

House of Representatives, April 7, 1998. The Committee on Judiciary reported through REP. LAWLOR, 99th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING DRUG DEALER LIABILITY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) For the purposes of sections  
2 1 to 6, inclusive, of this act, "illegal  
3 controlled substance" means a controlled substance  
4 that is sold, distributed, dispensed, given or  
5 administered in violation of chapter 420b of the  
6 general statutes.

7 Sec. 2. (NEW) (a) Any person who sells,  
8 distributes, dispenses, gives or administers to  
9 another person a controlled substance in violation  
10 of chapter 420b of the general statutes shall be  
11 liable for damages as provided in sections 1 to 6,  
12 inclusive, of this act.

13 (b) A person may recover damages under  
14 sections 1 to 6, inclusive, of this act for injury  
15 resulting from an individual's use of an illegal  
16 controlled substance.

17 (c) A law enforcement officer or agency, the  
18 state or a person acting at the direction of a law  
19 enforcement officer or agency or the state is not  
20 liable under sections 1 to 6, inclusive, of this  
21 act if the controlled substance was sold,  
22 distributed, dispensed, given or administered in  
23 furtherance of an official investigation.

24       Sec. 3. (NEW) (a) An individual user of an  
25 illegal controlled substance may not bring an  
26 action for damages caused by the use of an illegal  
27 controlled substance except as provided in this  
28 section. An individual user of an illegal  
29 controlled substance may bring an action for  
30 damages caused by the use of such controlled  
31 substance only if all the following conditions are  
32 met:

33       (1) The individual personally discloses to  
34 narcotics enforcement authorities, at least six  
35 months prior to the filing of the action, all of  
36 the information known to the individual regarding  
37 all that individual's sources of illegal  
38 controlled substances;

39       (2) The individual has not used an illegal  
40 controlled substance within the six months  
41 preceding the filing of the action;

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

45       (b) An individual entitled to bring an action  
46 under this section may seek damages only from the  
47 person who sold, distributed, dispensed, gave or  
48 administered the illegal controlled substance  
49 actually used by such individual.

50       (c) An individual entitled to bring an action  
51 under this section may recover only the following  
52 damages:

53       (1) Economic damages, including, but not  
54 limited to, the cost of treatment and  
55 rehabilitation, medical expenses, loss of economic  
56 or educational potential, loss of productivity,  
57 absenteeism, accidents or injury, and any other  
58 pecuniary loss proximately caused by such  
59 individual's use of an illegal controlled  
60 substance;

61       (2) Reasonable attorney's fees;

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

64       Sec. 4. (NEW) (a) One or more of the  
65 following persons may bring an action for damages  
66 caused by an individual's use of an illegal  
67 controlled substance:

68       (1) A parent, legal guardian, child, spouse  
69 or sibling of the individual user of an illegal  
70 controlled substance;

71 (2) An individual who was exposed to an  
72 illegal controlled substance in utero;

73 (3) An employer of the individual user of an  
74 illegal controlled substance;

75 (4) A medical facility, insurer, employer or  
76 other nongovernmental entity that funds a drug  
77 treatment program or employee assistance program  
78 for the individual user of an illegal controlled  
79 substance or that otherwise expended money on  
80 behalf of the individual user of an illegal  
81 controlled substance;

82 (5) A person injured as a result of the  
83 wilful, reckless or negligent actions of an  
84 individual user of an illegal controlled  
85 substance.

86 (b) A person entitled to bring an action  
87 under this section may seek damages from the  
88 person who sold, distributed, dispensed, gave or  
89 administered an illegal controlled substance to  
90 the individual user of the illegal controlled  
91 substance.

92 (c) A person entitled to bring an action  
93 under this section may recover all of the  
94 following damages:

95 (1) Economic damages, including, but not  
96 limited to, the cost of treatment and  
97 rehabilitation, medical expenses, loss of economic  
98 or educational potential, loss of productivity,  
99 absenteeism, support expenses, accidents or  
100 injury, and any other pecuniary loss proximately  
101 caused by an individual's use of an illegal  
102 controlled substance;

103 (2) Noneconomic damages, including, but not  
104 limited to, physical and emotional pain,  
105 suffering, physical impairment, emotional  
106 distress, medical anguish, disfigurement, loss of  
107 enjoyment, loss of companionship, services and  
108 consortium, and other nonpecuniary losses  
109 proximately caused by an individual's use of an  
110 illegal controlled substance;

111 (3) Exemplary damages;

112 (4) Reasonable attorney's fees;

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

115 Sec. 5. (NEW) (a) Except as provided in this  
116 section, an action under sections 1 to 6,  
117 inclusive, of this act may not be brought more  
118 than two years after the cause of action accrues.

119 A cause of action accrues under sections 1 to 6,  
120 inclusive, of this act when a person who may  
121 recover has reason to know of the harm from the  
122 use of an illegal controlled substance that is the  
123 basis for the cause of action and has reason to  
124 know that the use of an illegal controlled  
125 substance is the cause of the harm.

126 (b) For a plaintiff, the statute of  
127 limitations under this section is tolled while the  
128 individual potential plaintiff is incapacitated by  
129 the use of an illegal controlled substance to the  
130 extent that the individual cannot reasonably be  
131 expected to seek recovery under sections 1 to 6,  
132 inclusive, of this act or as otherwise provided by  
133 law. For a defendant, the statute of limitations  
134 is tolled until six months after the individual  
135 potential defendant is convicted of a criminal  
136 offense involving an illegal controlled substance  
137 or as otherwise provided by law.

