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JUDICIARY

HOUSE FILE  
BY HEATON

**438**

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act creating a civil action for damages caused by drug  
2 dealers.

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

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**HF 438**

1 Section 1. NEW SECTION. 670B.1 DEFINITIONS.

2 As used in this chapter:

3 1. "Illegal drug" means a drug whose distribution is  
4 prohibited or restricted under chapter 124, 124A, 124B, or  
5 126.

6 2. "Illegal drug market" means the support system of  
7 illegal drug-related operations, from production to retail  
8 sales, through which an illegal drug reaches the user and  
9 which does not operate in accordance with chapter 124, 124A,  
10 124B, or 126.

11 3. "Illegal drug market target community" means the  
12 following:

13 a. For a level 1 offense, the county in which the  
14 defendant's place of participation is situated.

15 b. For a level 2 offense, the target community described  
16 in paragraph "a" plus all counties contiguous to that target  
17 community.

18 c. For a level 3 offense, the target community described  
19 in paragraph "b" plus all counties contiguous to that target  
20 community.

21 d. For a level 4 offense, the state.

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

25 5. "Level 1 offense" means possession of one-fourth ounce  
26 or more, but less than four ounces, or distribution of less  
27 than one ounce of a specified illegal drug, or possession of  
28 one pound or twenty-five plants or more, but less than four  
29 pounds or fifty plants, or distribution of less than one pound  
30 of marijuana.

31 6. "Level 2 offense" means possession of four ounces or  
32 more, but less than eight ounces, or distribution of one ounce  
33 or more, but less than two ounces, of a specified illegal  
34 drug, or possession of four pounds or more or fifty plants or  
35 more, but less than eight pounds or seventy-five plants, or

1 distribution of more than one pound, but less than five  
2 pounds, of marijuana.

3 7. "Level 3 offense" means possession of eight ounces or  
4 more, but less than sixteen ounces, or distribution of two  
5 ounces or more, but less than four ounces, of a specified  
6 illegal drug or possession of eight pounds or more or seventy-  
7 five plants or more, but less than sixteen pounds or one  
8 hundred plants, or distribution of more than five pounds, but  
9 less than ten pounds, of marijuana.

10 8. "Level 4 offense" means possession of sixteen ounces or  
11 more or distribution of four ounces or more of a specified  
12 illegal drug or possession of sixteen pounds or more or one  
13 hundred plants or more or distribution of ten pounds or more  
14 of marijuana.

15 9. "Participate in the illegal drug market" means to  
16 distribute, possess with an intent to distribute, commit an  
17 act intended to facilitate the marketing or distribution of,  
18 or to agree to distribute, possess with an intent to  
19 distribute tax, or permit an act intended to facilitate the  
20 marketing and distribution of an illegal drug in violation of  
21 state law. "Participate in the illegal drug market" does not  
22 include the purchase or receipt of an illegal drug for  
23 personal use only.

24 10. "Period of illegal drug use" means, in relation to the  
25 individual drug user, the time of the individual's first use  
26 of an illegal drug distributed in violation of state law to  
27 the accrual of the cause of action. The period of illegal  
28 drug use is presumed to commence two years before the cause of  
29 action accrues unless the defendant proves otherwise by clear  
30 and convincing evidence.

31 11. "Place of illegal drug activity" means, in relation to  
32 the individual drug user, each county in which the individual  
33 possesses or uses an illegal drug which was distributed in  
34 violation of state law or each county in which the individual  
35 resides, attends school, or is employed during the period of

1 the individual's illegal drug use, unless the defendant proves  
2 otherwise by clear and convincing evidence.

3 12. "Place of participation" means, in relation to a  
4 defendant in an action brought under this chapter, each county  
5 in which the person participates in the illegal drug market or  
6 in which the person resides, attends school, or is employed  
7 during the period of the person's participation in the illegal  
8 drug market.

