



Bill and Sponsors Statement identical to S621

<b>COMMITTEE STATEMENT:</b>	<b>ASSEMBLY:</b>	Yes
	<b>SENATE:</b>	No
<b>FLOOR AMENDMENT STATEMENTS:</b>		No
<b>LEGISLATIVE FISCAL ESTIMATE:</b>		No
<b>VETO MESSAGE:</b>		No
<b>GOVERNOR'S PRESS RELEASE ON SIGNING:</b>		Yes

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<b>REPORTS:</b>	No
<b>HEARINGS:</b>	No
<b>NEWSPAPER ARTICLES:</b>	No

See: California Dealer Liability Act (Cal. Health and Safety Code, sec. 11700 et seq.)

**SENATE, No. 621**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

**Sponsored by:**

**Senator JOHN J. MATHEUSSEN**

**District 4 (Camden and Gloucester)**

**SYNOPSIS**

Establishes civil action against drug dealers.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning civil actions against drug dealers and  
2 supplementing Title 2C of the New Jersey Statutes.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. This act shall be known and may be cited as the "Drug Dealer  
8 Liability Act."

9  
10 2. The Legislature finds and declares:

11 a. Although the criminal justice system is an important weapon in  
12 the battle against controlled dangerous substances, the civil justice  
13 system can and must also be used. The civil justice system can provide  
14 an avenue of compensation for those who have suffered harm as a  
15 result of the marketing and distribution of controlled dangerous  
16 substances. The persons who have joined the marketing of controlled  
17 dangerous substances should bear the cost of the harm caused by that  
18 market in the community.

19 b. The threat of liability under this act serves as an additional  
20 deterrent to a recognizable segment of the network for marketing  
21 controlled dangerous substances. Because of this threat, a person who  
22 has assets unrelated to the sale of controlled dangerous substances,  
23 who markets controlled dangerous substances at the workplace, who  
24 encourages friends to become users, is likely to decide that the added  
25 cost of entering the market is not worth the benefit. This is  
26 particularly true for a first-time, casual dealer who has not yet made  
27 substantial profits.

28 c. This act is intended to provide a mechanism whereby the costs  
29 of the injuries caused by illegal drug use will be borne by those who  
30 benefit from illegal drug dealing.

31 d. This act imposes liability against all participants in the marketing  
32 of controlled dangerous substances, including small dealers,  
33 particularly those in the workplace, who are not usually the focus of  
34 criminal investigations. Small dealers increase the number of users and  
35 ultimately are the people who become large dealers. It is these small  
36 dealers who are most likely to be deterred by the threat of liability.

37  
38 3. As used in this act:

39 a. "Marketing of controlled dangerous substances" means the illegal  
40 distributing, dispensing, or possessing with intent to distribute, a  
41 specified controlled dangerous substance.

42 b. "Individual user of controlled dangerous substance" means the  
43 individual whose illegal use of a specified controlled dangerous  
44 substance is the basis of an action brought under this act.

45 c. "Level 1 offense" means:

- 1 (1) possessing with intent to distribute less than four ounces of a
- 2 specified controlled dangerous substance as defined in this section;
- 3 (2) distributing or dispensing less than one ounce of a specified
- 4 controlled dangerous substance as defined in this section;
- 5 (3) possessing with intent to distribute 25 or more but less than 50
- 6 marijuana plants;
- 7 (4) possessing with intent to distribute less than four pounds of
- 8 marijuana, or
- 9 (5) distributing or dispensing more than 28.5 grams of marijuana.
- 10 d. "Level 2 offense" means:
- 11 (1) possessing with intent to distribute four ounces or more but
- 12 less than eight ounces of a specified controlled dangerous substance
- 13 as defined in this section;
- 14 (2) distributing or dispensing one ounce or more but less than two
- 15 ounces of a specified controlled dangerous substance as defined in this
- 16 section;
- 17 (3) possessing with intent to distribute 50 or more but less than 75
- 18 marijuana plants;
- 19 (4) possessing with intent to distribute four pounds or more but
- 20 less than eight pounds of marijuana, or
- 21 (5) distributing or dispensing more than one pound but less than
- 22 five pounds of marijuana.
- 23 e. "Level 3 offense" means:
- 24 (1) possessing with intent to distribute eight ounces or more but
- 25 less than 16 ounces of a specified controlled dangerous substance as
- 26 defined in this section;
- 27 (2) distributing or dispensing two ounces or more but less than
- 28 four ounces of a specified controlled dangerous substance as defined
- 29 in this section;
- 30 (3) possessing with intent to distribute 75 or more but less than
- 31 100 marijuana plants;
- 32 (4) possessing with intent to distribute eight pounds or more but
- 33 less than 16 pounds of marijuana, or
- 34 (5) distributing or dispensing more than five pounds but less than
- 35 10 pounds of marijuana.
- 36 f. "Level 4 offense" means:
- 37 (1) possessing with intent to distribute 16 ounces or more of a
- 38 specified controlled dangerous substance as defined in this section;
- 39 (2) distributing or dispensing four ounces or more of a specified
- 40 controlled dangerous substance as defined in this section;
- 41 (3) possessing with intent to distribute 100 or more marijuana
- 42 plants;
- 43 (4) possessing with intent to distribute 16 pounds or more of
- 44 marijuana, or
- 45 (5) distributing or dispensing more than 10 pounds of marijuana.

1 g. "Participate in the illegal marketing of controlled dangerous  
2 substances" means to transport, import into this State, distribute,  
3 dispense, sell, possess with intent to distribute, or offer to distribute  
4 a controlled dangerous substance, in violation of any of the provisions  
5 of chapter 35 of Title 2C of the New Jersey Statutes. "Participate in  
6 the marketing of controlled dangerous substances" does not include  
7 the purchase or receipt of a controlled dangerous substance for  
8 personal use only.

9 h. "Person" means any natural person, association, partnership,  
10 corporation or other entity.

11 i. "Period of illegal use" means, in relation to the individual user of  
12 a controlled dangerous substance, the time of the individual's first  
13 illegal use of a controlled dangerous substance to the accrual of the  
14 cause of action.

15 j. "Place of illegal activity" means, in relation to the individual user  
16 of a specified controlled dangerous substance, each county in which  
17 the individual illegally possess or uses a specified controlled dangerous  
18 substance.

19 k. "Place of participation" means, in relation to a defendant in an  
20 action brought under this act, each county in which the defendant  
21 participates in the marketing of controlled dangerous substances.

22 l. "Specified controlled dangerous substance" means heroin,  
23 cocaine, lysergic acid diethylamide, phencyclidine, methamphetamine,  
24 phenyl-2-propanone (P2P) and any other controlled dangerous  
25 substance specified under the provisions of N.J.S.2C:35-5 as being  
26 unlawful to manufacture, distribute, or dispense, or to possess or have  
27 under a person's control with intent to manufacture, distribute or  
28 dispense.

29

30 4. A person who knowingly participates in the illegal marketing of  
31 controlled dangerous substances within this State is liable for damages,  
32 as provided in this act, for injury resulting from an individual's illegal  
33 use of a controlled dangerous substance.

34

35 5. a. Any of the following persons may bring an action for  
36 damages caused by an individual's illegal use of a controlled dangerous  
37 substance:

38 (1) A parent, legal guardian, child, spouse, or sibling of the  
39 controlled dangerous substance user.

40 (2) An individual who was exposed to a controlled dangerous  
41 substance in utero.

42 (3) An employer of the controlled dangerous substance user.

43 (4) A medical facility, insurer, employer, or other nongovernmental  
44 entity that funded a drug treatment program or employee assistance  
45 program for the controlled dangerous substance user or that otherwise  
46 expended money on behalf of the controlled dangerous substance user.

1 (5) A person injured as a result of the reckless or negligent actions  
2 of an individual user of a controlled dangerous substance.

3 No public entity, and no public agency other than a public hospital,  
4 shall have a cause of action under this act.

5 b. A person entitled to bring an action under this act may seek  
6 damages against:

7 (1) A person who distributed or dispensed a controlled dangerous  
8 substance to the individual user of the controlled dangerous substance;  
9 or

10 (2) A person who knowingly participated in the marketing of  
11 controlled dangerous substances, if all of the following apply:

12 (a) The defendant's place of participation is situated in the same  
13 county as the individual user's place of illegal activity;

14 (b) The defendant participated in the marketing of the same type  
15 of controlled dangerous substances as those used by the individual  
16 user;

17 (c) The defendant was previously convicted of an offense in the  
18 State of New Jersey for that type of controlled dangerous substance;  
19 and

20 (d) The defendant participated in the marketing of controlled  
21 dangerous substances at any time during the period the individual user  
22 unlawfully used the controlled dangerous substance.

23 c. A person entitled to bring an action under this section may  
24 recover all of the following damages:

25 (1) Economic damages, including, but not limited to, the cost of  
26 treatment and rehabilitation, medical expenses, loss of economic or  
27 educational potential, loss of productivity, absenteeism, support  
28 expenses, accidents or injury, and any other pecuniary loss proximately  
29 caused by the use of a controlled dangerous substance.

30 (2) Noneconomic damages, including but not limited to physical  
31 and emotional pain, suffering, physical impairment, physical  
32 impairment, emotional distress, disfigurement, loss of enjoyment, loss  
33 of companionship, services and consortium, and other nonpecuniary  
34 losses proximately caused by an individual's use of a controlled  
35 dangerous substance.

36 (3) Punitive damages.

37 (4) Reasonable attorney fees.

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

40

41 6. a. An individual user of a controlled dangerous substance may  
42 bring an action for damages caused by the use of a controlled  
43 dangerous substance only if all of the following conditions are met:

44 (1) The individual personally discloses to narcotics enforcement  
45 authorities all of the information known to the individual regarding all  
46 that individual's sources of controlled dangerous substances.

1 (2) The individual has not used a controlled dangerous substance  
2 within the 30 days before filing the action.

3 (3) The individual continues to remain free of the use of an illegal  
4 controlled substance throughout the pendency of the action.

5 b. An individual user entitled to bring an action under this section  
6 may seek damages only from a person who transported, imported into  
7 this State, distributed, dispensed, sold, possessed with intent to  
8 distribute, or offered to distribute, in violation of any of the provisions  
9 of chapter 35 of Title 2C of the New Jersey Statutes, the controlled  
10 dangerous substance actually used by the individual user of a  
11 controlled dangerous substance.

12 c. An individual user entitled to bring an action under this section  
13 may recover only the following damages:

14 (1) Economic damages, including, but not limited to, the cost of  
15 treatment, rehabilitation and medical expenses, loss of economic or  
16 educational potential, loss of productivity, absenteeism, accidents or  
17 injury, and any other pecuniary loss proximately caused by the person's  
18 use of a controlled dangerous substance.

19 (2) Reasonable attorney fees.

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

22

23 7. a. A third party shall not pay damages awarded under this act,  
24 or provide a defense or money for a defense, on behalf of an insured  
25 under a contract of insurance or indemnification.

26 b. A cause of action authorized pursuant to this act may not be  
27 assigned, either expressly, by subrogation, or by any other means,  
28 directly or indirectly, to any public or publicly funded agency or  
29 institution.

30

31 8. A person whose participation in the marketing of controlled  
32 dangerous substances is grounds for liability pursuant to this act shall  
33 be rebuttably presumed to be liable for damages incurred by the  
34 plaintiff in the following percentages:

35 a. For a level 1 offense, 25 percent of the damages;

36 b. For a level 2 offense, 50 percent of the damages;

37 c. For a level 3 offense, 75 percent of the damages; and

38 d. For a level 4 offense, 100 percent of the damages.

39

40 9. a. Two or more persons may join in one action under this act as  
41 plaintiffs if their respective actions have at least one market for  
42 controlled dangerous substances in common and if any portion of the  
43 period of use of a controlled dangerous substance overlaps with the  
44 period of use of a controlled dangerous substance for every other  
45 plaintiff.

1       b. Two or more persons may be joined in one action under this act  
2 as defendants if those persons are liable to at least one plaintiff.

3  
4       10. a. An action by an individual user of a controlled dangerous  
5 substance is governed by the principles of comparative responsibility.  
6 Comparative responsibility attributed to an individual user does not  
7 bar the user's recovery but diminishes the award of damages  
8 proportionately, according to the measure of responsibility attributed  
9 to the user. The burden of proving comparative responsibility is on  
10 the defendant, who shall prove comparative responsibility by clear and  
11 convincing evidence.

12       b. Comparative responsibility shall not be attributed to a plaintiff  
13 who is not an individual user of a controlled substance, unless that  
14 plaintiff knowingly gave the individual user money for the purchase  
15 of the controlled dangerous substance.

16  
17       11. A person subject to liability under this act has a right of action  
18 for contribution against another person subject to liability under this  
19 act. Contribution may be enforced either in the original action or by  
20 a separate action brought for that purpose. A plaintiff may seek  
21 recovery in accordance with this act and other laws against a person  
22 whom a defendant has asserted a right of contribution.

23  
24       12. a. Proof of liability in an action brought under this act shall be  
25 shown by clear and convincing evidence.

26       b. A person against whom recovery is sought who has been  
27 convicted of a violation of N.J.S.2C:35-5, Manufacturing, Distributing  
28 or Dispensing, or an equivalent offense under federal law or the law  
29 of any other state, is estopped from denying illegal participation in the  
30 market for controlled dangerous substances. If such conviction was  
31 based upon the same type of controlled dangerous substance as that  
32 used by the individual user, the conviction also constitutes prima facie  
33 evidence of the person's participation in the marketing of controlled  
34 dangerous substance user pursuant to this act.

35       c. The absence of a criminal conviction for a violation of  
36 N.J.S.2C:35-5 or an equivalent offense under federal law or the law of  
37 any other state does not bar recovery by a plaintiff bringing suit  
38 pursuant to section 5 of this act.

39  
40       13. A plaintiff under this act may request an ex parte prejudgment  
41 attachment order from the court against all assets of a defendant  
42 sufficient to satisfy a potential award.

43  
44       14. a. A cause of action accrues under this act when a person has  
45 reason to know of the harm from use of a controlled dangerous  
46 substance that is the basis for the cause of action and has reason to

1 know that the use of a controlled dangerous substance is the cause of  
2 the harm.

3 b. A claim under this act shall not be brought more than one year  
4 after the defendant distributes, dispenses, or possesses with intent to  
5 distribute, the controlled dangerous substance or more than one year  
6 after the defendant is convicted of a crime involving controlled  
7 dangerous substances, whichever is the later.

