

By: Pena

H.B. No. 1355

A BILL TO BE ENTITLED

AN ACT

relating to liability of certain persons for participation in the illegal drug market.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 94 to read as follows:

CHAPTER 94. LIABILITY FOR PARTICIPATION IN ILLEGAL DRUG MARKET

Sec. 94.001. SHORT TITLE. This Act may be cited as the Drug Dealer Liability Act.

Sec. 94.002. DEFINITIONS. In this chapter:

(1) "Claimant" has the meaning assigned by Section 33.011.

(2) "Defendant" has the meaning assigned by Section 33.011.

(3) "Illegal drug" means a drug whose distribution is a violation of state law.

(4) "Illegal drug market" means the support system of illegal drug-related operations, from production to retail sales, through which an illegal drug reaches an individual drug user.

(5) "Illegal drug market target community" means an area described as follows:

(A) for a level 1 violation, the county containing the defendant's place of participation;

(B) for a level 2 violation, the target community

1 described in Paragraph (A) and any county with a border contiguous
2 to that target community;

3 (C) for a level 3 violation, the target community
4 described in Paragraph (B) and any county with a border contiguous
5 to that target community; or

6 (D) for a level 4 violation, the state.

7 (6) "Individual drug user" means an individual whose
8 illegal drug use is the basis of an action brought under this
9 chapter.

10 (7) "Level 1 violation" means:

11 (A) possession of one-fourth ounce or more but
12 less than four ounces of a specified illegal drug;

13 (B) distribution of less than one ounce of a
14 specified illegal drug;

15 (C) possession of one pound or more or 25 plants
16 or more but less than four pounds or 50 plants of marihuana; or

17 (D) distribution of less than one pound of
18 marihuana.

19 (8) "Level 2 violation" means:

20 (A) possession of four ounces or more but less
21 than eight ounces of a specified illegal drug;

22 (B) distribution of one ounce or more but less
23 than two ounces of a specified illegal drug;

24 (C) possession of four pounds or more or 50
25 plants or more but less than eight pounds or 75 plants of marihuana;
26 or

27 (D) distribution of one pound or more but less

1 than five pounds of marihuana.

2 (9) "Level 3 violation" means:

3 (A) possession of eight ounces or more but less
4 than 16 ounces of a specified illegal drug;

5 (B) distribution of two ounces or more but less
6 than four ounces of a specified illegal drug;

7 (C) possession of eight pounds or more or 75
8 plants or more but less than 16 pounds or 100 plants of marihuana;
9 or

10 (D) distribution of five pounds or more but less
11 than 10 pounds of marihuana.

12 (10) "Level 4 violation" means:

13 (A) possession of at least 16 ounces or more of a
14 specified illegal drug;

15 (B) distribution of four ounces or more of a
16 specified illegal drug;

17 (C) possession of 16 pounds or more or 100 plants
18 or more of marihuana; or

19 (D) distribution of 10 pounds or more of
20 marihuana.

21 (11) "Period of illegal drug use" means, in relation
22 to the individual drug user, the period beginning on the date the
23 individual first uses an illegal drug and ending on the date a cause
24 of action relating to the use of the drug under this chapter
25 accrues.

26 (12) "Place of illegal drug activity" means each
27 county in which, during the period of an individual's illegal drug

1 use, the individual:

2 (A) possesses or uses an illegal drug; or

3 (B) resides, attends school, or is employed.

4 (13) "Place of participation" means each county in
5 which, during the period of a defendant's participation in the
6 illegal drug market, the defendant:

7 (A) participates in the illegal drug market; or

8 (B) resides, attends school, or is employed.

9 (14) "Specified illegal drug" means cocaine, heroin,
10 methamphetamine, and any drug other than marihuana whose
11 distribution is a violation of state law.

12 Sec. 94.003. LIABILITY FOR PARTICIPATION IN THE ILLEGAL
13 DRUG MARKET. (a) A person who knowingly participates in the
14 illegal drug market within this state by engaging in any of the
15 following activities is liable for damages as provided in this
16 chapter:

17 (1) distribution of an illegal drug;

18 (2) possession with an intent to distribute an illegal
19 drug;

20 (3) commission of an act intended to facilitate the
21 marketing or distribution of an illegal drug; or

22 (4) agreement to distribute, possess with an intent to
23 distribute, or commit an act intended to facilitate the marketing
24 and distribution of an illegal drug.