9 13. "Specified illegal drug" means cocaine, heroin, or  
10 methamphetamine and any other illegal drug.

11 Sec. 2. NEW SECTION. 670B.2 LIABILITY FOR PARTICIPATION  
12 IN THE ILLEGAL DRUG MARKET.

13 1. A person who knowingly participates in the illegal drug  
14 market within this state is liable for civil damages as  
15 provided in this chapter.

16 2. A person may recover damages for injury resulting from  
17 an individual's use of an illegal drug.

18 3. A law enforcement officer or agency, the state, or a  
19 person acting at the direction of a law enforcement officer or  
20 agency or the state is not liable for participating in the  
21 illegal drug market, if the participation is in furtherance of  
22 an official investigation.

23 Sec. 3. NEW SECTION. 670B.3 RECOVERY OF DAMAGES.

24 1. One or more of the following persons may bring an  
25 action for damages caused by an individual's use of an illegal  
26 drug:

27 a. A parent, legal guardian, child, spouse, or sibling of  
28 the individual drug user.

29 b. An individual who was exposed to an illegal drug in  
30 utero.

31 c. An employer of the individual drug user.

32 d. A medical facility, insurer, governmental entity,  
33 employer, or other entity that funds a drug treatment program  
34 or employee assistance program for the individual drug user or  
35 that otherwise expended money on behalf of the individual drug

1 user.

2 e. A person injured as a result of the willful, reckless,  
3 or negligent actions of an individual drug user.

4 2. A person entitled to bring an action under this section  
5 may seek damages from one or more of the following:

6 a. A person who knowingly distributed, or knowingly  
7 participated in the chain of distribution of, an illegal drug  
8 that was actually used by the individual drug user.

9 b. A person who knowingly participated in the illegal drug  
10 market, when all of the following conditions are established:

11 (1) The place of illegal drug activity by the individual  
12 drug user is within the illegal drug market target community  
13 of the defendant.

14 (2) The defendant's participation in the illegal drug  
15 market involved the same type of illegal drug used by the  
16 individual drug user.

17 (3) The defendant participated in the illegal drug market  
18 at any time during the individual drug user's period of  
19 illegal drug use.

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

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

28 b. Noneconomic damages, including, but not limited to,  
29 physical and emotional pain, suffering, physical impairment,  
30 emotional distress, mental anguish, disfigurement, loss of  
31 enjoyment, loss of companionship, services, and consortium,  
32 and other nonpecuniary losses proximately caused by an  
33 individual's use of an illegal drug.

34 c. Punitive damages.

35 d. Reasonable attorney fees.

1 e. The costs of suit, including, but not limited to,  
2 reasonable expenses for expert testimony.

3 Sec. 4. NEW SECTION. 670B.4 LIMITED RECOVERY OF DAMAGES.

4 1. An individual drug user may bring an action for damages  
5 caused by the use of an illegal drug only if all of the  
6 following conditions are met:

7 a. The individual personally discloses to narcotics  
8 enforcement authorities, more than six months before filing  
9 the action, all of the information known to the individual  
10 regarding all that individual's sources of illegal drugs.

11 b. The individual has not used an illegal drug within the  
12 six months before filing the action.

13 c. The individual continues to remain free of the use of  
14 an illegal drug throughout the pendency of the action.

15 2. An individual drug user shall not bring an action for  
16 damages caused by the use of an illegal drug, except as  
17 provided in this section.

18 3. A person entitled to bring an action under this section  
19 may seek damages only from a person who distributed, or is in  
20 the chain of distribution of, an illegal drug that was  
21 actually used by the individual drug user.

22 4. A person entitled to bring an action under this section  
23 may recover only the following damages:

24 a. Economic damages, including, but not limited to, the  
25 cost of treatment, rehabilitation, and medical expenses, loss  
26 of economic or educational potential, loss of productivity,  
27 absenteeism, accidents, or injury, and any other pecuniary  
28 loss proximately caused by the person's illegal drug use.

