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HOUSE BILL 128

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Lisa L. Lutz

AN ACT

RELATING TO CIVIL LAW; ENACTING THE DRUG TRAFFICKER LIABILITY ACT; PROVIDING FOR LEGAL ACTIONS BY CERTAIN PERSONS TO RECOVER DAMAGES FROM DRUG TRAFFICKERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Drug Trafficker Liability Act".

Section 2. DEFINITIONS.--As used in the Drug Trafficker Liability Act:

A. "controlled substance" means a "controlled substance", a "counterfeit substance" or a "controlled substance analog" as defined in Section 30-31-2 NMSA 1978;

B. "illegal user" means a person who acquires a controlled substance from a person who traffics in controlled substances;

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1 C. "traffic" means the illegal distribution, sale  
2 or possession with the intent to distribute a controlled  
3 substance; and

4 D. "trafficker" means a person who traffics.

5 Section 3. CAUSE OF ACTION--PRESUMPTION OF INJURY.--

6 A. A person other than an illegal user may recover  
7 damages from an illegal user's trafficker for an injury that  
8 is proximately caused by an illegal user's use of a controlled  
9 substance.

10 B. An illegal user may recover damages from a  
11 trafficker for an injury that is proximately caused by the  
12 illegal user's use of a controlled substance if:

13 (1) prior to filing the action, the illegal  
14 user discloses to a law enforcement authority the identity of  
15 the trafficker;

16 (2) prior to filing the action, the illegal  
17 user has not used a controlled substance for thirty days; and

18 (3) the illegal user does not use a  
19 controlled substance during the pendency of the action.

20 C. A trafficker is presumed to have injured the  
21 plaintiff and to have acted willfully and wantonly if the  
22 plaintiff is:

23 (1) a parent, legal guardian, child, spouse  
24 or sibling of the illegal user;

25 (2) a person whose mother was the illegal

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1 user while the person was in utero;

2 (3) the illegal user's employer;

3 (4) a person who financially supports or  
4 provides unreimbursed services to or on behalf of the illegal  
5 user; or

6 (5) a neighbor who proves the trafficker's  
7 trafficking caused a decline in the value of the neighbor's  
8 property in the neighborhood of the illegal user.

9 D. The cause of action established by the Drug  
10 Trafficker Liability Act is in addition to and not in lieu of  
11 any other cause of action available to a plaintiff.

12 Section 4. PRESUMPTIONS-- EFFECT OF CRIMINAL DRUG  
13 CONVICTION. --

14 A. If a person has been convicted of trafficking  
15 in a controlled substance pursuant to Section 30-31-20 NMSA  
16 1978, that person is presumed to have trafficked in a  
17 controlled substance pursuant to the Drug Trafficker Liability  
18 Act. This presumption is rebuttable.

19 B. A person convicted of violating the Controlled  
20 Substances Act or the federal Comprehensive Drug Abuse  
21 Prevention and Control Act of 1970 by trafficking in a  
22 controlled substance to an illegal user is estopped from  
23 denying trafficking in a controlled substance. The conviction  
24 is also prima facie evidence of the person's trafficking in a  
25 controlled substance during the two years preceding the date

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1 of an act giving rise to the conviction.

2 C. The absence of a conviction of a person against  
3 whom recovery is sought does not bar an action against that  
4 person.

5 Section 5. DAMAGES--INSURANCE EXCLUSION. --

6 A. A person, other than an illegal user, who is  
7 entitled to a recovery pursuant to the Drug Trafficker  
8 Liability Act may recover the following:

9 (1) economic or noneconomic and exemplary  
10 damages;

11 (2) any pecuniary or nonpecuniary loss  
12 proximately caused by an illegal user's use of a controlled  
13 substance; and

14 (3) reasonable attorney fees and costs.

15 B. An illegal user entitled to recovery under the  
16 Drug Trafficker Liability Act may recover the following:

17 (1) economic damages;

18 (2) any pecuniary loss proximately caused by  
19 an illegal user's use of a controlled substance; and

20 (3) reasonable attorney fees and costs.