25 (b) A law enforcement officer or agency, the state, or a
26 person acting at the direction of a law enforcement officer or
27 agency or the state is not liable for participating in the illegal

1 drug market if the participation is in furtherance of an official
2 investigation.

3 (c) Participation in the illegal drug market under
4 Subsection (a) does not include the purchase or receipt of a drug
5 solely for personal use.

6 Sec. 94.004. RECOVERY OF DAMAGES. (a) An action for
7 damages caused by an individual's use of an illegal drug may be
8 brought by:

9 (1) a parent, legal guardian, child, spouse, or
10 sibling of the individual drug user;

11 (2) an individual who was exposed to an illegal drug in
12 utero;

13 (3) an employer of the individual drug user;

14 (4) a medical facility, insurer, governmental entity,
15 or other entity that funds a drug treatment program or employee
16 assistance program for the individual drug user or that otherwise
17 spends money on behalf of the individual drug user; or

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

20 (b) A person entitled to bring an action under this section
21 may seek damages from:

22 (1) a person who knowingly distributed an illegal drug
23 or knowingly participated in the chain of distribution of an
24 illegal drug that was actually used by the individual drug user; and

25 (2) a person who knowingly participated in the illegal
26 drug market if:

27 (A) the place of illegal drug activity by the

1 individual drug user is within the illegal drug market target
2 community of the defendant;

3 (B) the defendant's participation in the illegal
4 drug market was connected with the same type of illegal drug used by
5 the individual drug user; and

6 (C) the defendant participated in the illegal
7 drug market at any time during the individual drug user's period of
8 illegal drug use.

9 (c) A person entitled to bring an action under this section
10 may recover:

11 (1) economic damages, including the cost of treatment
12 and rehabilitation, medical expenses, loss of economic or
13 educational potential, loss of productivity, absenteeism, support
14 expenses, accidents or injury, and any other pecuniary loss
15 proximately caused by the illegal drug use;

16 (2) noneconomic damages, as defined by Section 41.001;

17 (3) exemplary damages, as defined by Section 41.001;

18 (4) reasonable attorney fees; and

19 (5) costs of suit, including reasonable expenses for
20 expert testimony.

21 Sec. 94.005. LIMITED RECOVERY OF DAMAGES. (a) Except as
22 otherwise provided by this section, an individual drug user may not
23 bring an action for damages caused by the use of an illegal drug.

24 (b) An individual drug user may bring an action for damages
25 caused by the use of an illegal drug if:

26 (1) the individual personally discloses to narcotics
27 enforcement authorities, not less than six months before filing the

1 action, all of the information known to the individual regarding
2 all of the individual's sources of illegal drugs;

3 (2) the individual has not used an illegal drug within
4 the six months before filing the action; and

5 (3) the individual does not use an illegal drug
6 throughout the pendency of the action.

7 (c) An individual drug user entitled to bring an action
8 under this section may seek damages only from a person who
9 distributed an illegal drug or is involved in the chain of
10 distribution of an illegal drug that was actually used by the
11 individual drug user.

12 (d) An individual drug user entitled to bring an action
13 under this section may not recover noneconomic or exemplary
14 damages.

15 Sec. 94.006. AGREEMENT VOID AND UNENFORCEABLE. A covenant,
16 promise, agreement, or understanding contained in, collateral to,
17 or affecting a contract of insurance or an indemnity obligation is
18 void if it purports to indemnify a person against liability for
19 damages under this chapter.

20 Sec. 94.007. JOINDER OF PARTIES. (a) Two or more persons
21 may be joined in one action under this chapter as claimants if:

22 (1) their respective actions involve at least one
23 common place of illegal drug activity; and

24 (2) any portion of the period of illegal drug use for
25 one claimant overlaps with the period of illegal drug use for every
26 other claimant.

27 (b) Two or more persons may be joined in one action under

1 this chapter as defendants if those persons are jointly liable to at
2 least one claimant.