8  
9 15. On motion by a governmental agency involved in an  
10 investigation or prosecution involving a controlled dangerous  
11 substance, an action brought under this act shall be stayed until the  
12 completion of any underlying criminal investigation or prosecution.

13  
14 16. No cause of action shall arise based on any act by a defendant  
15 which occurred prior to the effective date of this act.

16  
17 17. This act shall take effect immediately.

18

19

20

STATEMENT

21

22 This bill provides a civil remedy for damages to persons injured as  
23 a result of the illegal use of controlled dangerous substances. These  
24 persons include parents, employers, insurers, government entities, and  
25 others who pay for drug treatment or employee assistance programs,  
26 as well as infants injured as a result of exposure to illegal drugs in  
27 utero. The bill is intended to shift, to the extent possible, the cost of  
28 the damage caused by the illegal market for controlled dangerous  
29 substances to those persons who profit from that market.

30 The bill provides that parents, children, spouses and siblings of drug  
31 users, as well as employers of drug users, medical facilities which treat  
32 the drug users, and persons injured by the drug users' actions, would  
33 be entitled to sue drug dealers for civil damages.

34 Drug dealers would be liable for such damages in proportion to the  
35 scale of their drug dealing, large-scale drug dealers being liable for all  
36 damages and smaller-scale dealers being liable for a smaller percentage  
37 of damages.

38 A drug seller would be liable even if he did not actually sell the  
39 drugs to the particular user, as long as he sells the same type of drug  
40 within the same county and has a past criminal conviction for a drug-  
41 related offense.

42 However, a drug seller without any past criminal convictions for  
43 drug-related offenses would still be liable for damages in those cases  
44 where he is identified as having sold drugs to the particular user whose  
45 drug use is the basis for the suit.

46 The person suing would be entitled to recover economic damages

1 and noneconomic damages, such as pain, suffering, and emotional  
2 distress, as well as punitive damages and attorney fees.

3 In addition, the bill provides that under certain limited  
4 circumstances the drug users themselves could sue their own dealers.  
5 Users would be eligible to bring suit if they first disclose to law  
6 enforcement authorities all of the information they know concerning  
7 their sources, if they have not used a controlled dangerous substance  
8 within the 30 days before filing the action, and if they continue to  
9 remain free of CDS use during the pendency of the action. Drug users  
10 would only be allowed to bring suit against the actual dealer who sold  
11 them the drug. Users would be entitled to receive economic  
12 (compensatory) damages and attorney fees, but could not receive  
13 noneconomic damages (such as damages for pain and suffering).

14 The bill bars all government entities from suit, in order to avoid  
15 possible constitutional issues of double jeopardy.

16 The bill is modeled on a statute enacted in the state of California in  
17 September, 1996.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### SENATE, No. 621

# STATE OF NEW JERSEY

DATED: JANUARY 31, 2000

The Senate Judiciary Committee reports favorably Senate Bill No. 621.

This bill would allow parents, children, spouses and siblings of illegal drug users, as well as employers of drug users, medical facilities which treat the drug users and persons injured by the drug users' actions, to sue drug dealers for civil damages. Individuals exposed to controlled dangerous substances in utero would also be entitled to seek damages.

Under the provisions of the bill, drug dealers would be liable for such damages in proportion to the scale of their drug dealing, large-scale drug dealers being liable for all damages and smaller-scale dealers being liable for a smaller percentage of damages.

A drug seller would be liable even if he did not actually sell the drugs to the particular user as long as he sells the same type of drug within the same county and has a past criminal conviction for a drug-related offense. A drug seller without any past criminal convictions for drug-related offenses would be liable for damages in those cases where he is identified as having sold drugs to the particular user whose drug use is the basis for the suit. Under the bill, the person suing would be entitled to recover economic damages and damages for pain and suffering and emotional distress, as well as punitive damages and attorney fees.

In addition, the bill provides that under certain limited circumstances the drug users themselves could sue their own dealers. Users would be eligible to bring suit if they first disclose to law enforcement authorities all of the information they know concerning their sources, if they have not used a controlled dangerous substance within 30 days before filing the action, and if they continue to remain free of CDS use during the pendency of the action. Drug users would only be allowed to bring suit against the actual dealer who sold them the drug. Users would be entitled to receive economic damages and attorney fees but could not receive noneconomic damages such as damages for pain and suffering.

In order to avoid possible constitutional issues of double jeopardy, the bill bars all government entities from suit.

This bill was prefiled for introduction in the 2000 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### SENATE, No. 621

# STATE OF NEW JERSEY

DATED: OCTOBER 16, 2000

The Assembly Judiciary Committee reports favorably Senate Bill No. 621.

This bill would allow parents, children, spouses and siblings of illegal drug users, as well as employers of drug users, medical facilities which treat the drug users and persons injured by the drug users' actions, to sue drug dealers for civil damages. Individuals exposed to controlled dangerous substances in utero would also be entitled to seek damages.

Under the provisions of the bill, drug dealers would be liable for such damages in proportion to the scale of their drug dealing, large-scale drug dealers being liable for all damages and smaller-scale dealers being liable for a smaller percentage of damages.

A drug seller would be liable even if he did not actually sell the drugs to the particular user as long as he sells the same type of drug within the same county and has a past criminal conviction for a drug-related offense. A drug seller without any past criminal convictions for drug-related offenses would be liable for damages in those cases where he is identified as having sold drugs to the particular user whose drug use is the basis for the suit. Under the bill, the person suing would be entitled to recover economic damages and damages for pain and suffering and emotional distress, as well as punitive damages and attorney fees.

In addition, the bill provides that under certain limited circumstances the drug users themselves could sue their own dealers. Users would be eligible to bring suit if they first disclose to law enforcement authorities all of the information they know concerning their sources, if they have not used a controlled dangerous substance within 30 days before filing the action, and if they continue to remain free of CDS use during the pendency of the action. Drug users would only be allowed to bring suit against the actual dealer who sold them the drug. Users would be entitled to receive economic damages and attorney fees but could not receive noneconomic damages such as damages for pain and suffering.

In order to avoid possible constitutional issues of double jeopardy, the bill bars all government entities from suit.

This bill is identical to Assembly, No. 918.

# SENATE, No. 621

## STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

**Sponsored by:**

**Senator JOHN J. MATHEUSSEN**

**District 4 (Camden and Gloucester)**

**Senator NORMAN M. ROBERTSON**

**District 34 (Essex and Passaic)**

**Co-Sponsored by:**

**Senators Gormley, Bucco, Baer, Assemblyman Kelly, Assemblywoman Friscia, Assemblymen Blee, LeFevre and DiGaetano**

**SYNOPSIS**

Establishes civil action against drug dealers.

**CURRENT VERSION OF TEXT**

As reported by the Senate Judiciary Committee with technical review.



**(Sponsorship Updated As Of: 3/9/2001)**

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4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
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13 system can and must also be used. The civil justice system can provide  
14 an avenue of compensation for those who have suffered harm as a  
15 result of the marketing and distribution of controlled dangerous  
16 substances. The persons who have joined the marketing of controlled  
17 dangerous substances should bear the cost of the harm caused by that  
18 market in the community.

19 b. The threat of liability under this act serves as an additional  
20 deterrent to a recognizable segment of the network for marketing  
21 controlled dangerous substances. Because of this threat, a person who  
22 has assets unrelated to the sale of controlled dangerous substances,  
23 who markets controlled dangerous substances at the workplace, who  
24 encourages friends to become users, is likely to decide that the added  
25 cost of entering the market is not worth the benefit. This is  
26 particularly true for a first-time, casual dealer who has not yet made  
27 substantial profits.

28 c. This act is intended to provide a mechanism whereby the costs  
29 of the injuries caused by illegal drug use will be borne by those who  
30 benefit from illegal drug dealing.

31 d. This act imposes liability against all participants in the marketing  
32 of controlled dangerous substances, including small dealers,  
33 particularly those in the workplace, who are not usually the focus of  
34 criminal investigations. Small dealers increase the number of users and  
35 ultimately are the people who become large dealers. It is these small  
36 dealers who are most likely to be deterred by the threat of liability.

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- 2 (1) possessing with intent to distribute less than four ounces of a  
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- 6 (3) possessing with intent to distribute 25 or more but less than 50  
7 marijuana plants;
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9 marijuana, or
- 10 (5) distributing or dispensing more than 28.5 grams of marijuana.
- 11 d. "Level 2 offense" means:
- 12 (1) possessing with intent to distribute four ounces or more but  
13 less than eight ounces of a specified controlled dangerous substance  
14 as defined in this section;
- 15 (2) distributing or dispensing one ounce or more but less than two  
16 ounces of a specified controlled dangerous substance as defined in this  
17 section;
- 18 (3) possessing with intent to distribute 50 or more but less than 75  
19 marijuana plants;
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21 less than eight pounds of marijuana, or
- 22 (5) distributing or dispensing more than one pound but less than  
23 five pounds of marijuana.
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- 25 (1) possessing with intent to distribute eight ounces or more but  
26 less than 16 ounces of a specified controlled dangerous substance as  
27 defined in this section;
- 28 (2) distributing or dispensing two ounces or more but less than  
29 four ounces of a specified controlled dangerous substance as defined  
30 in this section;
- 31 (3) possessing with intent to distribute 75 or more but less than  
32 100 marijuana plants;
- 33 (4) possessing with intent to distribute eight pounds or more but  
34 less than 16 pounds of marijuana, or
- 35 (5) distributing or dispensing more than five pounds but less than  
36 10 pounds of marijuana.
- 37 f. "Level 4 offense" means:
- 38 (1) possessing with intent to distribute 16 ounces or more of a  
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21 action brought under this act, each county in which the defendant  
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23 l. "Specified controlled dangerous substance" means heroin,  
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25 phenyl-2-propanone (P2P) and any other controlled dangerous  
26 substance specified under the provisions of N.J.S.2C:35-5 as being  
27 unlawful to manufacture, distribute, or dispense, or to possess or have  
28 under a person's control with intent to manufacture, distribute or  
29 dispense.

30

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42 substance in utero.

43 (3) An employer of the controlled dangerous substance user.

44 (4) A medical facility, insurer, employer, or other nongovernmental  
45 entity that funded a drug treatment program or employee assistance  
46 program for the controlled dangerous substance user or that otherwise

1 expended money on behalf of the controlled dangerous substance user.

2 (5) A person injured as a result of the reckless or negligent actions  
3 of an individual user of a controlled dangerous substance.

4 No public entity, and no public agency other than a public hospital,  
5 shall have a cause of action under this act.

6 b. A person entitled to bring an action under this act may seek  
7 damages against:

8 (1) A person who distributed or dispensed a controlled dangerous  
9 substance to the individual user of the controlled dangerous substance;

10 or

11 (2) A person who knowingly participated in the marketing of  
12 controlled dangerous substances, if all of the following apply:

13 (a) The defendant's place of participation is situated in the same  
14 county as the individual user's place of illegal activity;

15 (b) The defendant participated in the marketing of the same type  
16 of controlled dangerous substances as those used by the individual  
17 user;

18 (c) The defendant was previously convicted of an offense in the  
19 State of New Jersey for that type of controlled dangerous substance;

20 and

21 (d) The defendant participated in the marketing of controlled  
22 dangerous substances at any time during the period the individual user  
23 unlawfully used the controlled dangerous substance.

24 c. A person entitled to bring an action under this section may  
25 recover all of the following damages:

26 (1) Economic damages, including, but not limited to, the cost of  
27 treatment and rehabilitation, medical expenses, loss of economic or  
28 educational potential, loss of productivity, absenteeism, support  
29 expenses, accidents or injury, and any other pecuniary loss proximately  
30 caused by the use of a controlled dangerous substance.

31 (2) Noneconomic damages, including but not limited to physical  
32 and emotional pain, suffering, physical impairment, physical  
33 impairment, emotional distress, disfigurement, loss of enjoyment, loss  
34 of companionship, services and consortium, and other nonpecuniary  
35 losses proximately caused by an individual's use of a controlled  
36 dangerous substance.

37 (3) Punitive damages.

38 (4) Reasonable attorney fees.

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

41

42 6. a. An individual user of a controlled dangerous substance may  
43 bring an action for damages caused by the use of a controlled  
44 dangerous substance only if all of the following conditions are met:

45 (1) The individual personally discloses to narcotics enforcement  
46 authorities all of the information known to the individual regarding all

1 that individual's sources of controlled dangerous substances.

2 (2) The individual has not used a controlled dangerous substance  
3 within the 30 days before filing the action.

4 (3) The individual continues to remain free of the use of an illegal  
5 controlled substance throughout the pendency of the action.

6 b. An individual user entitled to bring an action under this section  
7 may seek damages only from a person who transported, imported into  
8 this State, distributed, dispensed, sold, possessed with intent to  
9 distribute, or offered to distribute, in violation of any of the provisions  
10 of chapter 35 of Title 2C of the New Jersey Statutes, the controlled  
11 dangerous substance actually used by the individual user of a  
12 controlled dangerous substance.

13 c. An individual user entitled to bring an action under this section  
14 may recover only the following damages:

15 (1) Economic damages, including, but not limited to, the cost of  
16 treatment, rehabilitation and medical expenses, loss of economic or  
17 educational potential, loss of productivity, absenteeism, accidents or  
18 injury, and any other pecuniary loss proximately caused by the person's  
19 use of a controlled dangerous substance.

20 (2) Reasonable attorney fees.

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

23

24 7. a. A third party shall not pay damages awarded under this act,  
25 or provide a defense or money for a defense, on behalf of an insured  
26 under a contract of insurance or indemnification.

27 b. A cause of action authorized pursuant to this act may not be  
28 assigned, either expressly, by subrogation, or by any other means,  
29 directly or indirectly, to any public or publicly funded agency or  
30 institution.

31

32 8. A person whose participation in the marketing of controlled  
33 dangerous substances is grounds for liability pursuant to this act shall  
34 be rebuttably presumed to be liable for damages incurred by the  
35 plaintiff in the following percentages:

36 a. For a level 1 offense, 25 percent of the damages;

37 b. For a level 2 offense, 50 percent of the damages;

38 c. For a level 3 offense, 75 percent of the damages; and

39 d. For a level 4 offense, 100 percent of the damages.

40

41 9. a. Two or more persons may join in one action under this act as  
42 plaintiffs if their respective actions have at least one market for  
43 controlled dangerous substances in common and if any portion of the  
44 period of use of a controlled dangerous substance overlaps with the  
45 period of use of a controlled dangerous substance for every other  
46 plaintiff.

1       b. Two or more persons may be joined in one action under this act  
2 as defendants if those persons are liable to at least one plaintiff.