29 b. Reasonable attorney fees.

30 c. The costs of suit, including, but not limited to,  
31 reasonable expenses for expert testimony.

32 Sec. 5. NEW SECTION. 670B.5 THIRD-PARTY CASES.

33 A third party shall not pay damages awarded under this  
34 chapter, or provide a defense or moneys for a defense, on  
35 behalf of an insured under a contract of insurance or

1 indemnification.

2 Sec. 6. NEW SECTION. 670B.6 JOINDER OF PARTIES.

3 1. Two or more persons may join in one action under this  
4 chapter as plaintiffs if their respective actions have at  
5 least one place of illegal drug activity in common and if any  
6 portion of the period of illegal drug use of every plaintiff  
7 overlaps with the period of illegal drug use of every other  
8 plaintiff.

9 2. Two or more persons may be joined in one action under  
10 this chapter as defendants if those persons are both liable to  
11 at least one plaintiff.

12 3. Any judgment rendered may be apportioned among one or  
13 more plaintiffs according to their respective rights to relief  
14 and against one or more defendants according to their  
15 respective liabilities.

16 Sec. 7. NEW SECTION. 670B.7 COMPARATIVE FAULT.

17 1. An action by an individual drug user is governed by the  
18 principles of comparative fault, pursuant to chapter 668.

19 2. Notwithstanding any other law, rule, or practice, the  
20 burden of proving the comparative fault of the plaintiff in  
21 actions under this chapter is on the defendant, which shall be  
22 shown by clear and convincing evidence.

23 3. Comparative fault pursuant to chapter 668 shall not be  
24 attributed to a plaintiff who is not an individual drug user.

25 Sec. 8. NEW SECTION. 670B.8 CONTRIBUTION AMONG AND  
26 RECOVERY FROM MULTIPLE DEFENDANTS.

27 1. A person subject to liability under this chapter has a  
28 right of action for contribution against another person  
29 subject to liability under this chapter.

30 2. Contribution may be enforced either in the original  
31 action or by a separate action brought for that purpose.

32 3. A plaintiff may seek recovery in accordance with this  
33 chapter and existing law against a person whom a defendant has  
34 asserted a right of contribution.

35 Sec. 9. NEW SECTION. 670B.9 STANDARD OF PROOF -- EFFECT

1 OF CRIMINAL DRUG CONVICTION.

2 1. Proof of participation in the illegal drug market in an  
3 action brought under this chapter shall be shown by clear and  
4 convincing evidence. Except as otherwise provided in this  
5 chapter, other elements of the cause of action shall be shown  
6 by a preponderance of the evidence.

7 2. A person against whom recovery is sought who has a  
8 criminal conviction pursuant to state drug laws or 21 U.S.C. §  
9 801 et seq. is estopped from denying participation in the  
10 illegal drug market. Such a conviction is also prima facie  
11 evidence of the person's participation in the illegal drug  
12 market during the two years preceding the date of an action  
13 giving rise to a conviction.

14 3. The absence of a criminal drug conviction of a person  
15 against whom recovery is sought, including the presence of an  
16 acquittal, does not bar an action against that person.

17 Sec. 10. NEW SECTION. 670B.10 PREJUDGMENT ATTACHMENT AND  
18 EXECUTION ON JUDGMENTS.

19 1. Notwithstanding the provisions of chapter 639, a  
20 plaintiff under this chapter, subject to subsection 3, may  
21 request an ex parte prejudgment attachment order from the  
22 court against all assets of a defendant sufficient to satisfy  
23 a potential award. If attachment is instituted, a defendant  
24 is entitled to an immediate hearing. Attachment may be lifted  
25 if the defendant demonstrates that the assets will be  
26 available for a potential award or if the defendant posts a  
27 bond sufficient to cover a potential award.

28 2. A person against whom a judgment has been rendered  
29 under this chapter is not eligible to exempt any property, of  
30 whatever kind, from process to levy or process to execute on  
31 the judgment.

