

SENATE FILE 419
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 321)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act to establish a cause of action for persons who incur
2 damages as a result of illegal drug use, providing for a
3 rebuttable presumption, joinder of parties, a right of
4 contribution, and temporary stays of proceedings pending
5 criminal investigations or prosecutions.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 419

1 Section 1. NEW SECTION. 124D.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "Illegal drug" means a controlled substance as defined
5 under section 124.101, which is unlawfully distributed.

6 2. "Illegal drug market" means the unlawful support
7 system, from manufacture to sale, through which an illegal
8 drug reaches an illegal drug user.

9 3. "Illegal drug user" means an individual who consumes
10 illegal drugs.

11 4. "Participate in the illegal drug market" means to
12 manufacture, deliver, or possess with the intent to
13 manufacture or deliver one or more illegal drugs.

14 5. "Person" means an individual, governmental entity,
15 corporation, firm, trust, partnership, or incorporated or
16 unincorporated association, existing under or authorized by
17 the laws of this state, another state, or a foreign country.

18 6. "Victim" means a parent, legal guardian, child, spouse,
19 or sibling of an illegal drug user; an individual who was
20 exposed in utero to an illegal drug; an employer of an illegal
21 drug user; and a medical facility, insurer, governmental
22 entity, or other person who funds a drug treatment program or
23 employee assistance program for illegal drug users or that
24 otherwise expends money for the treatment or rehabilitation of
25 an illegal drug user.

26 Sec. 2. NEW SECTION. 124D.2 LIABILITY TO VICTIMS FOR
27 CIVIL DAMAGES.

28 1. A victim may recover the civil damages enumerated in
29 subsection 2, from any of the following persons:

30 a. An illegal drug user.

31 b. A person who knowingly delivered, or knowingly
32 participated in the chain of delivery of, an illegal drug that
33 was actually used by an illegal drug user.

34 c. A person who knowingly participated in the illegal drug
35 market, if all of the following criteria are established:

1 (1) The illegal drug user purchased, possessed, or used
2 the illegal drug within the community of the person who
3 participated in the drug market.

4 (2) The participation of the person in the illegal drug
5 market involved the same type of illegal drug used by the
6 illegal drug user.

7 (3) The person participated in the illegal drug market at
8 the time that the illegal drug user purchased, possessed, or
9 used illegal drugs.

10 2. The following damages may be recovered by a victim in
11 an action under this chapter:

12 a. Economic damages for, but not limited to, the cost of
13 substance abuse treatment and rehabilitation, medical care,
14 loss of economic or educational potential, loss of
15 productivity, costs associated with absenteeism, past and
16 future support expenses, accident or injury, and any other
17 pecuniary loss proximately caused by the illegal drug use.

18 b. Noneconomic damages for, but not limited to, physical
19 and emotional pain and suffering, physical impairment,
20 emotional distress, mental anguish, disfigurement, loss of
21 enjoyment, loss of companionship and consortium, and any other
22 nonpecuniary loss proximately caused by the illegal drug use.

23 c. Exemplary damages.

24 d. Reasonable attorney's fees.

25 e. Costs of the lawsuit, including, but not limited to,
26 reasonable expenses for expert testimony.

27 3. A rebuttable presumption shall arise that damages
28 alleged by a victim are proximately caused by a person who
29 participates in the illegal drug market, if the person is
30 convicted of an offense under section 124.403, subsection 1 or
31 2.

32 4. Notwithstanding subsection 1, a peace officer, or
33 criminal justice agency, the state, or a person acting at the
34 direction of a criminal justice agency is not liable for
35 damages that result from participation in the illegal drug

1 market if the participation is part of an official law
2 enforcement investigation.

3 Sec. 3. NEW SECTION. 124D.3 LIABILITY TO ILLEGAL DRUG
4 USER FOR CIVIL DAMAGES.

5 1. An illegal drug user may bring an action for the
6 damages enumerated under subsection 2, which are directly
7 caused by the use of an illegal drug if all of the following
8 conditions apply:

9 a. The illegal drug user personally discloses to narcotics
10 enforcement authorities, more than six months before filing
11 the action, all of the information known to the individual
12 regarding the person or persons from whom the illegal drug
13 user obtained illegal drugs and actively participates in the
14 prosecution of the persons from whom the illegal drugs were
15 obtained.

16 b. The illegal drug user has not used an illegal drug
17 within the six months prior to the filing of the action.

18 c. The illegal drug user does not use illegal drugs during
19 the pendency of the action.