21 C. No damages, including those based on vicarious  
22 liability or parental responsibility, that are assessed  
23 pursuant to the Drug Trafficker Liability Act shall be payable  
24 or claimed under any insurance policy, and no duty to defend  
25 or indemnify shall be required for any civil complaint brought

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1 pursuant to the Drug Trafficker Liability Act.

2 Section 6. COMPARATIVE NEGLIGENCE. --An action by an  
3 illegal user pursuant to the Drug Trafficker Liability Act is  
4 governed by the principles of comparative negligence.  
5 Negligence shall not be attributed to a plaintiff who is not  
6 an illegal user, unless that plaintiff willfully and knowingly  
7 gave the illegal user the controlled substance or money for  
8 its purchase.

9 Section 7. ATTACHMENT--PROPERTY SUBJECT TO LEVY. --

10 A. After commencing an action under the Drug  
11 Trafficker Liability Act, a plaintiff may seek a writ of  
12 attachment by filing a motion supported by an affidavit  
13 setting forth specific facts showing all of the following:

14 (1) a description of the injury claimed and a  
15 statement that the affiant in good faith believes that the  
16 defendant is liable in a stated amount;

17 (2) the defendant is subject to the judicial  
18 jurisdiction of the state; and

19 (3) after diligent effort, the plaintiff  
20 cannot serve the defendant with process.

21 B. If an attachment action is instituted, a  
22 defendant is entitled to an immediate hearing. Attachment may  
23 be lifted if the defendant demonstrates that the assets will  
24 be available for a potential award or if the defendant posts a  
25 bond sufficient to cover a potential award.

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1 C. A person against whom a judgment has been  
2 rendered under the Drug Trafficker Liability Act is not  
3 eligible to exempt any property from process to levy or  
4 process to execute on the judgment. Unless the jury, or the  
5 court if there is no jury, specifically finds otherwise, the  
6 actions for which a person is found liable under the Drug  
7 Trafficker Liability Act are willful and malicious, and the  
8 judgment is not subject to discharge under federal bankruptcy  
9 law.

10 D. An asset shall not be used to satisfy a  
11 judgment under the Drug Trafficker Liability Act if that asset  
12 is named in or has been seized for a forfeiture action by the  
13 state or the United States before a plaintiff commences an  
14 action under that act unless the asset is released after the  
15 forfeiture action or is released by the agency that seized the  
16 asset.

17 Section 8. ACCRUAL OF CAUSE OF ACTION--TOLLING OF  
18 STATUTE OF LIMITATIONS.--

19 A. Except as otherwise provided in this section, a  
20 cause of action accrues under the Drug Trafficker Liability  
21 Act when a person who may recover has reason to know of the  
22 harm and that trafficking in a controlled substance is the  
23 cause of the harm.

24 B. The statute of limitations is tolled while the  
25 person is incapacitated by the use of a controlled substance

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1 to the extent that the person cannot reasonably be expected to  
2 seek recovery under the Drug Trafficker Liability Act or as  
3 otherwise provided by law.

4 C. A person may bring an action for an injury  
5 pursuant to the Drug Trafficker Liability Act within six years  
6 of the date the action accrues.

7 Section 9. PROSECUTIONS--STAYS.--

8 A. A prosecuting attorney may represent the state  
9 or a political subdivision of the state in an action brought  
10 pursuant to the provisions of the Drug Trafficker Liability  
11 Act.

12 B. On motion by a governmental agency involved in  
13 a controlled substance investigation or prosecution, an action  
14 brought pursuant to the Drug Trafficker Liability Act shall be  
15 stayed until the completion of the criminal investigation or  
16 prosecution that gave rise to the motion for a stay of the  
17 action.

18 C. An action shall not be brought pursuant to the  
19 Drug Trafficker Liability Act against a law enforcement  
20 officer or agency, or a person acting in good faith at the  
21 direction of a law enforcement officer or agency, for  
22 participation in illegal marketing of a controlled substance,  
23 if that participation is in the furtherance of an official  
24 investigation.

25 Section 10. SEVERABILITY.--If any part of the Drug

1 Trafficker Liability Act is held invalid, the remainder or its  
2 application to other situations or persons shall not be  
3 affected.

4 Section 11. EFFECTIVE DATE. --The effective date of the  
5 provisions of this act is July 1, 1999.

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