3 Sec. 94.008. BURDEN OF PROOF; EFFECT OF CRIMINAL DRUG
4 CONVICTION. (a) In an action brought under this chapter, the
5 claimant must establish proof of participation in the illegal drug
6 market by clear and convincing evidence. The claimant must
7 establish any other element of the cause of action by a
8 preponderance of the evidence.

9 (b) Unless the defendant proves otherwise by clear and
10 convincing evidence:

11 (1) an individual drug user's period of drug use is
12 presumed to commence two years before the cause of action accrues;
13 and

14 (2) an individual drug user's place of illegal drug
15 activity is presumed to be a location defined by Section
16 94.002(12).

17 (c) If a person against whom recovery is sought has a
18 criminal conviction under the drug laws of this state or the
19 Comprehensive Drug Abuse Prevention and Control Act of 1970 (21
20 U.S.C. 801 et seq.), the person is estopped from denying
21 participation in the illegal drug market, and the conviction is
22 prima facie evidence of the person's participation in the illegal
23 drug market during the two years preceding the date of an act giving
24 rise to the conviction.

25 Sec. 94.009. PREJUDGMENT ATTACHMENT; EXECUTION ON
26 JUDGMENT. (a) Notwithstanding Subsection (c), a claimant under
27 this chapter may request a writ of attachment from the court against

1 all assets of a defendant sufficient to satisfy a potential award.
2 If a writ of attachment is issued, a defendant is entitled to an
3 immediate hearing. Attachment may be lifted if the defendant
4 demonstrates that the assets will be available for a potential
5 award or if the defendant posts a bond sufficient to cover a
6 potential award.

7 (b) Except as provided by Section 50, Article XVI, Texas
8 Constitution, a person against whom a judgment has been rendered
9 under this chapter is not eligible to exempt any property from
10 process of levy or execution on the judgment.

11 (c) Any asset sought to satisfy a judgment under this
12 chapter that is named in a forfeiture action or has been seized for
13 forfeiture by any state or federal agency may not be used to satisfy
14 a judgment unless the asset has been released:

15 (1) following the conclusion of the forfeiture action;

16 or

17 (2) by the agency that seized the asset.

18 Sec. 94.010. STATUTE OF LIMITATIONS. (a) Except as
19 otherwise provided by this section, a claim under this chapter may
20 not be brought more than two years after the cause of action
21 accrues.

22 (b) A cause of action accrues under this chapter when a
23 person described by Section 94.004 or 94.005 has reason to know of
24 the harm from illegal drug use that is the basis for the cause of
25 action and has reason to know that the illegal drug use is the cause
26 of the harm.

27 (c) The statute of limitations under this section is tolled

1 for a claimant who is incapacitated by the use of an illegal drug to
2 the extent that the claimant cannot reasonably be expected to seek
3 recovery under this chapter or as otherwise provided by law.

4 (d) The statute of limitations under this section is tolled
5 for a defendant for a period of six months following the defendant's
6 conviction on a criminal drug offense or as otherwise provided by
7 law.

8 Sec. 94.011. REPRESENTATION OF GOVERNMENTAL ENTITIES; STAY
9 OF ACTION. (a) An action brought under this chapter may be brought
10 in the name of the state or a political subdivision of the state by
11 the attorney general or by a district or county attorney.

12 (b) On motion by a governmental agency involved in a drug
13 investigation or prosecution, a court shall stay an action brought
14 under this chapter until the completion of the criminal
15 investigation or prosecution that is the subject of the motion.

16 Sec. 94.012. EFFECT ON OTHER LIABILITY. This chapter does
17 not affect judicially developed or developing rules under which a
18 person is or is not totally or partially immune from tort liability
19 by virtue of family relationship.

20 SECTION 2. (a) Chapter 94, Civil Practice and Remedies
21 Code, as added by this Act, applies only to a cause of action that
22 accrues on or after the effective date of this Act. A cause of
23 action that accrues before the effective date of this Act is
24 governed by the law in effect immediately before that time, and the
25 former law is continued in effect for that purpose.

26 (b) The statute of limitations created by Section 94.010,
27 Civil Practice and Remedies Code, as added by this Act, does not

1 commence until the effective date of this Act.

2 SECTION 3. This Act takes effect September 1, 2005.