Controlled substance" means that term as defined in section 7104 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7104 of the Michigan Compiled Laws.

(2) "Individual abuser" means an individual who uses a controlled substance that is not obtained directly from, or pursuant to a valid prescription or order of, a practitioner who is acting in the course of the practitioner's professional practice, or which use is not otherwise authorized under article 7 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7101 to 333.7544 of the Michigan Compiled Laws.

(3) "Level 1 participation" means participating in illegal marketing of 650 or more grams of a mixture containing a specified controlled substance, or of 16 or more pounds or 100 or more plants of marihuana.

(4) "Level 2 participation" means participating in illegal marketing of 225 or more grams, but less than 650 grams, of a mixture containing a specified controlled substance, or of 8 or more pounds or 75 or more plants, but less than 16 pounds or 100 plants, of marihuana.

(5) "Level 3 participation" means participating in illegal marketing of 50 or more grams, but less than 225 grams, of a mixture containing a specified controlled substance, or of 4 or more pounds or 50 or more plants, but less than 8 pounds or 75 plants, of marihuana.

(6) "Level 4 participation" means participating in illegal marketing of less than 50 grams of a mixture containing a specified controlled substance, or of 1 or more pounds or 25 or more plants, but less than 4 pounds or 50 plants, of marihuana.

History: 1994, Act 27, Eff. Apr. 1, 1994.

691.1604 Definitions; M to S.

Sec. 4. (1) "Market area" means the area in which a person is presumed to have participated in illegal marketing of a market area controlled substance as described in section 9.

(2) "Market area controlled substance" means a specified controlled substance or marihuana.

(3) "Participate in illegal marketing" means doing any of the following in violation of state or federal law:

(a) Manufacturing or delivering, or attempting or conspiring to manufacture or deliver, a controlled substance.

(b) Possessing, or attempting or conspiring to possess, a controlled substance with the intent to manufacture or deliver a controlled substance.

(4) "Person" means an individual, governmental entity, sole proprietorship, corporation, limited liability company, firm, trust, partnership, or incorporated or unincorporated association, existing under or authorized

by the laws of this state, another state, or a foreign country.

(5) "Practitioner" means that term as defined in section 7109 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7109 of the Michigan Compiled Laws.

(6) "Specified controlled substance" means a controlled substance described in section 7212(1)(b) or section 7214(a)(iv) or (c)(ii) of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7212 and 333.7214 of the Michigan Compiled Laws.

History: 1994, Act 27, Eff. Apr. 1, 1994.

691.1605 Action against participant in illegal marketing of controlled substances; person injured by individual abuser; presumption.

Sec. 5. (1) A person injured by an individual abuser may bring an action under this act for damages against a person who participated in illegal marketing of the controlled substance actually used by the individual abuser.

(2) If a plaintiff in an action under this section proves that the defendant participated in illegal marketing of the controlled substance actually used by the individual abuser who injured the plaintiff, the defendant is presumed to have injured the plaintiff and to have acted willfully and wantonly.

History: 1994, Act 27, Eff. Apr. 1, 1994.

691.1606 Action against participant in illegal marketing of controlled substance; recovery of damages by individual abuser; conditions.

Sec. 6. (1) Subject to subsection (2), an individual abuser may bring an action under this act for damages against a person who participated in illegal marketing of the controlled substance actually used by the individual abuser.

(2) An individual abuser shall not recover damages under this section unless the individual abuser meets all of the following conditions:

(a) Not less than 6 months before filing the action, the individual personally discloses to law enforcement authorities all of the information the individual knows regarding his or her source of illegally marketed controlled substances.

(b) The individual has not used an illegally marketed controlled substance within the 6 months before filing the action.

(c) The individual does not use an illegally marketed controlled substance during the pendency of the action.

History: 1994, Act 27, Eff. Apr. 1, 1994.

691.1607 Action against participant in illegal marketing of market area controlled substance; person injured by individual abuser; burden of proof; presumption.

Sec. 7. (1) Other than an individual abuser, a person injured by an individual abuser may bring an action for damages against a person who participated in illegal marketing of the market area controlled substance used by the individual abuser. In an action brought under this section, participation in illegal marketing shall be proven by clear and convincing evidence.

(2) If the plaintiff in an action under this section proves a defendant's participation in illegal marketing of a market area controlled substance and the plaintiff is 1 of the following, the defendant is presumed to have injured the plaintiff and to have acted willfully and wantonly:

(a) A parent, legal guardian, child, spouse, or sibling of the individual abuser.

(b) A child whose mother was an individual abuser while the child was in utero.

(c) The individual abuser's employer.

(d) A medical facility, insurer, governmental entity, or other legal entity that financially supports a drug treatment or other assistance program for, or that otherwise expends money or provides unreimbursed service on behalf of, the individual abuser.

History: 1994, Act 27, Eff. Apr. 1, 1994.

691.1608 Proof of participation in illegal marketing of market area controlled substance; "market area" explained.

Sec. 8. (1) A plaintiff under section 7 may prove that a defendant participated in illegal marketing of the market area controlled substance used by the individual abuser who injured the plaintiff by proving both of the following:

(a) The defendant was participating in the illegal marketing of the market area controlled substance at the time the individual abuser obtained or used that market area controlled substance.

(b) The individual abuser obtained or used the market area controlled substance, or caused the injury, within the defendant's market area.