3  
4       10. a. An action by an individual user of a controlled dangerous  
5 substance is governed by the principles of comparative responsibility.  
6 Comparative responsibility attributed to an individual user does not  
7 bar the user's recovery but diminishes the award of damages  
8 proportionately, according to the measure of responsibility attributed  
9 to the user. The burden of proving comparative responsibility is on  
10 the defendant, who shall prove comparative responsibility by clear and  
11 convincing evidence.

12       b. Comparative responsibility shall not be attributed to a plaintiff  
13 who is not an individual user of a controlled substance, unless that  
14 plaintiff knowingly gave the individual user money for the purchase  
15 of the controlled dangerous substance.

16  
17       11. A person subject to liability under this act has a right of action  
18 for contribution against another person subject to liability under this  
19 act. Contribution may be enforced either in the original action or by  
20 a separate action brought for that purpose. A plaintiff may seek  
21 recovery in accordance with this act and other laws against a person  
22 whom a defendant has asserted a right of contribution.

23  
24       12. a. Proof of liability in an action brought under this act shall be  
25 shown by clear and convincing evidence.

26       b. A person against whom recovery is sought who has been  
27 convicted of a violation of N.J.S.2C:35-5, Manufacturing, Distributing  
28 or Dispensing, or an equivalent offense under federal law or the law  
29 of any other state, is estopped from denying illegal participation in the  
30 market for controlled dangerous substances. If such conviction was  
31 based upon the same type of controlled dangerous substance as that  
32 used by the individual user, the conviction also constitutes prima facie  
33 evidence of the person's participation in the marketing of controlled  
34 dangerous substance user pursuant to this act.

35       c. The absence of a criminal conviction for a violation of  
36 N.J.S.2C:35-5 or an equivalent offense under federal law or the law of  
37 any other state does not bar recovery by a plaintiff bringing suit  
38 pursuant to section 5 of this act.

39  
40       13. A plaintiff under this act may request an ex parte prejudgment  
41 attachment order from the court against all assets of a defendant  
42 sufficient to satisfy a potential award.

43  
44       14. a. A cause of action accrues under this act when a person has  
45 reason to know of the harm from use of a controlled dangerous  
46 substance that is the basis for the cause of action and has reason to

1 know that the use of a controlled dangerous substance is the cause of  
2 the harm.

3 b. A claim under this act shall not be brought more than one year  
4 after the defendant distributes, dispenses, or possesses with intent to  
5 distribute, the controlled dangerous substance or more than one year  
6 after the defendant is convicted of a crime involving controlled  
7 dangerous substances, whichever is the later.

8

9 15. On motion by a governmental agency involved in an  
10 investigation or prosecution involving a controlled dangerous  
11 substance, an action brought under this act shall be stayed until the  
12 completion of any underlying criminal investigation or prosecution.

13

14 16. No cause of action shall arise based on any act by a defendant  
15 which occurred prior to the effective date of this act.

16

17 17. This act shall take effect immediately.

[First Reprint]

**SENATE, No. 621**

**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

**Sponsored by:**

**Senator JOHN J. MATHEUSSEN**

**District 4 (Camden and Gloucester)**

**Senator NORMAN M. ROBERTSON**

**District 34 (Essex and Passaic)**

**Co-Sponsored by:**

**Senators Gormley, Bucco, Baer, Assemblyman Kelly, Assemblywoman**

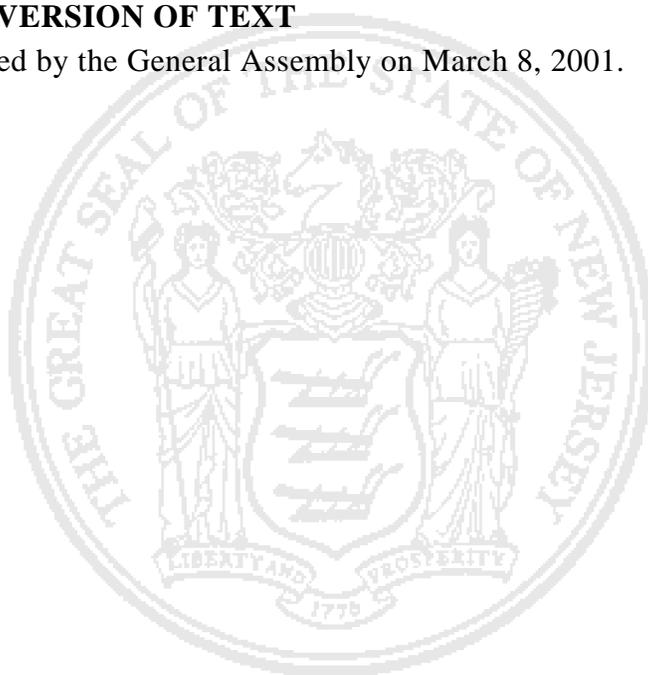
**Frischia, Assemblymen Blee, LeFevre and DiGaetano**

**SYNOPSIS**

Establishes civil action against drug dealers.

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on March 8, 2001.



**(Sponsorship Updated As Of: 3/9/2001)**

1 AN ACT concerning civil actions against drug dealers and  
2 supplementing Title 2C of the New Jersey Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6

7 1. This act shall be known and may be cited as the "Drug Dealer  
8 Liability Act."

9

10 2. The Legislature finds and declares:

11 a. Although the criminal justice system is an important weapon in  
12 the battle against controlled dangerous substances, the civil justice  
13 system can and must also be used. The civil justice system can provide  
14 an avenue of compensation for those who have suffered harm as a  
15 result of the marketing and distribution of controlled dangerous  
16 substances. The persons who have joined the marketing of controlled  
17 dangerous substances should bear the cost of the harm caused by that  
18 market in the community.

19 b. The threat of liability under this act serves as an additional  
20 deterrent to a recognizable segment of the network for marketing  
21 controlled dangerous substances. Because of this threat, a person who  
22 has assets unrelated to the sale of controlled dangerous substances,  
23 who markets controlled dangerous substances at the workplace, who  
24 encourages friends to become users, is likely to decide that the added  
25 cost of entering the market is not worth the benefit. This is  
26 particularly true for a first-time, casual dealer who has not yet made  
27 substantial profits.

28 c. This act is intended to provide a mechanism whereby the costs  
29 of the injuries caused by illegal drug use will be borne by those who  
30 benefit from illegal drug dealing.

31 d. This act imposes liability against all participants in the marketing  
32 of controlled dangerous substances, including small dealers,  
33 particularly those in the workplace, who are not usually the focus of  
34 criminal investigations. Small dealers increase the number of users and  
35 ultimately are the people who become large dealers. It is these small  
36 dealers who are most likely to be deterred by the threat of liability.

37

38 3. As used in this act:

39 a. "Marketing of controlled dangerous substances" means the illegal  
40 distributing, dispensing, or possessing with intent to distribute, a  
41 specified controlled dangerous substance.

42 b. "Individual user of controlled dangerous substance" means the

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

**<sup>1</sup>Assembly floor amendments adopted March 8, 2001.**

1 individual whose illegal use of a specified controlled dangerous  
2 substance is the basis of an action brought under this act.

3 c. "Level 1 offense" means:

4 (1) possessing with intent to distribute less than four ounces of a  
5 specified controlled dangerous substance as defined in this section;

6 (2) distributing or dispensing less than one ounce of a specified  
7 controlled dangerous substance as defined in this section;

8 (3) possessing with intent to distribute 25 or more but less than 50  
9 marijuana plants;

10 (4) possessing with intent to distribute less than four pounds of  
11 marijuana, or

12 (5) distributing or dispensing more than 28.5 grams of marijuana.

13 d. "Level 2 offense" means:

14 (1) possessing with intent to distribute four ounces or more but  
15 less than eight ounces of a specified controlled dangerous substance  
16 as defined in this section;

17 (2) distributing or dispensing one ounce or more but less than two  
18 ounces of a specified controlled dangerous substance as defined in this  
19 section;

20 (3) possessing with intent to distribute 50 or more but less than 75  
21 marijuana plants;

22 (4) possessing with intent to distribute four pounds or more but  
23 less than eight pounds of marijuana, or

24 (5) distributing or dispensing more than one pound but less than  
25 five pounds of marijuana.

26 e. "Level 3 offense" means:

27 (1) possessing with intent to distribute eight ounces or more but  
28 less than 16 ounces of a specified controlled dangerous substance as  
29 defined in this section;

30 (2) distributing or dispensing two ounces or more but less than  
31 four ounces of a specified controlled dangerous substance as defined  
32 in this section;

33 (3) possessing with intent to distribute 75 or more but less than  
34 100 marijuana plants;

35 (4) possessing with intent to distribute eight pounds or more but  
36 less than 16 pounds of marijuana, or

37 (5) distributing or dispensing more than five pounds but less than  
38 10 pounds of marijuana.

39 f. "Level 4 offense" means:

40 (1) possessing with intent to distribute 16 ounces or more of a  
41 specified controlled dangerous substance as defined in this section;

42 (2) distributing or dispensing four ounces or more of a specified  
43 controlled dangerous substance as defined in this section;

44 (3) possessing with intent to distribute 100 or more marijuana  
45 plants;

46 (4) possessing with intent to distribute 16 pounds or more of

1 marijuana, or

2 (5) distributing or dispensing more than 10 pounds of marijuana.

3 g. "Participate in the illegal marketing of controlled dangerous  
4 substances" means to transport, import into this State, distribute,  
5 dispense, sell, possess with intent to distribute, or offer to distribute  
6 a controlled dangerous substance, in violation of any of the provisions  
7 of chapter 35 of Title 2C of the New Jersey Statutes. "Participate in  
8 the marketing of controlled dangerous substances" does not include  
9 the purchase or receipt of a controlled dangerous substance for  
10 personal use only.

11 h. "Person" means any natural person, association, partnership,  
12 corporation or other entity.

13 i. "Period of illegal use" means, in relation to the individual user of  
14 a controlled dangerous substance, the time of the individual's first  
15 illegal use of a controlled dangerous substance to the accrual of the  
16 cause of action.

17 j. "Place of illegal activity" means, in relation to the individual user  
18 of a specified controlled dangerous substance, each county in which  
19 the individual illegally possess or uses a specified controlled dangerous  
20 substance.

21 k. "Place of participation" means, in relation to a defendant in an  
22 action brought under this act, each county in which the defendant  
23 participates in the marketing of controlled dangerous substances.

24 l. "Specified controlled dangerous substance" means heroin,  
25 cocaine, lysergic acid diethylamide, phencyclidine, methamphetamine,  
26 phenyl-2-propanone (P2P) and any other controlled dangerous  
27 substance specified under the provisions of N.J.S.2C:35-5 as being  
28 unlawful to manufacture, distribute, or dispense, or to possess or have  
29 under a person's control with intent to manufacture, distribute or  
30 dispense.

31

32 4. A person who knowingly participates in the illegal marketing of  
33 controlled dangerous substances within this State is liable for damages,  
34 as provided in this act, for injury resulting from an individual's illegal  
35 use of a controlled dangerous substance.

36

37 5. a. Any of the following persons may bring an action for  
38 damages caused by an individual's illegal use of a controlled dangerous  
39 substance:

40 (1) A parent, legal guardian, child, spouse, or sibling of the  
41 controlled dangerous substance user.

42 (2) An individual who was exposed to a controlled dangerous  
43 substance in utero.

44 (3) An employer of the controlled dangerous substance user.

1 (4) A medical facility, insurer, employer, or other nongovernmental  
2 entity that funded a drug treatment program or employee assistance  
3 program for the controlled dangerous substance user or that otherwise  
4 expended money on behalf of the controlled dangerous substance user.

5 (5) A person injured as a result of the reckless or negligent actions  
6 of an individual user of a controlled dangerous substance.

7 No public entity, and no public agency other than a public hospital,  
8 shall have a cause of action under this act.

9 b. A person entitled to bring an action under this act may seek  
10 damages against:

11 (1) A person who <sup>1</sup>illegally<sup>1</sup> distributed or dispensed a controlled  
12 dangerous substance to the individual user of the controlled dangerous  
13 substance; or

14 (2) A person who knowingly participated in the <sup>1</sup>illegal<sup>1</sup> marketing  
15 of controlled dangerous substances, if all of the following apply:

16 (a) The defendant's place of participation is situated in the same  
17 county as the individual user's place of illegal activity;

18 (b) The defendant participated in the marketing of the same type  
19 of controlled dangerous substances as those used by the individual  
20 user;

21 (c) The defendant was previously convicted of an offense in the  
22 State of New Jersey for that type of controlled dangerous substance;  
23 and

24 (d) The defendant participated in the marketing of controlled  
25 dangerous substances at any time during the period the individual user  
26 unlawfully used the controlled dangerous substance.

27 c. A person entitled to bring an action under this section may  
28 recover all of the following damages:

29 (1) Economic damages, including, but not limited to, the cost of  
30 treatment and rehabilitation, medical expenses, loss of economic or  
31 educational potential, loss of productivity, absenteeism, support  
32 expenses, accidents or injury, and any other pecuniary loss proximately  
33 caused by the use of a controlled dangerous substance.

34 (2) Noneconomic damages, including but not limited to physical  
35 and emotional pain, suffering, physical impairment, physical  
36 impairment, emotional distress, disfigurement, loss of enjoyment, loss  
37 of companionship, services and consortium, and other nonpecuniary  
38 losses proximately caused by an individual's use of a controlled  
39 dangerous substance.

40 (3) Punitive damages.

41 (4) Reasonable attorney fees.

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

1       6. a. An individual user of a controlled dangerous substance may  
2 bring an action for damages caused by the use of a controlled  
3 dangerous substance only if all of the following conditions are met:

4       (1) The individual personally discloses to narcotics enforcement  
5 authorities all of the information known to the individual regarding all  
6 that individual's sources of controlled dangerous substances.

7       (2) The individual has not used a controlled dangerous substance  
8 within the 30 days before filing the action.

9       (3) The individual continues to remain free of the use of an illegal  
10 controlled substance throughout the pendency of the action.

11       b. An individual user entitled to bring an action under this section  
12 may seek damages only from a person who transported, imported into  
13 this State, distributed, dispensed, sold, possessed with intent to  
14 distribute, or offered to distribute, in violation of any of the provisions  
15 of chapter 35 of Title 2C of the New Jersey Statutes, the controlled  
16 dangerous substance actually used by the individual user of a  
17 controlled dangerous substance.

