

CHAPTER 304

COURTS

SENATE BILL 99-150

BY SENATORS Epps, Blickensderfer, Congrove, Dennis, Dyer, Evans, Grampsas, Hernandez, Hillman, Lamborn, Musgrave, Nichol, Owen, Phillips, Powers, Tebedo, Teck, Weddig, and Wham;
also REPRESENTATIVES George, Grossman, Hagedorn, Larson, Lawrence, Scott, Swenson, and Taylor.

AN ACT

CONCERNING CIVIL LIABILITY RELATING TO ILLEGAL DRUGS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 21 of title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 8
DRUG DEALER LIABILITY ACT**

13-21-801. Short title. THIS PART 8 SHALL BE KNOWN AND MAY BE CITED AS THE "DRUG DEALER LIABILITY ACT".

13-21-802. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY DECLARES THAT THE PURPOSE OF THIS PART 8 IS:

(a) TO PROVIDE A CIVIL REMEDY FOR DAMAGES TO PERSONS IN THIS STATE INJURED AS A RESULT OF THE USE OF AN ILLEGAL DRUG;

(b) TO SHIFT, TO THE EXTENT POSSIBLE, THE COST OF DAMAGE CAUSED BY THE MARKET FOR ILLEGAL DRUGS IN THE STATE TO THOSE WHO ILLEGALLY PROFIT FROM THAT MARKET; AND

(c) TO DETER THOSE WHO HAVE NOT YET ENTERED INTO THE DISTRIBUTION MARKET FOR ILLEGAL DRUGS BY ESTABLISHING THE PROSPECT OF SUBSTANTIAL MONETARY LOSS.

13-21-803. Definitions. AS USED IN THIS PART 8, UNLESS THE CONTEXT

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

OTHERWISE REQUIRES:

(1) "ILLEGAL DRUG" MEANS A CONTROLLED SUBSTANCE AS DEFINED IN SECTION 18-18-102 (5), C.R.S.

(2) "INDIVIDUAL ILLEGAL DRUG USER" MEANS THE INDIVIDUAL WHOSE USE OF A SPECIFIED ILLEGAL DRUG IS THE BASIS OF AN ACTION BROUGHT UNDER THIS PART 8.

(3) "PARTICIPATE IN THE MARKETING OF ILLEGAL DRUGS" MEANS TO TRANSPORT, IMPORT INTO THIS STATE, SELL, POSSESS WITH THE INTENT TO SELL, FURNISH, ADMINISTER, OR GIVE AWAY, IMPORT INTO THIS STATE, SELL, FURNISH, ADMINISTER, OR GIVE AWAY AN ILLEGAL DRUG. "PARTICIPATE IN THE MARKETING OF ILLEGAL DRUGS" DOES NOT INCLUDE THE PURCHASE OR RECEIPT OF AN ILLEGAL DRUG FOR PERSONAL USE.

(4) "PERIOD OF ILLEGAL DRUG USE" MEANS, IN RELATION TO THE INDIVIDUAL ILLEGAL DRUG USER, THE PERIOD OF TIME FROM THE INDIVIDUAL'S FIRST USE OF A SPECIFIED ILLEGAL DRUG TO THE ACCRUAL OF THE CAUSE OF ACTION. THE PERIOD OF ILLEGAL DRUG USE IS PRESUMED TO COMMENCE TWO YEARS BEFORE THE CAUSE OF ACTION ACCRUES UNLESS THE DEFENDANT PROVES OTHERWISE BY CLEAR AND CONVINCING EVIDENCE.

(5) "PERSON" MEANS AN INDIVIDUAL, GOVERNMENTAL ENTITY, CORPORATION, FIRM, TRUST, PARTNERSHIP, OR INCORPORATED OR UNINCORPORATED ASSOCIATION EXISTING UNDER OR AUTHORIZED BY THE LAWS OF THIS STATE, ANOTHER STATE, OR A FOREIGN COUNTRY.

(6) "SPECIFIED ILLEGAL DRUG" MEANS THE TYPE OF ILLEGAL DRUG USED BY AN INDIVIDUAL ILLEGAL DRUG USER WHOSE USE IS THE BASIS OF AN ACTION BROUGHT UNDER SECTION 13-21-804 (2) (b).

13-21-804. Damages - persons injured by an individual illegal drug user.