(2) If a person participated in illegal marketing of a market area controlled substance, the person's market area for that controlled substance is the following:

(a) For level 4 participation, each county in which the person participated in illegal marketing.

(b) For level 3 participation, each market area described in subdivision (a) plus all counties with a border contiguous to each of those market areas.

(c) For level 2 participation, each market area described in subdivision (b) plus all counties with a border contiguous to each of those market areas.

(d) For level 1 participation, the state.

History: 1994, Act 27, Eff. Apr. 1, 1994.

691.1609 Participation in illegal marketing of controlled substance; presumptions.

Sec. 9. (1) If a defendant under this act has a criminal conviction under state or federal law for an act that constitutes participation in illegal marketing of a controlled substance under this act, that person is conclusively presumed to have participated in illegal marketing of a controlled substance for the purposes of this act.

(2) If a defendant is proven or presumed to have participated in illegal marketing of a controlled substance, that defendant is presumed to have participated during the 2 years before and the 2 years after the date of the participation or conviction, unless the defendant proves otherwise by clear and convincing evidence.

(3) In addition to each county in which a defendant is proven to have actually participated in illegal marketing of a controlled substance, the defendant is presumed to have participated in each county in which the defendant resides, attends school, is employed, or does business during the period of participation. In addition to the counties in which the individual abuser is proven to have obtained or used the controlled substance, the individual abuser is presumed to have obtained or used the controlled substance in each county in which the individual resides, attends school, or is employed during the period of the individual's abuse of that controlled substance, unless the defendant proves otherwise by clear and convincing evidence.

History: 1994, Act 27, Eff. Apr. 1, 1994.

691.1610 Recovery of damages, attorney fees, and costs; payment by third party.

Sec. 10. (1) A person other than an individual abuser who is entitled to a recovery under this act may recover economic, noneconomic, and exemplary damages and reasonable attorney fees and costs, including, but not limited to, reasonable expenses for expert testimony. An individual abuser entitled to recovery under this act may recover economic damages and reasonable attorney fees and costs, including, but not limited to, reasonable expenses for expert testimony.

(2) A third party shall not pay damages awarded under this act, or provide a defense or money for a defense, on behalf of an insured under a contract of insurance or indemnification.

History: 1994, Act 27, Eff. Apr. 1, 1994.

691.1611 Writ of attachment; affidavit; hearing; eligibility to exempt property; judgment not subject to discharge under bankruptcy law; use of seized asset to satisfy judgment.

Sec. 11. (1) After commencing an action under this act and subject to subsection (4), a plaintiff may seek a writ of attachment by filing an ex parte motion supported by an affidavit setting forth specific facts showing all of the following:

(a) A description of the injury claimed and a statement that the affiant in good faith believes that the defendant is liable to the plaintiff in a stated amount.

(b) The defendant is subject to the judicial jurisdiction of the state.

(c) After diligent effort, the plaintiff cannot serve the defendant with process.

(2) If attachment is instituted, a defendant is entitled to an immediate hearing. Attachment may be lifted if the defendant demonstrates that the assets will be available for a potential award or if the defendant posts a bond sufficient to cover a potential award.

(3) Unless precluded by the state or federal constitutions, a person against whom a judgment has been rendered under this act is not eligible to exempt any property, of whatever kind, from process to levy or process to execute on the judgment. Unless the jury, or the court if there is no jury, specifically finds otherwise, the actions for which a person is found liable under this act are willful and malicious, and the judgment is not subject to discharge under federal bankruptcy law as provided in 11 U.S.C. 523.

(4) An asset shall not be used to satisfy a judgment under this act if that asset is named in or has been seized for a forfeiture action by a state or federal agency before a plaintiff commences an action under this

act, unless the asset is released after the forfeiture action or is released by the agency that seized the asset.

History: 1994, Act 27, Eff. Apr. 1, 1994.

691.1612 Cause of action; accrual; tolling of statute of limitations.

Sec. 12. Except as otherwise provided in this section, a cause of action accrues under this act when a person who may recover has reason to know of the harm from use of an illegally marketed controlled substance that is the basis for the cause of action and has reason to know that the controlled substance use is the cause of the harm. For a plaintiff, the statute of limitations under this section is tolled while the individual potential plaintiff is incapacitated by the use of an illegally marketed controlled substance to the extent that the individual cannot reasonably be expected to seek recovery under this act or as otherwise provided by law.

History: 1994, Act 27, Eff. Apr. 1, 1994.

691.1613 Representation by prosecuting attorney; stay of action; actions against law enforcement officer, agency, or certain persons prohibited.

Sec. 13. (1) A prosecuting attorney may represent the state or a political subdivision of the state in an action brought under this act.

(2) On motion by a governmental agency involved in a controlled substance investigation or prosecution, an action brought under this act shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of the action.

(3) An action shall not be brought under this act against a law enforcement officer or agency, or a person acting in good faith at the direction of a law enforcement officer or agency, for participation in illegal marketing of a controlled substance if that participation is in the furtherance of an official investigation.

History: 1994, Act 27, Eff. Apr. 1, 1994.

691.1619 Effective date; applicability of act to action arising on and after April 1, 1994; other actions not precluded.

Sec. 19. This act shall take effect April 1, 1994. This act applies only to an action arising on and after April 1, 1994. This act does not preclude an action for damages otherwise available on or after April 1, 1994.

History: 1994, Act 27, Eff. Apr. 1, 1994.