18       c. An individual user entitled to bring an action under this section  
19 may recover only the following damages:

20       (1) Economic damages, including, but not limited to, the cost of  
21 treatment, rehabilitation and medical expenses, loss of economic or  
22 educational potential, loss of productivity, absenteeism, accidents or  
23 injury, and any other pecuniary loss proximately caused by the person's  
24 use of a controlled dangerous substance.

25       (2) Reasonable attorney fees.

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

28

29       7. a. A third party shall not pay damages awarded under this act,  
30 or provide a defense or money for a defense, on behalf of an insured  
31 under a contract of insurance or indemnification.

32       b. A cause of action authorized pursuant to this act may not be  
33 assigned, either expressly, by subrogation, or by any other means,  
34 directly or indirectly, to any public or publicly funded agency or  
35 institution.

36

37       8. A person whose participation in the marketing of controlled  
38 dangerous substances is grounds for liability pursuant to this act shall  
39 be rebuttably presumed to be liable for damages incurred by the  
40 plaintiff in the following percentages:

41       a. For a level 1 offense, 25 percent of the damages;

42       b. For a level 2 offense, 50 percent of the damages;

43       c. For a level 3 offense, 75 percent of the damages; and

44       d. For a level 4 offense, 100 percent of the damages.

1 9. a. Two or more persons may join in one action under this act as  
2 plaintiffs if their respective actions have at least one market for  
3 controlled dangerous substances in common and if any portion of the  
4 period of use of a controlled dangerous substance overlaps with the  
5 period of use of a controlled dangerous substance for every other  
6 plaintiff.

7 b. Two or more persons may be joined in one action under this act  
8 as defendants if those persons are liable to at least one plaintiff.

9  
10 10. a. An action by an individual user of a controlled dangerous  
11 substance is governed by the principles of comparative responsibility.  
12 Comparative responsibility attributed to an individual user does not  
13 bar the user's recovery but diminishes the award of damages  
14 proportionately, according to the measure of responsibility attributed  
15 to the user. The burden of proving comparative responsibility is on  
16 the defendant, who shall prove comparative responsibility by clear and  
17 convincing evidence.

18 b. Comparative responsibility shall not be attributed to a plaintiff  
19 who is not an individual user of a controlled substance, unless that  
20 plaintiff knowingly gave the individual user money for the purchase  
21 of the controlled dangerous substance.

22  
23 11. A person subject to liability under this act has a right of action  
24 for contribution against another person subject to liability under this  
25 act. Contribution may be enforced either in the original action or by  
26 a separate action brought for that purpose. A plaintiff may seek  
27 recovery in accordance with this act and other laws against a person  
28 whom a defendant has asserted a right of contribution.

29  
30 12. a. Proof of liability in an action brought under this act shall be  
31 shown by clear and convincing evidence.

32 b. A person against whom recovery is sought who has been  
33 convicted of a violation of N.J.S.2C:35-5, Manufacturing, Distributing  
34 or Dispensing, or an equivalent offense under federal law or the law  
35 of any other state, is estopped from denying illegal participation in the  
36 market for controlled dangerous substances. If such conviction was  
37 based upon the same type of controlled dangerous substance as that  
38 used by the individual user, the conviction also constitutes prima facie  
39 evidence of the person's participation in the marketing of controlled  
40 dangerous substance user pursuant to this act.

41 c. The absence of a criminal conviction for a violation of  
42 N.J.S.2C:35-5 or an equivalent offense under federal law or the law of  
43 any other state does not bar recovery by a plaintiff bringing suit  
44 pursuant to <sup>1</sup>subsection b. of<sup>1</sup> section 5 of this act.

1 13. A plaintiff under this act may request an ex parte prejudgment  
2 attachment order from the court against all assets of a defendant  
3 sufficient to satisfy a potential award. <sup>1</sup>Any claim of the State  
4 authorized pursuant to chapter 35A and 64 of Title 2C of the New  
5 Jersey Statutes shall have priority over an order issued pursuant to this  
6 section.<sup>1</sup>

7  
8 14. a. A cause of action accrues under this act when a person has  
9 reason to know of the harm from use of a controlled dangerous  
10 substance that is the basis for the cause of action and has reason to  
11 know that the use of a controlled dangerous substance is the cause of  
12 the harm.

13 b. <sup>1</sup>[A] Except as provided in subsection a. of this section, a<sup>1</sup>  
14 claim under this act shall not be brought more than one year after the  
15 defendant distributes, dispenses, or possesses with intent to distribute,  
16 the controlled dangerous substance or more than one year after the  
17 defendant is convicted of a crime involving controlled dangerous  
18 substances, whichever is the later.

19  
20 15. On motion by a governmental agency involved in an  
21 investigation or prosecution involving a controlled dangerous  
22 substance, an action brought under this act shall be stayed until the  
23 completion of any underlying criminal investigation or prosecution.

24  
25 <sup>1</sup>16. Any judgment resulting from a cause of action brought  
26 pursuant to this act shall be satisfied only after the satisfaction of any  
27 assessment, fine, fee, penalty or restitution imposed by law and  
28 enumerated in section 13 of P.L. 1991, c.329 (2C:46-4.1).<sup>1</sup>

29  
30 <sup>1</sup>[16.] 17.<sup>1</sup> No cause of action shall arise based on any act by a  
31 defendant which occurred prior to the effective date of this act.

32  
33 <sup>1</sup>[17.] 18.<sup>1</sup> This act shall take effect immediately.

STATEMENT TO  
**SENATE, No. 621**

with Assembly Floor Amendments  
(Proposed By Assemblyman KELLY)

ADOPTED: MARCH 8, 2001

These amendments would provide that any prejudgment attachment order or judgment resulting from a cause of action brought pursuant to the "Drug Dealer Liability Act," would be satisfied only after the satisfaction of claims by the State. Moreover, any private claim would be subordinate to those imposed pursuant to the criminal code.

In addition, the amendments to section 5 clarify that a person entitled to bring an action pursuant to the act may seek damages only against those who illegally distribute or dispense controlled dangerous substances. Further technical amendments to sections 12 and 14 add clarifying cross references.

# ASSEMBLY, No. 918

## STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

**Sponsored by:**

**Assemblyman JOHN V. KELLY**

**District 36 (Bergen, Essex and Passaic)**

**Assemblywoman ARLINE M. FRISCIA**

**District 19 (Middlesex)**

**Co-Sponsored by:**

**Assemblymen Blee and LeFevre**

**SYNOPSIS**

Establishes civil action against drug dealers.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 9/26/2000)**

1 AN ACT concerning civil actions against drug dealers and  
2 supplementing Title 2C of the New Jersey Statutes.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. This act shall be known and may be cited as the "Drug Dealer  
8 Liability Act."

9  
10 2. The Legislature finds and declares:

11 a. Although the criminal justice system is an important weapon in  
12 the battle against controlled dangerous substances, the civil justice  
13 system can and must also be used. The civil justice system can provide  
14 an avenue of compensation for those who have suffered harm as a  
15 result of the marketing and distribution of controlled dangerous  
16 substances. The persons who have joined the marketing of controlled  
17 dangerous substances should bear the cost of the harm caused by that  
18 market in the community.

19 b. The threat of liability under this act serves as an additional  
20 deterrent to a recognizable segment of the network for marketing  
21 controlled dangerous substances. Because of this threat, a person who  
22 has assets unrelated to the sale of controlled dangerous substances,  
23 who markets controlled dangerous substances at the workplace, who  
24 encourages friends to become users, is likely to decide that the added  
25 cost of entering the market is not worth the benefit. This is  
26 particularly true for a first-time, casual dealer who has not yet made  
27 substantial profits.

28 c. This act is intended to provide a mechanism whereby the costs  
29 of the injuries caused by illegal drug use will be borne by those who  
30 benefit from illegal drug dealing.

31 d. This act imposes liability against all participants in the marketing  
32 of controlled dangerous substances, including small dealers,  
33 particularly those in the workplace, who are not usually the focus of  
34 criminal investigations. Small dealers increase the number of users and  
35 ultimately are the people who become large dealers. It is these small  
36 dealers who are most likely to be deterred by the threat of liability.

37  
38 3. As used in this act:

39 a. "Marketing of controlled dangerous substances" means the  
40 illegal distributing, dispensing, or possessing with intent to distribute,  
41 a specified controlled dangerous substance.

42 b. "Individual user of controlled dangerous substance" means the  
43 individual whose illegal use of a specified controlled dangerous  
44 substance is the basis of an action brought under this act.

45 c. "Level 1 offense" means:

46 (1) possessing with intent to distribute less than four ounces of a

- 1 specified controlled dangerous substance as defined in this section;
- 2 (2) distributing or dispensing less than one ounce of a specified
- 3 controlled dangerous substance as defined in this section;
- 4 (3) possessing with intent to distribute 25 or more but less than 50
- 5 marijuana plants;
- 6 (4) possessing with intent to distribute less than four pounds of
- 7 marijuana, or
- 8 (5) distributing or dispensing more than 28.5 grams of marijuana.
- 9 d. "Level 2 offense" means:
- 10 (1) possessing with intent to distribute four ounces or more but
- 11 less than eight ounces of a specified controlled dangerous substance
- 12 as defined in this section;
- 13 (2) distributing or dispensing one ounce or more but less than two
- 14 ounces of a specified controlled dangerous substance as defined in this
- 15 section;
- 16 (3) possessing with intent to distribute 50 or more but less than 75
- 17 marijuana plants;
- 18 (4) possessing with intent to distribute four pounds or more but
- 19 less than eight pounds of marijuana, or
- 20 (5) distributing or dispensing more than one pound but less than
- 21 five pounds of marijuana.
- 22 e. "Level 3 offense" means:
- 23 (1) possessing with intent to distribute eight ounces or more but
- 24 less than 16 ounces of a specified controlled dangerous substance as
- 25 defined in this section;
- 26 (2) distributing or dispensing two ounces or more but less than
- 27 four ounces of a specified controlled dangerous substance as defined
- 28 in this section;
- 29 (3) possessing with intent to distribute 75 or more but less than
- 30 100 marijuana plants;
- 31 (4) possessing with intent to distribute eight pounds or more but
- 32 less than 16 pounds of marijuana, or
- 33 (5) distributing or dispensing more than five pounds but less than
- 34 10 pounds of marijuana.
- 35 f. "Level 4 offense" means:
- 36 (1) possessing with intent to distribute 16 ounces or more of a
- 37 specified controlled dangerous substance as defined in this section;
- 38 (2) distributing or dispensing four ounces or more of a specified
- 39 controlled dangerous substance as defined in this section;
- 40 (3) possessing with intent to distribute 100 or more marijuana
- 41 plants;
- 42 (4) possessing with intent to distribute 16 pounds or more of
- 43 marijuana, or
- 44 (5) distributing or dispensing more than 10 pounds of marijuana.
- 45 g. "Participate in the illegal marketing of controlled dangerous
- 46 substances" means to transport, import into this State, distribute,

1 dispense, sell, possess with intent to distribute, or offer to distribute  
2 a controlled dangerous substance, in violation of any of the provisions  
3 of chapter 35 of Title 2C of the New Jersey Statutes. "Participate in  
4 the marketing of controlled dangerous substances" does not include  
5 the purchase or receipt of a controlled dangerous substance for  
6 personal use only.

7 h. "Person" means any natural person, association, partnership,  
8 corporation or other entity.

9 i. "Period of illegal use" means, in relation to the individual user of  
10 a controlled dangerous substance, the time of the individual's first  
11 illegal use of a controlled dangerous substance to the accrual of the  
12 cause of action.

13 j. "Place of illegal activity" means, in relation to the individual user  
14 of a specified controlled dangerous substance, each county in which  
15 the individual illegally possess or uses a specified controlled dangerous  
16 substance.

17 k. "Place of participation" means, in relation to a defendant in an  
18 action brought under this act, each county in which the defendant  
19 participates in the marketing of controlled dangerous substances.

20 l. "Specified controlled dangerous substance" means heroin,  
21 cocaine, lysergic acid diethylamide, phencyclidine, methamphetamine,  
22 phenyl-2-propanone (P2P) and any other controlled dangerous  
23 substance specified under the provisions of N.J.S.2C:35-5 as being  
24 unlawful to manufacture, distribute, or dispense, or to possess or have  
25 under a person's control with intent to manufacture, distribute or  
26 dispense.

27  
28 4. A person who knowingly participates in the illegal marketing of  
29 controlled dangerous substances within this State is liable for damages,  
30 as provided in this act, for injury resulting from an individual's illegal  
31 use of a controlled dangerous substance.

32  
33 5. a. Any of the following persons may bring an action for  
34 damages caused by an individual's illegal use of a controlled dangerous  
35 substance:

36 (1) A parent, legal guardian, child, spouse, or sibling of the  
37 controlled dangerous substance user.

38 (2) An individual who was exposed to a controlled dangerous  
39 substance in utero.

40 (3) An employer of the controlled dangerous substance user.

41 (4) A medical facility, insurer, employer, or other nongovernmental  
42 entity that funded a drug treatment program or employee assistance  
43 program for the controlled dangerous substance user or that otherwise  
44 expended money on behalf of the controlled dangerous substance user.

45 (5) A person injured as a result of the reckless or negligent actions  
46 of an individual user of a controlled dangerous substance.

1 No public entity, and no public agency other than a public hospital,  
2 shall have a cause of action under this act.

3 b. A person entitled to bring an action under this act may seek  
4 damages against:

5 (1) A person who distributed or dispensed a controlled dangerous  
6 substance to the individual user of the controlled dangerous substance;  
7 or

8 (2) A person who knowingly participated in the marketing of  
9 controlled dangerous substances, if all of the following apply:

10 (a) The defendant's place of participation is situated in the same  
11 county as the individual user's place of illegal activity;

12 (b) The defendant participated in the marketing of the same type  
13 of controlled dangerous substances as those used by the individual  
14 user;

15 (c) The defendant was previously convicted of an offense in the  
16 State of New Jersey for that type of controlled dangerous substance;  
17 and

18 (d) The defendant participated in the marketing of controlled  
19 dangerous substances at any time during the period the individual user  
20 unlawfully used the controlled dangerous substance.

21 c. A person entitled to bring an action under this section may  
22 recover all of the following damages:

23 (1) Economic damages, including, but not limited to, the cost of  
24 treatment and rehabilitation, medical expenses, loss of economic or  
25 educational potential, loss of productivity, absenteeism, support  
26 expenses, accidents or injury, and any other pecuniary loss proximately  
27 caused by the use of a controlled dangerous substance.

