

[CHAPTER 663E]
DRUG DEALER LIABILITY

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" **[§663E-1] Definitions.** As used in this chapter:

"Illegal drug" means "dangerous drugs" or a "harmful drug" as defined in section 712-1240.

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

"Illegal drug market target community" is the area described under section 663E-5.

"Individual drug user" means the individual whose illegal drug use is the basis of an action brought under this chapter.

"Level four offense" means the illegal possession of sixteen ounces or more or the illegal distribution of four ounces or more of an illegal drug.

"Level one offense" means the illegal possession of one-fourth ounce or more, but less than four ounces, or the illegal distribution of less than one ounce of an illegal drug.

"Level three offense" means the illegal possession of eight ounces or more, but less than sixteen ounces, or the illegal distribution of two ounces or more, but less than four ounces, of an illegal drug.

"Level two offense" means the illegal possession of four ounces or more, but less than eight ounces, or the illegal distribution of one ounce or more, but less than two ounces, of an illegal drug.

"Participate in the illegal drug market" means to illegally:

- (1) Distribute an illegal drug;
- (2) Possess with an intent to distribute;
- (3) Commit an act intended to facilitate the marketing or distribution of an illegal drug;
- (4) Commit any of the marketing or distribution of an illegal drug; or
- (5) Conspire to commit any of the foregoing acts.

"Period of illegal drug use" means, in relation to the individual drug user, the entire time of the individual's illegal use of an illegal drug. In cases where the testimony of the individual drug user is unavailable, the period of illegal drug use is presumed to commence two years before the earliest known use by the individual drug user, unless the defendant proves otherwise by clear and convincing evidence.

"Place of illegal drug activity" means, in relation to the individual drug user, the place in which the individual possesses or uses an illegal drug or in which the individual resides, attends school, or is employed during the period of the individual's illegal drug use.

"Place of participation" means, in relation to a defendant in an action brought under this chapter, the place at which the

person participates in the illegal drug market or at which the person resides, attends school, or is employed during the period of the person's participation in the illegal drug market. [L 2004, c 44, pt of §13]

" **[\$663E-2] Recovery of damages.** (a) One or more of the following persons may bring an action to recover for damages caused by an individual's use of an illegal drug:

- (1) A parent, legal guardian, child, spouse, or sibling of the individual drug user;
- (2) An individual who was exposed to an illegal drug in utero;
- (3) An employer of the individual drug user;
- (4) A medical facility, insurer, governmental entity, employer, or other entity that funds a drug treatment program or employee assistance program for the individual drug user or that otherwise expended money on behalf of the individual drug user; or
- (5) A person injured as a result of the intentional, knowing, reckless, or negligent actions of an individual drug user.

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

- (1) A person who knowingly distributed, or knowingly participated in the chain of distribution of, the illegal drug that was used by the individual drug user;
- (2) A person who knowingly participated in the illegal drug market, but only if:
 - (A) The place of illegal drug activity by the individual drug user is within the illegal drug market target community of the defendant;
 - (B) The defendant's participation in the illegal drug market was involved with the same type of illegal drug used by the individual drug user; and
 - (C) The defendant participated in the illegal drug market at any time during the individual drug user's period of illegal drug use.

(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 associated with the illegal drug use;

- (2) Noneconomic damages, including but not limited to physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services, and consortium, and other nonpecuniary losses associated with an individual's use of an illegal drug;
- (3) Exemplary damages;
- (4) Reasonable attorney's fees; and
- (5) Costs of suit, including but not limited to reasonable expenses for expert testimony. [L 2004, c 44, pt of §13]

" **[§663E-3] Limitations for recovery of damages; state recovery.** (a) An individual drug user may not bring an action for damages caused by the use of an illegal drug, except as otherwise provided in this section. An individual drug user may bring an action for damages caused by that individual's use of an illegal drug only if all of the following conditions are met:

- (1) The individual has not used an illegal drug within the six months before filing the action; and
- (2) The individual continues to remain free of the use of an illegal drug throughout the pendency of the action.

(b) A person entitled to bring an action under this section may seek damages only from a person who distributed, or is in the chain of distribution of, the illegal drug that was used by the individual drug user.

(c) A person 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 associated with the person's illegal drug use;
- (2) Reasonable attorney's fees; and
- (3) Costs of suit including but not limited to reasonable expenses for expert testimony.