(1) ANY ONE OR MORE OF THE FOLLOWING PERSONS MAY BRING AN ACTION FOR DAMAGES CAUSED BY AN INDIVIDUAL'S USE OF AN ILLEGAL DRUG WITHIN THIS STATE:

(a) A PARENT, LEGAL GUARDIAN, CHILD, SPOUSE, OR SIBLING OF THE INDIVIDUAL ILLEGAL DRUG USER;

(b) AN EMPLOYER OF AN INDIVIDUAL ILLEGAL DRUG USER;

(c) A MEDICAL FACILITY, INSURER, GOVERNMENTAL ENTITY, EMPLOYER, OR OTHER ENTITY THAT FUNDED A DRUG TREATMENT PROGRAM OR EMPLOYEE ASSISTANCE PROGRAM FOR THE INDIVIDUAL ILLEGAL DRUG USER OR THAT OTHERWISE EXPENDED MONEY ON BEHALF OF THE INDIVIDUAL ILLEGAL DRUG USER OR A DEPENDENT OF THE INDIVIDUAL ILLEGAL DRUG USER; AND

(d) A PERSON INJURED AS A RESULT OF THE WILLFUL, RECKLESS, OR NEGLIGENT ACTIONS OF AN INDIVIDUAL ILLEGAL DRUG USER.

(2) (a) A PERSON ENTITLED TO SEEK DAMAGES UNDER THIS SECTION MAY SEEK DAMAGES FROM ONE OR MORE OF THE FOLLOWING:

(I) A PERSON WHO SOLD, ADMINISTERED, OR FURNISHED, OR IS IN THE CHAIN OF DISTRIBUTION OF, AN ILLEGAL DRUG USED BY THE INDIVIDUAL ILLEGAL DRUG USER;

(II) A PERSON WHO KNOWINGLY PARTICIPATED IN THE MARKETING OR DISTRIBUTION IN THE STATE OF COLORADO OF THE SPECIFIED ILLEGAL DRUG USED BY AN INDIVIDUAL ILLEGAL DRUG USER DURING THE INDIVIDUAL DRUG USER'S PERIOD OF ILLEGAL DRUG USE.

(b) NOTHING IN THIS SECTION SHALL BE DEEMED TO AUTHORIZE A SUIT AGAINST AN EMPLOYER OF A PERSON DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (2) IF THE EMPLOYER HAD NO KNOWLEDGE OF THE ACTIONS OF THE PERSON GIVING RISE TO THE CLAIM UNDER THIS SECTION.

(3) THE STANDARD OF PROOF FOR ESTABLISHING LIABILITY UNDER THIS SECTION SHALL BE BY CLEAR AND CONVINCING EVIDENCE.

(4) A PERSON ENTITLED TO BRING AN ACTION UNDER THIS SECTION MAY RECOVER ALL OF THE FOLLOWING DAMAGES:

(a) ECONOMIC DAMAGES, INCLUDING BUT NOT LIMITED TO THE COST OF TREATMENT AND REHABILITATION, MEDICAL EXPENSES, OR ANY OTHER PECUNIARY LOSS PROXIMATELY CAUSED BY AN INDIVIDUAL'S USE OF AN ILLEGAL DRUG;

(b) NONECONOMIC DAMAGES, INCLUDING BUT NOT LIMITED TO PAIN AND SUFFERING, DISFIGUREMENT, LOSS OF ENJOYMENT, LOSS OF COMPANIONSHIP AND CONSORTIUM, AND OTHER NONPECUNIARY LOSS PROXIMATELY CAUSED BY AN INDIVIDUAL'S USE OF AN ILLEGAL DRUG;

(c) EXEMPLARY DAMAGES;

(d) REASONABLE ATTORNEY FEES INCURRED AS A RESULT OF BRINGING AN ACTION UNDER THIS SECTION; AND

(e) COSTS OF SUIT, INCLUDING BUT NOT LIMITED TO EXPENSES FOR EXPERT WITNESSES AND EXPENSES FOR INVESTIGATIVE SERVICES TO DETERMINE THE IDENTITY OF THE DEFENDANTS AND THE LOCATION OF ANY ASSETS OF THE DEFENDANTS.

13-21-805. Nonexclusiveness - exceptions to liability - joinder. (1) ANY CAUSE OF ACTION ESTABLISHED BY THIS PART 8 SHALL BE IN ADDITION TO AND NOT IN LIEU OF ANY OTHER CAUSE OF ACTION AVAILABLE TO A PLAINTIFF.