28 (2) Noneconomic damages, including but not limited to physical  
29 and emotional pain, suffering, physical impairment, physical  
30 impairment, emotional distress, disfigurement, loss of enjoyment, loss  
31 of companionship, services and consortium, and other nonpecuniary  
32 losses proximately caused by an individual's use of a controlled  
33 dangerous substance.

34 (3) Punitive damages.

35 (4) Reasonable attorney fees.

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

38

39 6. a. An individual user of a controlled dangerous substance may  
40 bring an action for damages caused by the use of a controlled  
41 dangerous substance only if all of the following conditions are met:

42 (1) The individual personally discloses to narcotics enforcement  
43 authorities all of the information known to the individual regarding all  
44 that individual's sources of controlled dangerous substances.

45 (2) The individual has not used a controlled dangerous substance  
46 within the 30 days before filing the action.

1 (3) The individual continues to remain free of the use of an illegal  
2 controlled substance throughout the pendency of the action.

3 b. An individual user entitled to bring an action under this section  
4 may seek damages only from a person who transported, imported into  
5 this State, distributed, dispensed, sold, possessed with intent to  
6 distribute, or offered to distribute, in violation of any of the provisions  
7 of chapter 35 of Title 2C of the New Jersey Statutes, the controlled  
8 dangerous substance actually used by the individual user of a  
9 controlled dangerous substance.

10 c. An individual user entitled to bring an action under this section  
11 may recover only the following damages:

12 (1) Economic damages, including, but not limited to, the cost of  
13 treatment, rehabilitation and medical expenses, loss of economic or  
14 educational potential, loss of productivity, absenteeism, accidents or  
15 injury, and any other pecuniary loss proximately caused by the person's  
16 use of a controlled dangerous substance.

17 (2) Reasonable attorney fees.

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

20

21 7. a. A third party shall not pay damages awarded under this act,  
22 or provide a defense or money for a defense, on behalf of an insured  
23 under a contract of insurance or indemnification.

24 b. A cause of action authorized pursuant to this act may not be  
25 assigned, either expressly, by subrogation, or by any other means,  
26 directly or indirectly, to any public or publicly funded agency or  
27 institution.

28

29 8. A person whose participation in the marketing of controlled  
30 dangerous substances is grounds for liability pursuant to this act shall  
31 be rebuttably presumed to be liable for damages incurred by the  
32 plaintiff in the following percentages:

33 a. For a level 1 offense, 25 percent of the damages;

34 b. For a level 2 offense, 50 percent of the damages;

35 c. For a level 3 offense, 75 percent of the damages; and

36 d. For a level 4 offense, 100 percent of the damages.

37

38 9. a. Two or more persons may join in one action under this act as  
39 plaintiffs if their respective actions have at least one market for  
40 controlled dangerous substances in common and if any portion of the  
41 period of use of a controlled dangerous substance overlaps with the  
42 period of use of a controlled dangerous substance for every other  
43 plaintiff.

44 b. Two or more persons may be joined in one action under this act  
45 as defendants if those persons are liable to at least one plaintiff.

1       10. a. An action by an individual user of a controlled dangerous  
2 substance is governed by the principles of comparative responsibility.  
3 Comparative responsibility attributed to an individual user does not  
4 bar the user's recovery but diminishes the award of damages  
5 proportionately, according to the measure of responsibility attributed  
6 to the user. The burden of proving comparative responsibility is on  
7 the defendant, who shall prove comparative responsibility by clear and  
8 convincing evidence.

9       b. Comparative responsibility shall not be attributed to a plaintiff  
10 who is not an individual user of a controlled substance, unless that  
11 plaintiff knowingly gave the individual user money for the purchase  
12 of the controlled dangerous substance.

13  
14       11. A person subject to liability under this act has a right of action  
15 for contribution against another person subject to liability under this  
16 act. Contribution may be enforced either in the original action or by  
17 a separate action brought for that purpose. A plaintiff may seek  
18 recovery in accordance with this act and other laws against a person  
19 whom a defendant has asserted a right of contribution.

20  
21       12. a. Proof of liability in an action brought under this act shall be  
22 shown by clear and convincing evidence.

23       b. A person against whom recovery is sought who has been  
24 convicted of a violation of N.J.S.2C:35-5, Manufacturing, Distributing  
25 or Dispensing, or an equivalent offense under federal law or the law  
26 of any other state, is estopped from denying illegal participation in the  
27 market for controlled dangerous substances. If such conviction was  
28 based upon the same type of controlled dangerous substance as that  
29 used by the individual user, the conviction also constitutes prima facie  
30 evidence of the person's participation in the marketing of controlled  
31 dangerous substance user pursuant to this act.

32       c. The absence of a criminal conviction for a violation of  
33 N.J.S.2C:35-5 or an equivalent offense under federal law or the law of  
34 any other state does not bar recovery by a plaintiff bringing suit  
35 pursuant to section 5 of this act.

36  
37       13. A plaintiff under this act may request an ex parte prejudgment  
38 attachment order from the court against all assets of a defendant  
39 sufficient to satisfy a potential award.

40  
41       14. a. A cause of action accrues under this act when a person has  
42 reason to know of the harm from use of a controlled dangerous  
43 substance that is the basis for the cause of action and has reason to  
44 know that the use of a controlled dangerous substance is the cause of  
45 the harm.

46       b. A claim under this act shall not be brought more than one year

1 after the defendant distributes, dispenses, or possesses with intent to  
2 distribute, the controlled dangerous substance or more than one year  
3 after the defendant is convicted of a crime involving controlled  
4 dangerous substances, whichever is the later.

5  
6 15. On motion by a governmental agency involved in an  
7 investigation or prosecution involving a controlled dangerous  
8 substance, an action brought under this act shall be stayed until the  
9 completion of any underlying criminal investigation or prosecution.

10  
11 16. No cause of action shall arise based on any act by a defendant  
12 which occurred prior to the effective date of this act.

13  
14 17. This act shall take effect immediately.

15  
16  
17 STATEMENT

18  
19 This bill provides a civil remedy for damages to persons injured as  
20 a result of the illegal use of controlled dangerous substances. These  
21 persons include parents, employers, insurers, government entities, and  
22 others who pay for drug treatment or employee assistance programs,  
23 as well as infants injured as a result of exposure to illegal drugs in  
24 utero. The bill is intended to shift, to the extent possible, the cost of  
25 the damage caused by the illegal market for controlled dangerous  
26 substances to those persons who profit from that market.

27 The bill provides that parents, children, spouses and siblings of drug  
28 users, as well as employers of drug users, medical facilities which treat  
29 the drug users, and persons injured by the drug users' actions, would  
30 be entitled to sue drug dealers for civil damages.

31 Drug dealers would be liable for such damages in proportion to the  
32 scale of their drug dealing, large-scale drug dealers being liable for all  
33 damages and smaller-scale dealers being liable for a smaller percentage  
34 of damages.

35 A drug seller would be liable even if he did not actually sell the  
36 drugs to the particular user, as long as he sells the same type of drug  
37 within the same county and has a past criminal conviction for a drug-  
38 related offense.

39 However, a drug seller without any past criminal convictions for  
40 drug-related offenses would still be liable for damages in those cases  
41 where he is identified as having sold drugs to the particular user whose  
42 drug use is the basis for the suit.

43 The person suing would be entitled to recover economic damages  
44 and noneconomic damages, such as pain, suffering, and emotional  
45 distress, as well as punitive damages and attorney fees.

46 In addition, the bill provides that under certain limited

1 circumstances the drug users themselves could sue their own dealers.  
2 Users would be eligible to bring suit if they first disclose to law  
3 enforcement authorities all of the information they know concerning  
4 their sources, if they have not used a controlled dangerous substance  
5 within the 30 days before filing the action, and if they continue to  
6 remain free of CDS use during the pendency of the action. Drug users  
7 would only be allowed to bring suit against the actual dealer who sold  
8 them the drug. Users would be entitled to receive economic  
9 (compensatory) damages and attorney fees, but could not receive  
10 noneconomic damages (such as damages for pain and suffering).

11 The bill bars all government entities from suit, in order to avoid  
12 possible constitutional issues of double jeopardy.

13 The bill is modeled on a statute enacted in the state of California in  
14 September, 1996.

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 918

# STATE OF NEW JERSEY

DATED: OCTOBER 16, 2000

The Assembly Judiciary Committee reports favorably Assembly Bill No. 918.

This bill provides a civil remedy for damages to persons injured as a result of the illegal use of controlled dangerous substances. The bill provides that parents, children, spouses and siblings of drug users, as well as employers of drug users, medical facilities which treat the drug users, and persons injured by the drug users' actions, would be entitled to sue drug dealers for civil damages.

Under the provisions of the bill, drug dealers would be liable for such damages in proportion to the scale of their drug dealing, large-scale drug dealers being liable for all damages and smaller-scale dealers being liable for a smaller percentage of damages.

A drug seller would be liable even if he did not actually sell the drugs to the particular user, as long as he sells the same type of drug within the same county and has a past criminal conviction for a drug-related offense. A drug seller without any past criminal convictions for drug-related offenses would still be liable for damages in those cases where he is identified as having sold drugs to the particular user whose drug use is the basis for the suit. Under the bill, the person suing would be entitled to recover economic damages and damages for pain and suffering and emotional distress, as well as punitive damages and attorney fees.

In addition, the bill provides that under certain limited circumstances the drug users themselves could sue their own dealers. Users would be eligible to bring suit if they first disclose to law enforcement authorities all of the information they know concerning their sources, if they have not used a controlled dangerous substance within the 30 days before filing the action, and if they continue to remain free of CDS use during the pendency of the action. Drug users would only be allowed to bring suit against the actual dealer who sold them the drug. Users would be entitled to receive economic damages and attorney fees, but could not receive noneconomic damages such as damages for pain and suffering.

In order to avoid possible constitutional issues of double jeopardy, the bill bars all government entities from suit.

This bill was prefiled for introduction in the 2000 session pending

technical review. As reported, the bill includes the changes required by technical review which has been performed.

This bill is identical to Senate Bill No. 621.

# ASSEMBLY, No. 918

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## STATE OF NEW JERSEY

### 209th LEGISLATURE

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PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

**Sponsored by:**

**Assemblyman JOHN V. KELLY**

**District 36 (Bergen, Essex and Passaic)**

**Assemblywoman ARLINE M. FRISCIA**

**District 19 (Middlesex)**

**Co-Sponsored by:**

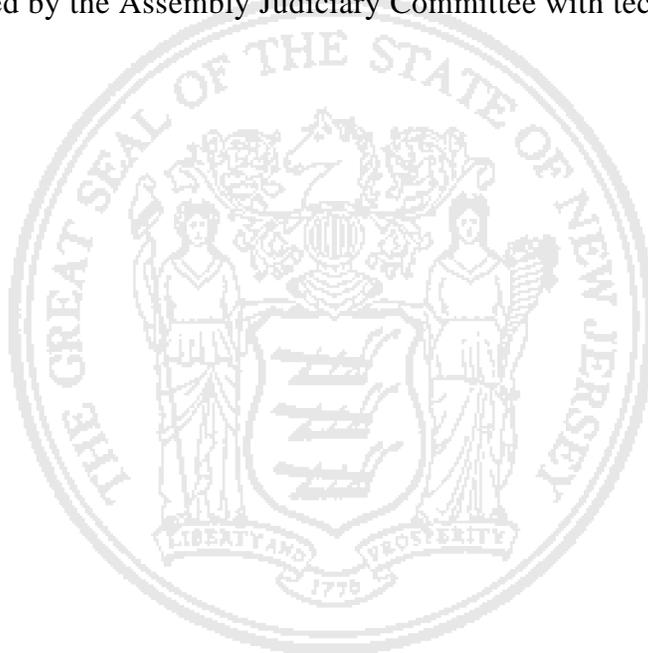
**Assemblymen Blee, LeFevre and DiGaetano**

**SYNOPSIS**

Establishes civil action against drug dealers.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Judiciary Committee with technical review.



**(Sponsorship Updated As Of: 10/31/2000)**

1 AN ACT concerning civil actions against drug dealers and  
2 supplementing Title 2C of the New Jersey Statutes.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. This act shall be known and may be cited as the "Drug Dealer  
8 Liability Act."

9  
10 2. The Legislature finds and declares:

11 a. Although the criminal justice system is an important weapon in  
12 the battle against controlled dangerous substances, the civil justice  
13 system can and must also be used. The civil justice system can provide  
14 an avenue of compensation for those who have suffered harm as a  
15 result of the marketing and distribution of controlled dangerous  
16 substances. The persons who have joined the marketing of controlled  
17 dangerous substances should bear the cost of the harm caused by that  
18 market in the community.

19 b. The threat of liability under this act serves as an additional  
20 deterrent to a recognizable segment of the network for marketing  
21 controlled dangerous substances. Because of this threat, a person who  
22 has assets unrelated to the sale of controlled dangerous substances,  
23 who markets controlled dangerous substances at the workplace, who  
24 encourages friends to become users, is likely to decide that the added  
25 cost of entering the market is not worth the benefit. This is  
26 particularly true for a first-time, casual dealer who has not yet made  
27 substantial profits.

28 c. This act is intended to provide a mechanism whereby the costs  
29 of the injuries caused by illegal drug use will be borne by those who  
30 benefit from illegal drug dealing.

31 d. This act imposes liability against all participants in the marketing  
32 of controlled dangerous substances, including small dealers,  
33 particularly those in the workplace, who are not usually the focus of  
34 criminal investigations. Small dealers increase the number of users and  
35 ultimately are the people who become large dealers. It is these small  
36 dealers who are most likely to be deterred by the threat of liability.

37  
38 3. As used in this act:

39 a. "Marketing of controlled dangerous substances" means the  
40 illegal distributing, dispensing, or possessing with intent to distribute,  
41 a specified controlled dangerous substance.

42 b. "Individual user of controlled dangerous substance" means the  
43 individual whose illegal use of a specified controlled dangerous  
44 substance is the basis of an action brought under this act.