20 2. An illegal drug user who meets the requirements of
21 subsection 1 may recover the following damages from a person
22 who distributed, or is in the chain of distribution of, an
23 illegal drug that was actually used by the illegal drug user:

24 a. Economic damages for the cost of substance abuse
25 treatment and rehabilitation, medical care, and any accident
26 or injury directly caused by the illegal drug use.

27 b. Reasonable attorney's fees.

28 c. Costs of the lawsuit, including, but not limited to,
29 reasonable expenses for expert testimony.

30 d. The amount of a judgment against the illegal drug user
31 resulting from a suit by a victim under this chapter.

32 Sec. 4. NEW SECTION. 124D.4 THIRD-PARTY PAYMENT OF
33 DAMAGES -- DEFENSE UNDER CONTRACT OF INSURANCE --
34 INDEMNIFICATION PROHIBITION.

35 A third party shall not pay damages awarded under this

1 chapter, or provide a defense or money for a defense, on
2 behalf of an insured under a contract of insurance or
3 indemnification.

4 Sec. 5. NEW SECTION. 124D.5 JOINDER OF PARTIES.

5 Two or more plaintiffs in separate actions under this
6 chapter may join in one action if one or more of the
7 defendants named in the separate actions are the same person.
8 Two or more defendants may be joined in one action under this
9 chapter if the defendants are potentially liable to one or
10 more of the same plaintiffs.

11 Sec. 6. NEW SECTION. 124D.6 RIGHT OF CONTRIBUTION.

12 A person who participates in the illegal drug market and is
13 subject to liability under this chapter shall have a right of
14 action for contribution against another person from whom the
15 person obtained illegal drugs if the person personally
16 discloses to narcotics enforcement authorities, more than six
17 months before filing the action, all of the information known
18 to the person regarding the person or persons from whom the
19 person obtained illegal drugs and actively participates in the
20 prosecution of the persons from whom the illegal drugs were
21 obtained. Contribution may be enforced either in the original
22 action or by a separate action brought for that purpose.

23 Sec. 7. NEW SECTION. 124D.7 STATE INTERESTS -- LEGAL
24 REPRESENTATION -- STAY OF ACTION.

25 A prosecuting attorney, as defined under section 801.4,
26 subsection 12, may represent the interests of the state or a
27 political subdivision of the state in any action under this
28 chapter. An action brought under this chapter shall be stayed
29 until the completion of a criminal investigation or
30 prosecution upon a motion by a prosecuting attorney
31 representing the interests of the state or political
32 subdivision which is involved in the investigation or is a
33 party to the prosecution.

34 EXPLANATION

35 This bill establishes a new chapter which establishes a

1 civil cause of action for damages which result from illegal
2 drug use. Parents, legal guardians, children, spouses, or
3 siblings of illegal drug users; children who were exposed in
4 utero to illegal drugs; an employer of an illegal drug user;
5 and persons who fund treatment programs or who have expended
6 money for the treatment or rehabilitation of an illegal drug
7 user are eligible to receive damages for economic,
8 noneconomic, and exemplary damages, as well as the
9 reimbursement for reasonable attorney's fees and the costs of
10 bringing a lawsuit, including attorney's and expert witness
11 fees, from the illegal drug user and persons participating in
12 the illegal drug market. A rebuttable presumption of
13 causation of damages by a person participating in the illegal
14 drug market arises upon the conviction of the person of the
15 manufacture, delivery, or possession with the intent to
16 deliver a controlled substance under section 124.403,
17 subsection 1 or 2. An illegal drug user is also allowed to
18 bring a cause of action against a person who is involved in
19 the manufacture and delivery of illegal drugs. The illegal
20 drug user may bring a cause of action for economic damages for
21 the cost of substance abuse treatment and rehabilitation,
22 medical expenses, accidents or injuries, and the costs of
23 bringing a lawsuit, including attorney's and expert witness
24 fees, and the amount of any judgment against them which
25 results from a victim bringing an action for damages against
26 the illegal drug user. The persons who are held liable to the
27 illegal drug user, in turn, have rights of contribution
28 against other persons who were the sources of illegal drugs,
29 if the person turns those sources over to narcotics
30 authorities and assist narcotics authorities in the active
31 prosecution of those other individuals. Third parties are
32 prohibited from indemnifying or insuring a person who is
33 liable under the chapter. A provision is made for joinder of
34 actions where there are identical plaintiffs or defendants in
35 the actions and defendants have a right of contribution

1 against their illegal drug suppliers. Civil actions under the
2 new chapter may be stayed, upon motion of a prosecuting
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Giannetto
Vilsack
Bisignano
Maddox
Redfern

SSB 321
Judiciary
Succeeded by
SENATE FILE 419
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON GIANNETTO)

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