138 Sec. 6. (NEW) On motion by a governmental  
139 agency involved in an investigation or prosecution  
140 involving an illegal controlled substance, an  
141 action brought under sections 1 to 6, inclusive,  
142 of this act shall be stayed until the completion  
143 of the criminal investigation or prosecution that  
144 gave rise to the motion for a stay of the action.

145 Sec. 7. Subsection (c) of section 21a-278a of  
146 the general statutes is repealed and the following  
147 is substituted in lieu thereof:

148 (c) Any person who employs, hires, uses,  
149 persuades, induces, entices or coerces a person  
150 under eighteen years of age OR A PERSON WITH  
151 MENTAL RETARDATION, AS DEFINED IN SECTION 1-1g, to  
152 violate section 21a-277 or 21a-278 shall be  
153 imprisoned for a term of three years, which shall  
154 not be suspended and shall be in addition and  
155 consecutive to any term of imprisonment imposed  
156 for violation of section 21a-277 or 21a-278.

157 JUD COMMITTEE VOTE: YEA 39 NAY 0 JFS

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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**FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5737**

STATE IMPACT                      Potential Cost, see explanation below

MUNICIPAL IMPACT                None

STATE AGENCY(S)                Criminal Justice Agencies

EXPLANATION OF ESTIMATES:

STATE IMPACT: The bill could result in a long-term cost impact to the Judicial Department to the extent that additional litigation would occur. The degree to which the courts may see individuals pursuing civil damages against drug dealers is not known at this time. Although new cases are typically added into the court's caseload backlog without incurring new costs, over time caseload increases lead to the need for more funding for court staff. It should be noted that SHB 5021, (the revised Appropriations Act for FY 1998-99, as favorably reported by the Appropriations Committee) includes \$870,000 in partial-year funding for the addition of five judges, associated staff, expenses and sheriffs to more properly address civil case backlogs. This funding is the first phase of an anticipated three year phase-in of 15 more judges for this effort at a cumulative cost of \$7.8 million at the end of three years.

The bill's expansion of the criminal penalty for the illegal distribution of drugs to persons under eighteen to include those that are mentally retarded can be handled within current caseload structures of the criminal justice system. In 1996 and 1997, Judicial Department reports show no offenses or revenue collected for illegal distribution of drugs to minors.

These reports, however, indicate only the primary charge.

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### OLR BILL ANALYSIS

sHB 5737

#### AN ACT CONCERNING DRUG DEALER LIABILITY

**SUMMARY:** This bill makes most people who sell, distribute, dispense, give, or administer dependency-producing drugs in violation of the law (drug dealers) liable for damages. Law enforcement officers or agencies, state officials or employees, or anyone engaged at their direction engaged in selling illegal drugs during an official investigation are not liable for damages.

The bill allows people who sustain injuries as a result of their use of illegal drugs (drug users) to sue for damages, but only as provided under the bill. It allows certain people to sue for damages caused by a drug user.

The bill requires anyone suing for damages to do so within two years after he has reason to know of the harm that the illegal drug that he used causes and that use of the illegal drug caused his harm, unless the statute of limitations is tolled (stopped) or stayed (extended).

Lastly, the bill imposes a three-year mandatory minimum sentence on anyone who employs, hires, uses, persuades, induces, entices, or coerces a person with mental retardation to sell illegal drugs. As with the mandatory sentence for using minors to sell drugs, the sentence for using people with mental retardation is in addition to and consecutive with a prison term imposed for the underlying crime.

EFFECTIVE DATE: October 1, 1998

#### FURTHER EXPLANATION

##### Drug Users Actions for Damages

The bill authorizes an illegal drug user to sue for damages only if he:

1. personally discloses to narcotics enforcement authorities everything he knows about his illegal drug sources at least six months before filing the action;
2. is drug-free during the six months preceding the filing of the action; and
3. continues to remain drug-free throughout the pendency of the action.

The drug user may seek damages only from his drug dealer and may recover only:

1. economic damages, including the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, accidents or injury, and any other pecuniary loss proximately caused by his use of drugs;
2. reasonable attorney's fees; and
3. costs to bring the suit, such as reasonable expenses for expert testimony.

#### Damage Actions Brought by People Harmed by Drug User

Under the bill, the following people who are injured by a drug user may sue the drug user's dealer for damages:

1. a drug user's parent, legal guardian, child, spouse, or sibling;
2. a person exposed to an illegal drug in utero;
3. a drug user's employer;
4. a medical facility, insurer, employer, or other nongovernmental entity that funds the drug user's drug treatment or employee assistance program or that otherwise expends money on his behalf; or
5. a person injured as a result of the drug

user's willful, reckless, or negligent actions.

The person injured by the drug user may sue for and recover all of the damages that the drug user can recover plus:

1. the cost of support expenses proximately caused by his use of drugs;
2. noneconomic damages, including physical and emotional pain; suffering; physical impairment; emotional distress; medical anguish; disfigurement, loss of enjoyment; loss of companionship, services, and consortium; and other nonpecuniary losses proximately caused by the drug user's use of drugs; and
3. exemplary damages.

### **Statute of Limitations**

The bill provides that the statute of limitations is tolled for a plaintiff (1) while a potential plaintiff is incapacitated as a result of his use of illegal drugs to the extent that he cannot reasonably be expected to seek damages or (2) as otherwise provided by law. It is tolled for a potential defendant until six months after he is convicted of the illegal drug crime or as otherwise provided by law. The bill requires an action for damages to be stayed, upon the motion of a governmental agency involved in an investigation or prosecution involving an illegal drug, until the completion of the criminal investigation or prosecution that gave rise to the motion.

### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute  
Yea 39      Nay 0