45 c. "Level 1 offense" means:

46 (1) possessing with intent to distribute less than four ounces of a

- 1 specified controlled dangerous substance as defined in this section;
- 2 (2) distributing or dispensing less than one ounce of a specified
- 3 controlled dangerous substance as defined in this section;
- 4 (3) possessing with intent to distribute 25 or more but less than
- 5 50 marijuana plants;
- 6 (4) possessing with intent to distribute less than four pounds of
- 7 marijuana, or
- 8 (5) distributing or dispensing more than 28.5 grams of marijuana.
- 9 d. "Level 2 offense" means:
- 10 (1) possessing with intent to distribute four ounces or more but
- 11 less than eight ounces of a specified controlled dangerous substance
- 12 as defined in this section;
- 13 (2) distributing or dispensing one ounce or more but less than two
- 14 ounces of a specified controlled dangerous substance as defined in this
- 15 section;
- 16 (3) possessing with intent to distribute 50 or more but less than 75
- 17 marijuana plants;
- 18 (4) possessing with intent to distribute four pounds or more but
- 19 less than eight pounds of marijuana, or
- 20 (5) distributing or dispensing more than one pound but less than
- 21 five pounds of marijuana.
- 22 e. "Level 3 offense" means:
- 23 (1) possessing with intent to distribute eight ounces or more but
- 24 less than 16 ounces of a specified controlled dangerous substance as
- 25 defined in this section;
- 26 (2) distributing or dispensing two ounces or more but less than
- 27 four ounces of a specified controlled dangerous substance as defined
- 28 in this section;
- 29 (3) possessing with intent to distribute 75 or more but less than
- 30 100 marijuana plants;
- 31 (4) possessing with intent to distribute eight pounds or more but
- 32 less than 16 pounds of marijuana, or
- 33 (5) distributing or dispensing more than five pounds but less than
- 34 10 pounds of marijuana.
- 35 f. "Level 4 offense" means:
- 36 (1) possessing with intent to distribute 16 ounces or more of a
- 37 specified controlled dangerous substance as defined in this section;
- 38 (2) distributing or dispensing four ounces or more of a specified
- 39 controlled dangerous substance as defined in this section;
- 40 (3) possessing with intent to distribute 100 or more marijuana
- 41 plants;
- 42 (4) possessing with intent to distribute 16 pounds or more of
- 43 marijuana, or
- 44 (5) distributing or dispensing more than 10 pounds of marijuana.
- 45 g. "Participate in the illegal marketing of controlled dangerous
- 46 substances" means to transport, import into this State, distribute,

1 dispense, sell, possess with intent to distribute, or offer to distribute  
2 a controlled dangerous substance, in violation of any of the provisions  
3 of chapter 35 of Title 2C of the New Jersey Statutes. "Participate in  
4 the marketing of controlled dangerous substances" does not include  
5 the purchase or receipt of a controlled dangerous substance for  
6 personal use only.

7 h. "Person" means any natural person, association, partnership,  
8 corporation or other entity.

9 i. "Period of illegal use" means, in relation to the individual user of  
10 a controlled dangerous substance, the time of the individual's first  
11 illegal use of a controlled dangerous substance to the accrual of the  
12 cause of action.

13 j. "Place of illegal activity" means, in relation to the individual user  
14 of a specified controlled dangerous substance, each county in which  
15 the individual illegally possess or uses a specified controlled dangerous  
16 substance.

17 k. "Place of participation" means, in relation to a defendant in an  
18 action brought under this act, each county in which the defendant  
19 participates in the marketing of controlled dangerous substances.

20 l. "Specified controlled dangerous substance" means heroin,  
21 cocaine, lysergic acid diethylamide, phencyclidine, methamphetamine,  
22 phenyl-2-propanone (P2P) and any other controlled dangerous  
23 substance specified under the provisions of N.J.S.2C:35-5 as being  
24 unlawful to manufacture, distribute, or dispense, or to possess or have  
25 under a person's control with intent to manufacture, distribute or  
26 dispense.

27  
28 4. A person who knowingly participates in the illegal marketing of  
29 controlled dangerous substances within this State is liable for damages,  
30 as provided in this act, for injury resulting from an individual's illegal  
31 use of a controlled dangerous substance.

32  
33 5. a. Any of the following persons may bring an action for  
34 damages caused by an individual's illegal use of a controlled dangerous  
35 substance:

36 (1) A parent, legal guardian, child, spouse, or sibling of the  
37 controlled dangerous substance user.

38 (2) An individual who was exposed to a controlled dangerous  
39 substance in utero.

40 (3) An employer of the controlled dangerous substance user.

41 (4) A medical facility, insurer, employer, or other nongovernmental  
42 entity that funded a drug treatment program or employee assistance  
43 program for the controlled dangerous substance user or that otherwise  
44 expended money on behalf of the controlled dangerous substance user.

45 (5) A person injured as a result of the reckless or negligent actions  
46 of an individual user of a controlled dangerous substance.

1 No public entity, and no public agency other than a public hospital,  
2 shall have a cause of action under this act.

3 b. A person entitled to bring an action under this act may seek  
4 damages against:

5 (1) A person who distributed or dispensed a controlled dangerous  
6 substance to the individual user of the controlled dangerous substance;  
7 or

8 (2) A person who knowingly participated in the marketing of  
9 controlled dangerous substances, if all of the following apply:

10 (a) The defendant's place of participation is situated in the same  
11 county as the individual user's place of illegal activity;

12 (b) The defendant participated in the marketing of the same type  
13 of controlled dangerous substances as those used by the individual  
14 user;

15 (c) The defendant was previously convicted of an offense in the  
16 State of New Jersey for that type of controlled dangerous substance;  
17 and

18 (d) The defendant participated in the marketing of controlled  
19 dangerous substances at any time during the period the individual user  
20 unlawfully used the controlled dangerous substance.

21 c. A person entitled to bring an action under this section may  
22 recover all of the following damages:

23 (1) Economic damages, including, but not limited to, the cost of  
24 treatment and rehabilitation, medical expenses, loss of economic or  
25 educational potential, loss of productivity, absenteeism, support  
26 expenses, accidents or injury, and any other pecuniary loss proximately  
27 caused by the use of a controlled dangerous substance.

28 (2) Noneconomic damages, including but not limited to physical  
29 and emotional pain, suffering, physical impairment, physical  
30 impairment, emotional distress, disfigurement, loss of enjoyment, loss  
31 of companionship, services and consortium, and other nonpecuniary  
32 losses proximately caused by an individual's use of a controlled  
33 dangerous substance.

34 (3) Punitive damages.

35 (4) Reasonable attorney fees.

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

38

39 6. a. An individual user of a controlled dangerous substance may  
40 bring an action for damages caused by the use of a controlled  
41 dangerous substance only if all of the following conditions are met:

42 (1) The individual personally discloses to narcotics enforcement  
43 authorities all of the information known to the individual regarding all  
44 that individual's sources of controlled dangerous substances.

45 (2) The individual has not used a controlled dangerous substance  
46 within the 30 days before filing the action.

1 (3) The individual continues to remain free of the use of an illegal  
2 controlled substance throughout the pendency of the action.

3 b. An individual user entitled to bring an action under this section  
4 may seek damages only from a person who transported, imported into  
5 this State, distributed, dispensed, sold, possessed with intent to  
6 distribute, or offered to distribute, in violation of any of the provisions  
7 of chapter 35 of Title 2C of the New Jersey Statutes, the controlled  
8 dangerous substance actually used by the individual user of a  
9 controlled dangerous substance.

10 c. An individual user entitled to bring an action under this section  
11 may recover only the following damages:

12 (1) Economic damages, including, but not limited to, the cost of  
13 treatment, rehabilitation and medical expenses, loss of economic or  
14 educational potential, loss of productivity, absenteeism, accidents or  
15 injury, and any other pecuniary loss proximately caused by the person's  
16 use of a controlled dangerous substance.

17 (2) Reasonable attorney fees.

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

20

21 7. a. A third party shall not pay damages awarded under this act,  
22 or provide a defense or money for a defense, on behalf of an insured  
23 under a contract of insurance or indemnification.

24 b. A cause of action authorized pursuant to this act may not be  
25 assigned, either expressly, by subrogation, or by any other means,  
26 directly or indirectly, to any public or publicly funded agency or  
27 institution.

28

29 8. A person whose participation in the marketing of controlled  
30 dangerous substances is grounds for liability pursuant to this act shall  
31 be rebuttably presumed to be liable for damages incurred by the  
32 plaintiff in the following percentages:

33 a. For a level 1 offense, 25 percent of the damages;

34 b. For a level 2 offense, 50 percent of the damages;

35 c. For a level 3 offense, 75 percent of the damages; and

36 d. For a level 4 offense, 100 percent of the damages.

37

38 9. a. Two or more persons may join in one action under this act as  
39 plaintiffs if their respective actions have at least one market for  
40 controlled dangerous substances in common and if any portion of the  
41 period of use of a controlled dangerous substance overlaps with the  
42 period of use of a controlled dangerous substance for every other  
43 plaintiff.

44 b. Two or more persons may be joined in one action under this act  
45 as defendants if those persons are liable to at least one plaintiff.

1       10. a. An action by an individual user of a controlled dangerous  
2 substance is governed by the principles of comparative responsibility.  
3 Comparative responsibility attributed to an individual user does not  
4 bar the user's recovery but diminishes the award of damages  
5 proportionately, according to the measure of responsibility attributed  
6 to the user. The burden of proving comparative responsibility is on  
7 the defendant, who shall prove comparative responsibility by clear and  
8 convincing evidence.

9       b. Comparative responsibility shall not be attributed to a plaintiff  
10 who is not an individual user of a controlled substance, unless that  
11 plaintiff knowingly gave the individual user money for the purchase  
12 of the controlled dangerous substance.

13  
14       11. A person subject to liability under this act has a right of action  
15 for contribution against another person subject to liability under this  
16 act. Contribution may be enforced either in the original action or by  
17 a separate action brought for that purpose. A plaintiff may seek  
18 recovery in accordance with this act and other laws against a person  
19 whom a defendant has asserted a right of contribution.

20  
21       12. a. Proof of liability in an action brought under this act shall be  
22 shown by clear and convincing evidence.

23       b. A person against whom recovery is sought who has been  
24 convicted of a violation of N.J.S.2C:35-5, Manufacturing, Distributing  
25 or Dispensing, or an equivalent offense under federal law or the law  
26 of any other state, is estopped from denying illegal participation in the  
27 market for controlled dangerous substances. If such conviction was  
28 based upon the same type of controlled dangerous substance as that  
29 used by the individual user, the conviction also constitutes prima facie  
30 evidence of the person's participation in the marketing of controlled  
31 dangerous substance user pursuant to this act.

32       c. The absence of a criminal conviction for a violation of  
33 N.J.S.2C:35-5 or an equivalent offense under federal law or the law of  
34 any other state does not bar recovery by a plaintiff bringing suit  
35 pursuant to section 5 of this act.

36  
37       13. A plaintiff under this act may request an ex parte prejudgment  
38 attachment order from the court against all assets of a defendant  
39 sufficient to satisfy a potential award.

40  
41       14. a. A cause of action accrues under this act when a person has  
42 reason to know of the harm from use of a controlled dangerous  
43 substance that is the basis for the cause of action and has reason to  
44 know that the use of a controlled dangerous substance is the cause of  
45 the harm.

46       b. A claim under this act shall not be brought more than one year

1 after the defendant distributes, dispenses, or possesses with intent to  
2 distribute, the controlled dangerous substance or more than one year  
3 after the defendant is convicted of a crime involving controlled  
4 dangerous substances, whichever is the later.

5

6 15. On motion by a governmental agency involved in an  
7 investigation or prosecution involving a controlled dangerous  
8 substance, an action brought under this act shall be stayed until the  
9 completion of any underlying criminal investigation or prosecution.

10

11 16. No cause of action shall arise based on any act by a defendant  
12 which occurred prior to the effective date of this act.

13

14 17. This act shall take effect immediately.

P.L. 2001, CHAPTER 114, *approved June 26, 2001*  
Senate Bill No. 621 (*First Reprint*)

1 AN ACT concerning civil actions against drug dealers and  
2 supplementing Title 2C of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "Drug Dealer  
8 Liability Act."

9

10 2. The Legislature finds and declares:

11 a. Although the criminal justice system is an important weapon in  
12 the battle against controlled dangerous substances, the civil justice  
13 system can and must also be used. The civil justice system can provide  
14 an avenue of compensation for those who have suffered harm as a  
15 result of the marketing and distribution of controlled dangerous  
16 substances. The persons who have joined the marketing of controlled  
17 dangerous substances should bear the cost of the harm caused by that  
18 market in the community.

19 b. The threat of liability under this act serves as an additional  
20 deterrent to a recognizable segment of the network for marketing  
21 controlled dangerous substances. Because of this threat, a person who  
22 has assets unrelated to the sale of controlled dangerous substances,  
23 who markets controlled dangerous substances at the workplace, who  
24 encourages friends to become users, is likely to decide that the added  
25 cost of entering the market is not worth the benefit. This is  
26 particularly true for a first-time, casual dealer who has not yet made  
27 substantial profits.

28 c. This act is intended to provide a mechanism whereby the costs  
29 of the injuries caused by illegal drug use will be borne by those who  
30 benefit from illegal drug dealing.

31 d. This act imposes liability against all participants in the marketing  
32 of controlled dangerous substances, including small dealers,  
33 particularly those in the workplace, who are not usually the focus of  
34 criminal investigations. Small dealers increase the number of users and  
35 ultimately are the people who become large dealers. It is these small  
36 dealers who are most likely to be deterred by the threat of liability.

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

**<sup>1</sup>Assembly floor amendments adopted March 8, 2001.**

1       3. As used in this act:

2       a. "Marketing of controlled dangerous substances" means the illegal  
3 distributing, dispensing, or possessing with intent to distribute, a  
4 specified controlled dangerous substance.

5       b. "Individual user of controlled dangerous substance" means the  
6 individual whose illegal use of a specified controlled dangerous  
7 substance is the basis of an action brought under this act.

8       c. "Level 1 offense" means:

9       (1) possessing with intent to distribute less than four ounces of a  
10 specified controlled dangerous substance as defined in this section;

11       (2) distributing or dispensing less than one ounce of a specified  
12 controlled dangerous substance as defined in this section;

13       (3) possessing with intent to distribute 25 or more but less than 50  
14 marijuana plants;

15       (4) possessing with intent to distribute less than four pounds of  
16 marijuana, or

17       (5) distributing or dispensing more than 28.5 grams of marijuana.

18       d. "Level 2 offense" means:

19       (1) possessing with intent to distribute four ounces or more but  
20 less than eight ounces of a specified controlled dangerous substance  
21 as defined in this section;

22       (2) distributing or dispensing one ounce or more but less than two  
23 ounces of a specified controlled dangerous substance as defined in this  
24 section;

25       (3) possessing with intent to distribute 50 or more but less than 75  
26 marijuana plants;

27       (4) possessing with intent to distribute four pounds or more but  
28 less than eight pounds of marijuana, or

29       (5) distributing or dispensing more than one pound but less than  
30 five pounds of marijuana.