(d) Twenty-five per cent of any actual recovery of damages by the plaintiff under this section, whether by settlement, execution on a judgment, or otherwise, shall be turned over to the State for deposit into the general fund. [L 2004, c 44, pt of §13]

" **[§663E-4] Third party cases.** Notwithstanding any other law to the contrary, no person shall be liable under this

chapter under civil principles of vicarious liability. [L 2004, c 44, pt of §13]

" **[\$663E-5] Illegal drug market target community.** A person who participates in the illegal drug market at a level one, two, three, or four offense shall be considered to have participated in the following illegal drug market target communities:

- (1) For a level one offense, the area identified by the tax map section in which the defendant's place of participation is situated;
- (2) For a level two offense, the area identified by the tax map zone in which the defendant's place of participation is situated;
- (3) For a level three offense, the county; provided that in the case of Maui and Kauai counties, the target community shall be any island in the respective county; and
- (4) For a level four offense, the entire State. [L 2004, c 44, pt of §13]

" **[\$663E-6] Joinder of parties.** (a) Two or more persons may join in one action under this chapter as plaintiffs if their respective actions have at least one place of illegal drug activity in common, and if each plaintiff's illegal drug user's period of illegal drug use overlaps in time with each other.

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

(c) A plaintiff need not be interested in obtaining and a defendant need not be interested in defending against all the relief demanded. Judgment may be given for one or more plaintiffs according to their respective rights to relief and against one or more defendants according to their respective liabilities. [L 2004, c 44, pt of §13]

" **[\$663E-7] Comparative responsibility.** (a) An action by an individual drug user shall be governed by the principles of comparative responsibility. Comparative responsibility attributed to the plaintiff does not bar recovery but diminishes the award of compensatory damages proportionally, according to the measure of responsibility attributed to the plaintiff.

(b) The burden of proving the comparative responsibility of the plaintiff is on the defendant, which shall be shown by clear and convincing evidence.

(c) Comparative responsibility shall not be attributed to a plaintiff who is not an individual drug user. [L 2004, c 44, pt of §13]

" **[\$663E-8] Contribution among and recovery from multiple defendants.** Except as otherwise provided in this chapter, part II of chapter 663 shall apply to a cause of action established by this chapter. [L 2004, c 44, pt of §13]

" **[\$663E-9] Standard of proof; effect of criminal drug convictions.** (a) Proof of participation in the illegal drug market in an action brought under this chapter shall be shown by clear and convincing evidence. Except as otherwise provided in this chapter, other elements of the cause of action shall be shown by a preponderance of the evidence.

(b) A person against whom recovery is sought who has a final criminal conviction pursuant to section 712-1241, 712-1242, 712-1244, 712-1245, or 712-1240.5, 712-1240.6, or 712-1249.7 or the Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law 91-513, 84 Stat. 1236 (21 U.S.C. §801 et seq.), arising out of an act or acts within the meaning of the term "participate in the illegal drug market" is estopped from denying participation in the illegal drug market. Such a conviction creates a rebuttable presumption that the person participated in the illegal drug market during the two years preceding the date of an act giving rise to a conviction.

(c) The absence of a criminal drug conviction of a person against whom recovery is sought does not bar an action against that person under this chapter. [L 2004, c 44, pt of §13]

Note

Section 712-1240.6 referred to in text is repealed.

Cross References

Methamphetamine trafficking, see §§712-1240.7 and 712-1240.9.

" **[\$663E-10] Defense.** [(a)] It is a defense to any action brought pursuant to this chapter that the person who possessed, distributed, or facilitated the marketing or distribution of a dangerous or harmful drug did so under authority of law as a practitioner, as an ultimate user of the drug pursuant to a lawful prescription, or as a person otherwise authorized by law.

[(b)] A law enforcement officer or agency, the State, or a person acting at the direction of a law enforcement officer or agency or the State is not liable for participating in the illegal drug market if the participation is in furtherance of an official investigation. [L 2004, c 44, pt of §13]

" **[\$663E-11] Statute of limitations.** (a) A claim under this chapter may not be brought against a person more than four years after that person participated in the illegal drug market.

(b) The limitation period provided for in this chapter is tolled during any time there is a criminal drug offense investigation conducted against the defendant by a governmental agency or there is a criminal drug offense charge, information, or indictment pending against defendant. [L 2004, c 44, pt of §13]

" **[\$663E-12] Stay of action.** On motion by a governmental agency involved in a drug investigation or prosecution, an action brought under this chapter shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of the action. [L 2004, c 44, pt of §13]

" **[\$663E-13] Effect on existing laws.** This chapter is not intended to alter any law regarding intra-family tort immunity. [L 2004, c 44, pt of §13]