32 3. Any assets sought to satisfy a judgment under this  
33 chapter that are named in a forfeiture action or have been  
34 seized for forfeiture by any state or federal agency may not  
35 be used to satisfy a judgment unless and until the assets have

1 been released following the conclusion of the forfeiture  
2 action or released by the agency that seized the assets.  
3 However, this chapter does not replace or supersede any rights  
4 or remedies with regard to property seized or forfeited  
5 pursuant to chapters 809 and 809A.

6 Sec. 11. NEW SECTION. 670B.11 STATUTE OF LIMITATIONS.

7 1. Except as otherwise provided in this section, a claim  
8 under this chapter shall not be brought more than two years  
9 after the cause of action accrues. A cause of action accrues  
10 under this chapter when a person who may recover has reason to  
11 know of the harm from illegal drug use that is the basis for  
12 the cause of action and has reason to know that the illegal  
13 drug use is the cause of the harm.

14 2. a. For a plaintiff, notwithstanding chapter 614 or  
15 other rule, the statute of limitations under this section is  
16 tolled while the individual potential plaintiff is  
17 incapacitated by the use of an illegal drug to the extent that  
18 the individual cannot reasonably be expected to seek recovery.

19 b. For a defendant, the statute of limitations under this  
20 section is tolled until six months after the individual  
21 potential defendant is convicted of a criminal drug offense or  
22 as otherwise provided by law.

23 3. The statute of limitations under the chapter for a  
24 claim based on participation in the illegal drug market that  
25 occurred prior to the effective date of this chapter does not  
26 begin to run until the effective date this chapter.

27 Sec. 12. NEW SECTION. 670B.12 REPRESENTATION OF  
28 GOVERNMENTAL ENTITIES -- STAY OF ACTION.

29 1. A county attorney may represent the state or a  
30 political subdivision of the state in an action brought under  
31 this chapter.

32 2. On motion by a governmental agency involved in a drug  
33 investigation or prosecution, an action brought under this  
34 chapter shall be stayed until the completion of the criminal  
35 investigation or prosecution that gave rise to the motion for

1 a stay of the action.

2

EXPLANATION

3 This bill creates a civil action for damages against  
4 persons who cause injury by their participation in the illegal  
5 drug market.

6 Plaintiffs may be a parent, legal guardian, child, spouse,  
7 or sibling of the individual drug user, as well as an  
8 employer, medical facility, insurer, or governmental entity  
9 that expends moneys on the drug user. Any person injured by  
10 the willful, reckless, or negligent action of a drug user may  
11 also seek damages under a cause of action. An individual drug  
12 user may also recover more limited damages after meeting  
13 certain conditions, including refraining from drug use and  
14 cooperating with law enforcement six months before bringing  
15 suit.

16 Defendants include persons who knowingly distribute or  
17 participate in the chain of distribution of illegal drugs to  
18 the drug user or of the type used by the drug user.

19 A plaintiff may recover economic damages, including but not  
20 limited to costs of treatment, loss of productivity,  
21 accidents, or other pecuniary loss; noneconomic damages,  
22 including but not limited to pain, suffering, and loss of  
23 companionship; punitive damages; attorney fees; and costs of  
24 suits, including but not limited to expert witness fees.

25 Other provisions regarding suit, including principles  
26 relating to joinder of parties, comparative fault,  
27 contribution among defendants, statute of limitations,  
28 representation of government entities, and prejudgment  
29 attachment of assets, are specified. Proof of participation  
30 in the illegal drug market must be established by clear and  
31 convincing evidence; other elements of the cause of action may  
32 be established by a preponderance of the evidence. A person  
33 who has a criminal drug conviction under state or federal law  
34 cannot deny participation in the drug market, and the  
35 conviction also constitutes prima facie evidence of such

1 participation for the two-year period prior to an act giving  
2 rise to conviction.

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