31       e. "Level 3 offense" means:

32       (1) possessing with intent to distribute eight ounces or more but  
33 less than 16 ounces of a specified controlled dangerous substance as  
34 defined in this section;

35       (2) distributing or dispensing two ounces or more but less than  
36 four ounces of a specified controlled dangerous substance as defined  
37 in this section;

38       (3) possessing with intent to distribute 75 or more but less than  
39 100 marijuana plants;

40       (4) possessing with intent to distribute eight pounds or more but  
41 less than 16 pounds of marijuana, or

42       (5) distributing or dispensing more than five pounds but less than  
43 10 pounds of marijuana.

44       f. "Level 4 offense" means:

45       (1) possessing with intent to distribute 16 ounces or more of a  
46 specified controlled dangerous substance as defined in this section;

1 (2) distributing or dispensing four ounces or more of a specified  
2 controlled dangerous substance as defined in this section;

3 (3) possessing with intent to distribute 100 or more marijuana  
4 plants;

5 (4) possessing with intent to distribute 16 pounds or more of  
6 marijuana, or

7 (5) distributing or dispensing more than 10 pounds of marijuana.

8 g. "Participate in the illegal marketing of controlled dangerous  
9 substances" means to transport, import into this State, distribute,  
10 dispense, sell, possess with intent to distribute, or offer to distribute  
11 a controlled dangerous substance, in violation of any of the provisions  
12 of chapter 35 of Title 2C of the New Jersey Statutes. "Participate in  
13 the marketing of controlled dangerous substances" does not include  
14 the purchase or receipt of a controlled dangerous substance for  
15 personal use only.

16 h. "Person" means any natural person, association, partnership,  
17 corporation or other entity.

18 i. "Period of illegal use" means, in relation to the individual user of  
19 a controlled dangerous substance, the time of the individual's first  
20 illegal use of a controlled dangerous substance to the accrual of the  
21 cause of action.

22 j. "Place of illegal activity" means, in relation to the individual user  
23 of a specified controlled dangerous substance, each county in which  
24 the individual illegally possess or uses a specified controlled dangerous  
25 substance.

26 k. "Place of participation" means, in relation to a defendant in an  
27 action brought under this act, each county in which the defendant  
28 participates in the marketing of controlled dangerous substances.

29 l. "Specified controlled dangerous substance" means heroin,  
30 cocaine, lysergic acid diethylamide, phencyclidine, methamphetamine,  
31 phenyl-2-propanone (P2P) and any other controlled dangerous  
32 substance specified under the provisions of N.J.S.2C:35-5 as being  
33 unlawful to manufacture, distribute, or dispense, or to possess or have  
34 under a person's control with intent to manufacture, distribute or  
35 dispense.

36

37 4. A person who knowingly participates in the illegal marketing of  
38 controlled dangerous substances within this State is liable for damages,  
39 as provided in this act, for injury resulting from an individual's illegal  
40 use of a controlled dangerous substance.

41

42 5. a. Any of the following persons may bring an action for  
43 damages caused by an individual's illegal use of a controlled dangerous  
44 substance:

45 (1) A parent, legal guardian, child, spouse, or sibling of the  
46 controlled dangerous substance user.

1 (2) An individual who was exposed to a controlled dangerous  
2 substance in utero.

3 (3) An employer of the controlled dangerous substance user. (4)  
4 A medical facility, insurer, employer, or other nongovernmental entity  
5 that funded a drug treatment program or employee assistance program  
6 for the controlled dangerous substance user or that otherwise  
7 expended money on behalf of the controlled dangerous substance user.

8 (5) A person injured as a result of the reckless or negligent actions  
9 of an individual user of a controlled dangerous substance.

10 No public entity, and no public agency other than a public hospital,  
11 shall have a cause of action under this act.

12 b. A person entitled to bring an action under this act may seek  
13 damages against:

14 (1) A person who <sup>1</sup>illegally<sup>1</sup> distributed or dispensed a controlled  
15 dangerous substance to the individual user of the controlled dangerous  
16 substance; or

17 (2) A person who knowingly participated in the <sup>1</sup>illegal<sup>1</sup> marketing  
18 of controlled dangerous substances, if all of the following apply:

19 (a) The defendant's place of participation is situated in the same  
20 county as the individual user's place of illegal activity;

21 (b) The defendant participated in the marketing of the same type  
22 of controlled dangerous substances as those used by the individual  
23 user;

24 (c) The defendant was previously convicted of an offense in the  
25 State of New Jersey for that type of controlled dangerous substance;  
26 and

27 (d) The defendant participated in the marketing of controlled  
28 dangerous substances at any time during the period the individual user  
29 unlawfully used the controlled dangerous substance.

30 c. A person entitled to bring an action under this section may  
31 recover all of the following damages:

32 (1) Economic damages, including, but not limited to, the cost of  
33 treatment and rehabilitation, medical expenses, loss of economic or  
34 educational potential, loss of productivity, absenteeism, support  
35 expenses, accidents or injury, and any other pecuniary loss proximately  
36 caused by the use of a controlled dangerous substance.

37 (2) Noneconomic damages, including but not limited to physical  
38 and emotional pain, suffering, physical impairment, physical  
39 impairment, emotional distress, disfigurement, loss of enjoyment, loss  
40 of companionship, services and consortium, and other nonpecuniary  
41 losses proximately caused by an individual's use of a controlled  
42 dangerous substance.

43 (3) Punitive damages.

44 (4) Reasonable attorney fees.

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

1       6. a. An individual user of a controlled dangerous substance may  
2 bring an action for damages caused by the use of a controlled  
3 dangerous substance only if all of the following conditions are met:

4       (1) The individual personally discloses to narcotics enforcement  
5 authorities all of the information known to the individual regarding all  
6 that individual's sources of controlled dangerous substances.

7       (2) The individual has not used a controlled dangerous substance  
8 within the 30 days before filing the action.

9       (3) The individual continues to remain free of the use of an illegal  
10 controlled substance throughout the pendency of the action.

11       b. An individual user entitled to bring an action under this section  
12 may seek damages only from a person who transported, imported into  
13 this State, distributed, dispensed, sold, possessed with intent to  
14 distribute, or offered to distribute, in violation of any of the provisions  
15 of chapter 35 of Title 2C of the New Jersey Statutes, the controlled  
16 dangerous substance actually used by the individual user of a  
17 controlled dangerous substance.

18       c. An individual user entitled to bring an action under this section  
19 may recover only the following damages:

20       (1) Economic damages, including, but not limited to, the cost of  
21 treatment, rehabilitation and medical expenses, loss of economic or  
22 educational potential, loss of productivity, absenteeism, accidents or  
23 injury, and any other pecuniary loss proximately caused by the person's  
24 use of a controlled dangerous substance.

25       (2) Reasonable attorney fees.

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

28

29       7. a. A third party shall not pay damages awarded under this act,  
30 or provide a defense or money for a defense, on behalf of an insured  
31 under a contract of insurance or indemnification.

32       b. A cause of action authorized pursuant to this act may not be  
33 assigned, either expressly, by subrogation, or by any other means,  
34 directly or indirectly, to any public or publicly funded agency or  
35 institution.

36

37       8. A person whose participation in the marketing of controlled  
38 dangerous substances is grounds for liability pursuant to this act shall  
39 be rebuttably presumed to be liable for damages incurred by the  
40 plaintiff in the following percentages:

41       a. For a level 1 offense, 25 percent of the damages;

42       b. For a level 2 offense, 50 percent of the damages;

43       c. For a level 3 offense, 75 percent of the damages; and

44       d. For a level 4 offense, 100 percent of the damages.

45

46       9. a. Two or more persons may join in one action under this act as

1 plaintiffs if their respective actions have at least one market for  
2 controlled dangerous substances in common and if any portion of the  
3 period of use of a controlled dangerous substance overlaps with the  
4 period of use of a controlled dangerous substance for every other  
5 plaintiff.

6 b. Two or more persons may be joined in one action under this act  
7 as defendants if those persons are liable to at least one plaintiff.

8

9 10. a. An action by an individual user of a controlled dangerous  
10 substance is governed by the principles of comparative responsibility.  
11 Comparative responsibility attributed to an individual user does not  
12 bar the user's recovery but diminishes the award of damages  
13 proportionately, according to the measure of responsibility attributed  
14 to the user. The burden of proving comparative responsibility is on  
15 the defendant, who shall prove comparative responsibility by clear and  
16 convincing evidence.

17 b. Comparative responsibility shall not be attributed to a plaintiff  
18 who is not an individual user of a controlled substance, unless that  
19 plaintiff knowingly gave the individual user money for the purchase  
20 of the controlled dangerous substance.

21

22 11. A person subject to liability under this act has a right of action  
23 for contribution against another person subject to liability under this  
24 act. Contribution may be enforced either in the original action or by  
25 a separate action brought for that purpose. A plaintiff may seek  
26 recovery in accordance with this act and other laws against a person  
27 whom a defendant has asserted a right of contribution.

28

29 12. a. Proof of liability in an action brought under this act shall be  
30 shown by clear and convincing evidence.

31 b. A person against whom recovery is sought who has been  
32 convicted of a violation of N.J.S.2C:35-5, Manufacturing, Distributing  
33 or Dispensing, or an equivalent offense under federal law or the law  
34 of any other state, is estopped from denying illegal participation in the  
35 market for controlled dangerous substances. If such conviction was  
36 based upon the same type of controlled dangerous substance as that  
37 used by the individual user, the conviction also constitutes prima facie  
38 evidence of the person's participation in the marketing of controlled  
39 dangerous substance user pursuant to this act.

40 c. The absence of a criminal conviction for a violation of  
41 N.J.S.2C:35-5 or an equivalent offense under federal law or the law of  
42 any other state does not bar recovery by a plaintiff bringing suit  
43 pursuant to <sup>1</sup>subsection b. of<sup>1</sup> section 5 of this act.

1 13. A plaintiff under this act may request an ex parte prejudgment  
2 attachment order from the court against all assets of a defendant  
3 sufficient to satisfy a potential award. <sup>1</sup>Any claim of the State  
4 authorized pursuant to chapter 35A and 64 of Title 2C of the New  
5 Jersey Statutes shall have priority over an order issued pursuant to this  
6 section.<sup>1</sup>

7  
8 14. a. A cause of action accrues under this act when a person has  
9 reason to know of the harm from use of a controlled dangerous  
10 substance that is the basis for the cause of action and has reason to  
11 know that the use of a controlled dangerous substance is the cause of  
12 the harm.

13 b. <sup>1</sup>[A] Except as provided in subsection a. of this section, a<sup>1</sup>  
14 claim under this act shall not be brought more than one year after the  
15 defendant distributes, dispenses, or possesses with intent to distribute,  
16 the controlled dangerous substance or more than one year after the  
17 defendant is convicted of a crime involving controlled dangerous  
18 substances, whichever is the later.

19  
20 15. On motion by a governmental agency involved in an  
21 investigation or prosecution involving a controlled dangerous  
22 substance, an action brought under this act shall be stayed until the  
23 completion of any underlying criminal investigation or prosecution.

24  
25 <sup>1</sup>16. Any judgment resulting from a cause of action brought  
26 pursuant to this act shall be satisfied only after the satisfaction of any  
27 assessment, fine, fee, penalty or restitution imposed by law and  
28 enumerated in section 13 of P.L. 1991, c.329 (2C:46-4.1).<sup>1</sup>

29  
30 <sup>1</sup>[16.] 17.<sup>1</sup> No cause of action shall arise based on any act by a  
31 defendant which occurred prior to the effective date of this act.

32  
33 <sup>1</sup>[17.] 18.<sup>1</sup> This act shall take effect immediately.

34  
35  
36  
37  
38 Establishes civil action against drug dealers.

## CHAPTER 114

AN ACT concerning civil actions against drug dealers and supplementing Title 2C of the New Jersey Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.2C:35B-1 Short title.

1. This act shall be known and may be cited as the "Drug Dealer Liability Act."

C.2C:35B-2 Findings, declarations regarding civil actions against drug dealers.

2. The Legislature finds and declares:

- a. Although the criminal justice system is an important weapon in the battle against controlled dangerous substances, the civil justice system can and must also be used. The civil justice system can provide an avenue of compensation for those who have suffered harm as a result of the marketing and distribution of controlled dangerous substances. The persons who have joined the marketing of controlled dangerous substances should bear the cost of the harm caused by that market in the community.

- b. The threat of liability under this act serves as an additional deterrent to a recognizable segment of the network for marketing controlled dangerous substances. Because of this threat, a person who has assets unrelated to the sale of controlled dangerous substances, who markets controlled dangerous substances at the workplace, who encourages friends to become users, is likely to decide that the added cost of entering the market is not worth the benefit. This is particularly true for a first-time, casual dealer who has not yet made substantial profits.

- c. This act is intended to provide a mechanism whereby the costs of the injuries caused by illegal drug use will be borne by those who benefit from illegal drug dealing.

- d. This act imposes liability against all participants in the marketing of controlled dangerous substances, including small dealers, particularly those in the workplace, who are not usually the focus of criminal investigations. Small dealers increase the number of users and ultimately are the people who become large dealers. It is these small dealers who are most likely to be deterred by the threat of liability.

C.2C:35B-3 Definitions regarding civil actions against drug dealers.

3. As used in this act:

- a. "Marketing of controlled dangerous substances" means the illegal distributing, dispensing, or possessing with intent to distribute, a specified controlled dangerous substance.

- b. "Individual user of controlled dangerous substance" means the individual whose illegal use of a specified controlled dangerous substance is the basis of an action brought under this act.

- c. "Level 1 offense" means:

- (1) possessing with intent to distribute less than four ounces of a specified controlled dangerous substance as defined in this section;

- (2) distributing or dispensing less than one ounce of a specified controlled dangerous substance as defined in this section;

- (3) possessing with intent to distribute 25 or more but less than 50 marijuana plants;

- (4) possessing with intent to distribute less than four pounds of marijuana, or

- (5) distributing or dispensing more than 28.5 grams of marijuana.

- d. "Level 2 offense" means:

- (1) possessing with intent to distribute four ounces or more but less than eight ounces of a specified controlled dangerous substance as defined in this section;

- (2) distributing or dispensing one ounce or more but less than two ounces of a specified controlled dangerous substance as defined in this section;

- (3) possessing with intent to distribute 50 or more but less than 75 marijuana plants;

- (4) possessing with intent to distribute four pounds or more but less than eight pounds of marijuana, or

- (5) distributing or dispensing more than one pound but less than five pounds of marijuana.