(2) A PERSON WHOSE POSSESSION, USE, OR DISTRIBUTION OF ILLEGAL DRUGS IS AUTHORIZED BY LAW IS NOT LIABLE FOR DAMAGES UNDER THIS PART 8.

(3) 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 MARKETING OF ILLEGAL DRUGS IF THE PARTICIPATION IS IN FURTHERANCE OF AN OFFICIAL INVESTIGATION.

(4) TWO OR MORE PERSONS MAY JOIN TOGETHER IN ONE ACTION UNDER SECTION 13-21-804 IF ANY PORTION OF THE PERIOD OF ILLEGAL DRUG USE OF THE INDIVIDUAL

ILLEGAL DRUG USER WHOSE ACTIONS RESULTED IN THE DAMAGES TO ONE PLAINTIFF OVERLAPS WITH THE PERIOD OF ILLEGAL DRUG USE OF THE INDIVIDUAL ILLEGAL DRUG USERS WHOSE ACTIONS RESULTED IN THE DAMAGES TO EVERY OTHER PLAINTIFF.

(5) A THIRD PARTY SHALL NOT PAY DAMAGES AWARDED UNDER THIS PART 8 OR PROVIDE A DEFENSE OR MONEY FOR A DEFENSE ON BEHALF OF AN INSURED UNDER A CONTRACT OF INSURANCE OR INDEMNIFICATION.

13-21-806. Comparative negligence. (1) AN ACTION UNDER THIS PART 8 IS GOVERNED BY THE PRINCIPLES OF COMPARATIVE NEGLIGENCE.

(2) THE BURDEN OF PROVING THE COMPARATIVE NEGLIGENCE OF THE PLAINTIFF SHALL BE ON THE DEFENDANT BY CLEAR AND CONVINCING EVIDENCE.

13-21-807. Contribution among and recovery from multiple defendants. NOTWITHSTANDING THE PROVISIONS OF SECTION 13-50.5-102 (3), A PERSON SUBJECT TO LIABILITY UNDER THIS PART 8 HAS A RIGHT OF CONTRIBUTION AGAINST ANY OTHER PERSON SUBJECT TO LIABILITY UNDER THIS PART 8. CONTRIBUTION MAY BE ENFORCED EITHER IN THE ORIGINAL ACTION OR BY A SEPARATE ACTION BROUGHT FOR THAT PURPOSE. A PLAINTIFF MAY SEEK RECOVERY AGAINST A PERSON WHOM A DEFENDANT HAS ASSERTED A RIGHT OF CONTRIBUTION IN ACCORDANCE WITH THIS PART 8 AND OTHER LAWS.

13-21-808. Effect of criminal drug conviction. (1) (a) A PERSON AGAINST WHOM RECOVERY IS SOUGHT IS ESTOPPED FROM DENYING PARTICIPATION IN THE MARKETING OF ILLEGAL DRUGS IF THE PERSON HAS A CRIMINAL CONVICTION BASED ON THE SAME CIRCUMSTANCES THAT ARE THE BASIS FOR THE CLAIM FOR DAMAGES. SAID CONVICTION MUST BE FOR OTHER THAN MERE POSSESSION OF THE SPECIFIED ILLEGAL DRUG:

(I) THAT IS A FELONY UNDER THE "COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970", 21 U.S.C. SEC. 801, ET SEQ.;

(II) UNDER SECTION 18-18-405 OR 18-18-406, C.R.S.; OR

(III) THAT IS A FELONY RELATED TO PARTICIPATION IN THE MARKETING OF ILLEGAL DRUGS UNDER THE LAWS OF ANOTHER STATE.

(b) SUCH A CONVICTION IS ALSO PRIMA FACIE EVIDENCE OF THE PERSON'S PARTICIPATION IN THE MARKETING OF ILLEGAL DRUGS DURING THE TWO YEARS PRECEDING THE DATE OF AN ACT GIVING RISE TO A CONVICTION.

(2) THE ABSENCE OF A CONVICTION OF A PERSON AGAINST WHOM RECOVERY IS SOUGHT DOES NOT BAR AN ACTION AGAINST THAT PERSON.

13-21-809. Prejudgment attachment and execution on judgments.