- e. "Level 3 offense" means:

- (1) possessing with intent to distribute eight ounces or more but less than 16 ounces of a specified controlled dangerous substance as defined in this section;

- (2) distributing or dispensing two ounces or more but less than four ounces of a specified

controlled dangerous substance as defined in this section;

(3) possessing with intent to distribute 75 or more but less than 100 marijuana plants;

(4) possessing with intent to distribute eight pounds or more but less than 16 pounds of marijuana, or

(5) distributing or dispensing more than five pounds but less than 10 pounds of marijuana.

f. "Level 4 offense" means:

(1) possessing with intent to distribute 16 ounces or more of a specified controlled dangerous substance as defined in this section;

(2) distributing or dispensing four ounces or more of a specified controlled dangerous substance as defined in this section;

(3) possessing with intent to distribute 100 or more marijuana plants;

(4) possessing with intent to distribute 16 pounds or more of marijuana, or

(5) distributing or dispensing more than 10 pounds of marijuana.

g. "Participate in the illegal marketing of controlled dangerous substances" means to transport, import into this State, distribute, dispense, sell, possess with intent to distribute, or offer to distribute a controlled dangerous substance, in violation of any of the provisions of chapter 35 of Title 2C of the New Jersey Statutes. "Participate in the marketing of controlled dangerous substances" does not include the purchase or receipt of a controlled dangerous substance for personal use only.

h. "Person" means any natural person, association, partnership, corporation or other entity.

i. "Period of illegal use" means, in relation to the individual user of a controlled dangerous substance, the time of the individual's first illegal use of a controlled dangerous substance to the accrual of the cause of action.

j. "Place of illegal activity" means, in relation to the individual user of a specified controlled dangerous substance, each county in which the individual illegally possess or uses a specified controlled dangerous substance.

k. "Place of participation" means, in relation to a defendant in an action brought under this act, each county in which the defendant participates in the marketing of controlled dangerous substances.

l. "Specified controlled dangerous substance" means heroin, cocaine, lysergic acid diethylamide, phencyclidine, methamphetamine, phenyl-2-propanone (P2P) and any other controlled dangerous substance specified under the provisions of N.J.S.2C:35-5 as being unlawful to manufacture, distribute, or dispense, or to possess or have under a person's control with intent to manufacture, distribute or dispense.

C.2C:35B-4 Liability of illegal marketer of controlled dangerous substances.

4. A person who knowingly participates in the illegal marketing of controlled dangerous substances within this State is liable for damages, as provided in this act, for injury resulting from an individual's illegal use of a controlled dangerous substance.

C.2C:35B-5 Action for damages; plaintiffs, offenses.

5. a. Any of the following persons may bring an action for damages caused by an individual's illegal use of a controlled dangerous substance:

(1) A parent, legal guardian, child, spouse, or sibling of the controlled dangerous substance user.

(2) An individual who was exposed to a controlled dangerous substance in utero.

(3) An employer of the controlled dangerous substance user.

(4) A medical facility, insurer, employer, or other nongovernmental entity that funded a drug treatment program or employee assistance program for the controlled dangerous substance user or that otherwise expended money on behalf of the controlled dangerous substance user.

(5) A person injured as a result of the reckless or negligent actions of an individual user of a controlled dangerous substance.

No public entity, and no public agency other than a public hospital, shall have a cause of action under this act.

b. A person entitled to bring an action under this act may seek damages against:

(1) A person who illegally distributed or dispensed a controlled dangerous substance to the individual user of the controlled dangerous substance; or

(2) A person who knowingly participated in the illegal marketing of controlled dangerous substances, if all of the following apply:

(a) The defendant's place of participation is situated in the same county as the individual user's place of illegal activity;

(b) The defendant participated in the marketing of the same type of controlled dangerous substances as those used by the individual user;

(c) The defendant was previously convicted of an offense in the State of New Jersey for that type of controlled dangerous substance; and

(d) The defendant participated in the marketing of controlled dangerous substances at any time during the period the individual user unlawfully used the controlled dangerous substance.

c. 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 a controlled dangerous substance.

(2) Noneconomic damages, including but not limited to physical and emotional pain, suffering, physical impairment, physical impairment, emotional distress, disfigurement, loss of enjoyment, loss of companionship, services and consortium, and other nonpecuniary losses proximately caused by an individual's use of a controlled dangerous substance.

(3) Punitive damages.

(4) Reasonable attorney fees.

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

C.2C:35B-6 Controlled dangerous substance individual user; conditions to bring an action.

6. a. An individual user of a controlled dangerous substance may bring an action for damages caused by the use of a controlled dangerous substance only if all of the following conditions are met:

(1) The individual personally discloses to narcotics enforcement authorities all of the information known to the individual regarding all that individual's sources of controlled dangerous substances.

(2) The individual has not used a controlled dangerous substance within the 30 days before filing the action.

(3) The individual continues to remain free of the use of an illegal controlled substance throughout the pendency of the action.

b. An individual user entitled to bring an action under this section may seek damages only from a person who transported, imported into this State, distributed, dispensed, sold, possessed with intent to distribute, or offered to distribute, in violation of any of the provisions of chapter 35 of Title 2C of the New Jersey Statutes, the controlled dangerous substance actually used by the individual user of a controlled dangerous substance.

c. An 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 a controlled dangerous substance.

(2) Reasonable attorney fees.

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

C.2C:35B-7 No third party damage payments; assignment of cause of action restricted.

7. a. 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.

b. A cause of action authorized pursuant to this act may not be assigned, either expressly,

by subrogation, or by any other means, directly or indirectly, to any public or publicly funded agency or institution.

C.2C:35B-8 Damage table.

8. A person whose participation in the marketing of controlled dangerous substances is grounds for liability pursuant to this act shall be rebuttably presumed to be liable for damages incurred by the plaintiff in the following percentages:

- a. For a level 1 offense, 25 percent of the damages;
- b. For a level 2 offense, 50 percent of the damages;
- c. For a level 3 offense, 75 percent of the damages; and
- d. For a level 4 offense, 100 percent of the damages.

C.2C:35B-9 Joint actions.

9. a. Two or more persons may join in one action under this act as plaintiffs if their respective actions have at least one market for controlled dangerous substances in common and if any portion of the period of use of a controlled dangerous substance overlaps with the period of use of a controlled dangerous substance for every other plaintiff.

b. Two or more persons may be joined in one action under this act as defendants if those persons are liable to at least one plaintiff.

C.2C:35B-10 Comparative responsibility governing action.

10. a. An action by an individual user of a controlled dangerous substance is governed by the principles of comparative responsibility. Comparative responsibility attributed to an individual user does not bar the user's recovery but diminishes the award of damages proportionately, according to the measure of responsibility attributed to the user. The burden of proving comparative responsibility is on the defendant, who shall prove comparative responsibility by clear and convincing evidence.

b. Comparative responsibility shall not be attributed to a plaintiff who is not an individual user of a controlled substance, unless that plaintiff knowingly gave the individual user money for the purchase of the controlled dangerous substance.

C.2C:35B-11 Right of action for contribution.

11. A person subject to liability under this act has a right of action for contribution against another person subject to liability under this act. Contribution may be enforced either in the original action or by a separate action brought for that purpose. A plaintiff may seek recovery in accordance with this act and other laws against a person whom a defendant has asserted a right of contribution.

C.2C:35B-12 Proof of liability; prima facie evidence.

12. a. Proof of liability in an action brought under this act shall be shown by clear and convincing evidence.

b. A person against whom recovery is sought who has been convicted of a violation of N.J.S.2C:35-5, Manufacturing, Distributing or Dispensing, or an equivalent offense under federal law or the law of any other state, is estopped from denying illegal participation in the market for controlled dangerous substances. If such conviction was based upon the same type of controlled dangerous substance as that used by the individual user, the conviction also constitutes prima facie evidence of the person's participation in the marketing of controlled dangerous substance user pursuant to this act.

c. The absence of a criminal conviction for a violation of N.J.S.2C:35-5 or an equivalent offense under federal law or the law of any other state does not bar recovery by a plaintiff bringing suit pursuant to subsection b. of section 5 of this act.

C.2C:35B-13 Ex parte prejudgment attachment order.

13. A plaintiff under this act may request an ex parte prejudgment attachment order from the court against all assets of a defendant sufficient to satisfy a potential award. Any claim of the State authorized pursuant to chapter 35A and 64 of Title 2C of the New Jersey Statutes shall have priority over an order issued pursuant to this section.

C.2C:35B-14 Cause of action, accrual; statute of limitations on claim.

14. a. A cause of action accrues under this act when a person has reason to know of the harm from use of a controlled dangerous substance that is the basis for the cause of action and has reason to know that the use of a controlled dangerous substance is the cause of the harm.

b. Except as provided in subsection a. of this section, a claim under this act shall not be brought more than one year after the defendant distributes, dispenses, or possesses with intent to distribute, the controlled dangerous substance or more than one year after the defendant is convicted of a crime involving controlled dangerous substances, whichever is the later.

C.2C:35B-15 Stay of action pending criminal action.

15. On motion by a governmental agency involved in an investigation or prosecution involving a controlled dangerous substance, an action brought under this act shall be stayed until the completion of any underlying criminal investigation or prosecution.

C.2C:35B-16 Satisfaction of judgment after other fines, penalties, etc.

16. Any judgment resulting from a cause of action brought pursuant to this act shall be satisfied only after the satisfaction of any assessment, fine, fee, penalty or restitution imposed by law and enumerated in section 13 of P.L. 1991, c.329 (2C:46-4.1).

C.2C:35B-17 Nonapplicability of act.

17. No cause of action shall arise based on any act by a defendant which occurred prior to the effective date of this act.

18. This act shall take effect immediately.

Approved June 26, 2001.

PO BOX 004  
TRENTON, NJ 08625

*Office of the Governor*  
**NEWS RELEASE**

CONTACT: Rae Hutton  
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RELEASE: June 27 , 2001

Acting Governor Donald T. DiFrancesco has signed the following legislation:

**S-621**, sponsored by Senators John Matheussen (R-Camden/Gloucester), Norman Robertson (Essex/Passaic) and Anthony Bucco (R-Morris) and Assemblymembers John Kelly (R-Bergen/Essex/Passaic) and Arline Friscia (D-Middlesex), allows parents, children, spouses and siblings of illegal drug users, as well as employers of illegal drug users, medical facilities, insurers and persons injured by the drug users' actions to sue drug dealers for civil damages.

**S-647**, sponsored by Senator Joseph Kyriillos (R-Middlesex/Monmouth) and Assemblyman Joseph Azzolina (R-Middlesex/Monmouth) and Guy Gregg (R-Sussex/Hunterdon/Morris) permits the Director of the Division of Alcoholic Beverage Control to issue a special auction permit to a nonprofit organization operating solely for civic, religious, education, charitable, fraternal, social or recreational purposes.

The permit will cost \$100 and would entitle the nonprofit organization to sell at auction alcoholic beverages donated to it by a licensee.

**S-1382**, sponsored by Senator Robert Martin (R-Essex/Morris/Passaic) and Assemblymen Wilfredo Caraballo (D-Essex) and Kip Bateman (R-Morris/Somerset), revises rules concerning secured transactions by replacing Chapter 9 of the Uniform Commercial Code (UCC) with revised Chapter 9, as well as, conforming amendments to Chapters 1,2,2A,4,5,7 and 8 of the UCC.

**S-2123**, sponsored by Senator Raymond Lesniak (D-Union) and Assemblymen Neil Cohen(D-Union) and Joseph Impreveduto (D-Bergen/Hudson), increases the term of office of the mayor and the members of council from two years to four years in municipalities. Provides for a transitional three-year term of office for the mayor and members of council elected at the 2002 general election.

This bill also alters the term of office of mayor and member so council from three years to four years in towns.

**A-1325**, sponsored by Senator William Schluter (R-Warren/Hunterdon/Mercer) and Assemblymembers Richard Bagger (R-Middlesex/Morris/Somerset/Union) and the late Alan Augustine (R-Middlesex/Morris/Somerset/Union), allows a municipality or county to install pedestrian crossing right-of-way signs at a marked or unmarked crosswalk or at an intersection.

**A-1342**, sponsored by late Assemblyman Alan Augustine (R-Middlesex/Morris/Somerset/Union), provides that, as a fifth option, a Teachers' Pension and Annuity Fund (TPAF) or Public Employees' Retirement System (PERS) member may choose a retirement allowance actuarially reduced to provide to a beneficiary an allowance equivalent to the full amount, three-quarters, one-half or one-quarter of that reduced allowance, but if the beneficiary dies before the retiree, the retiree's allowance will increase to a maximum amount.

**A-2185**, sponsored by Senator Louis Bassano (R-Essex/Union) and John Singer (R-Burlington/Monmouth/Ocean) and Assemblymembers Leonard Lance (R-Warren/Hunterdon/Mercer) and Rose Maria Heck (R-Bergen), appropriates \$28,695,000 from the Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Fund for the Department of Human Services. This money will be used for various projects within the divisions, including reducing the community services waiting list.

**A-2209**, sponsored by Senators Jack Sinagra (R-Middlesex) and Joseph Vitale (D-Middlesex) and Assemblymembers Carol Murphy (R-Essex/Morris/Passaic) and Samuel Thompson (R-Middlesex/Monmouth), provides that the period for which eligibility for Medicaid and KidCare benefits is determined shall be the maximum permitted under federal law, currently 12 months.

**A-2449**, sponsored by Assemblymen Michael Arnone (R-Monmouth) and Joseph Azzolina (R-Middlesex/Monmouth), permits sewerage authority or a utilities authority to rename itself as a "water reclamation authority" to more accurately reflect its activities and purposes.

**A-2523**, sponsored by Senators William Gormley (R-Atlantic) and Edward O'Connor (D-Hudson) and Assemblymen James Holzapfel (R-Monmouth/Ocean) and Peter Barnes (D-Middlesex), increases the penalty for persons who produce and sell false motor vehicle identification cards from a crime of the fourth degree to a crime of the third degree which is punishable by imprisonment for three to five years, a fine of up to \$15,000, or both.

**A-3622**, sponsored by Senators Walter Kavanaugh (R-Morris/Somerset) and Raymond Lesniak (D-Union) and Assemblymen John Wisniewski (D-Middlesex) and Samuel Thompson (R-Middlesex/Monmouth), provides that for the year 2001, 1) the day on which members of the State, county or municipal committee of a political party will take office, and the day on which the terms of members previously elected to each such committee will terminate, will be the day immediately following the day of the primary election for the general election and 2) the holding of the annual meeting of the State, county and municipal committees of a political party will occur no earlier than the day immediately following the day of the primary election and no later than the 21st day following such election.