(1) (a) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, A PLAINTIFF UNDER THIS PART 8 MAY REQUEST AN EX PARTE, PREJUDGMENT ORDER OF ATTACHMENT UNDER RULE 102 OF THE COLORADO RULES OF CIVIL PROCEDURE AGAINST ALL OF THE ASSETS OF A DEFENDANT SUFFICIENT TO SATISFY A POTENTIAL AWARD. IF ATTACHMENT IS ISSUED, A DEFENDANT IS ENTITLED TO AN IMMEDIATE HEARING. THE

ATTACHMENT MAY BE REMOVED IF THE DEFENDANT DEMONSTRATES THAT THE ASSETS WILL BE AVAILABLE FOR A POTENTIAL AWARD OR IF THE DEFENDANT POSTS A BOND SUFFICIENT TO COVER A POTENTIAL AWARD.

(b) PRIOR TO THE PAYMENT OF ANY JUDGMENT AWARDED PURSUANT TO THIS PART 8, PAYMENT SHALL FIRST BE MADE TO SATISFY ANY ORDER OR JUDGMENT ENTERED AGAINST THE DEFENDANT IN A CRIMINAL PROCEEDING FOR RESTITUTION, INCLUDING ANY CONTRIBUTIONS TO A CRIME VICTIM COMPENSATION FUND PURSUANT TO ARTICLE 4.1 OF TITLE 24, C.R.S., OR TO A VICTIMS AND WITNESSES ASSISTANCE AND LAW ENFORCEMENT FUND PURSUANT TO ARTICLE 4.2 OF TITLE 24, C.R.S.

(2) A PERSON AGAINST WHOM A JUDGMENT HAS BEEN RENDERED UNDER THIS PART 8 IS NOT ELIGIBLE TO EXEMPT ANY PROPERTY, OF WHATEVER KIND, FROM PROCESS TO LEVY OR PROCESS TO EXECUTE ON THE JUDGMENT.

(3) ANY ASSETS SOUGHT TO SATISFY A JUDGMENT UNDER THIS PART 8 THAT HAVE BEEN NAMED IN A FORFEITURE ACTION PENDING ON THE DATE THAT THE ATTACHMENT UNDER SUBSECTION (1) OF THIS SECTION IS SOUGHT OR HAVE BEEN SEIZED FOR FORFEITURE BY ANY STATE OR FEDERAL AGENCY MAY NOT BE ATTACHED OR USED TO SATISFY A JUDGMENT UNDER THIS PART 8 UNLESS AND UNTIL THE ASSETS HAVE BEEN RELEASED FOLLOWING CONCLUSION OF THE FORFEITURE ACTION OR RELEASED BY THE AGENCY THAT SEIZED THE ASSETS.

13-21-810. Statute of limitations. (1) EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION, A CLAIM UNDER THIS PART 8 SHALL NOT BE BROUGHT MORE THAN FOUR YEARS AFTER THE CAUSE OF ACTION ACCRUES. A CAUSE OF ACTION ACCRUES UNDER THIS PART 8 WHEN A PERSON WHO MAY RECOVER HAS REASON TO KNOW OF THE HARM FROM ILLEGAL DRUG USE THAT IS THE BASIS OF THE CAUSE OF ACTION AND HAS REASON TO KNOW THAT THE ILLEGAL DRUG USE IS THE CAUSE OF THE HARM.

(2) FOR A DEFENDANT, THE STATUTE OF LIMITATIONS UNDER THIS SECTION DOES NOT EXPIRE UNTIL SIX MONTHS AFTER THE INDIVIDUAL POTENTIAL DEFENDANT IS CONVICTED OF A CRIMINAL OFFENSE OR AS OTHERWISE PROVIDED BY LAW.

13-21-811. Stay of action. ON MOTION BY A GOVERNMENTAL AGENCY INVOLVED IN A DRUG INVESTIGATION OR PROSECUTION, AN ACTION BROUGHT UNDER THIS PART 8 SHALL BE STAYED UNTIL THE COMPLETION OF THE CRIMINAL INVESTIGATION OR PROSECUTION THAT GAVE RISE TO THE MOTION FOR A STAY OF THE ACTION.

13-21-812. Nonretroactive. NO CAUSE OF ACTION SHALL ACCRUE BASED UPON ANY ACT BY A DEFENDANT THAT OCCURRED PRIOR TO THE EFFECTIVE DATE OF THIS PART 8.

13-21-813. Severability. IF ANY PROVISION OF THIS PART 8 OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, SUCH INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS PART 8 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS PART 8 ARE DECLARED TO BE SEVERABLE.

SECTION 2. Effective date - applicability. This act shall take effect upon passage and shall apply to causes of action accruing on or after said date.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 2, 1999