

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE DRS75396-LA-23 (2/22)

Short Title: Blaire Thompson Drug Dealer Liability Act. (Public)

Sponsors: Senator Boseman.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ENACT THE BLAIRE THOMPSON DRUG DEALER LIABILITY ACT  
IN ORDER TO PROVIDE A CIVIL REMEDY FOR DAMAGES TO PERSONS  
IN A COMMUNITY INJURED BY AN INDIVIDUAL'S USE OF ILLEGAL  
CONTROLLED SUBSTANCES AND TO APPROPRIATE FUNDS TO HELP  
IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 90 of the General Statutes is amended by adding a  
new Article to read:

"Article 5F.

"Blaire Thompson Drug Dealer Liability Act.

**"§ 90-113.85. Title of Article.**

This Article shall be known and may be cited as the 'Blaire Thompson Drug Dealer  
Liability Act'.

**"§ 90-113.86. Purpose.**

The purpose of this Article is to provide a civil remedy for damages to persons in a  
community injured by an individual's use of illegal drugs. It establishes a cause of  
action against drug dealers for damages for monetary, noneconomic, and physical losses  
incurred as a result of an individual's use of an illegal controlled substance. This Article  
will shift the cost of the damage caused by the marketing of illegal drugs to those who  
illegally profit from that market, as well as deter others from entering the illegal drug  
market by subjecting them to substantial monetary loss. This Article will also provide  
an incentive for individual users to identify drug marketers and recover from them the  
costs of their own drug treatment.

**"§ 90-113.87. Definitions.**

(1) 'Illegal controlled substance' means a controlled substance as defined  
and covered under Article 5 of this Chapter.

- 1           (2) 'Individual user' means the individual whose use of an illegal  
2           controlled substance that is not obtained directly from, or pursuant to,  
3           a valid prescription or order of a licensed physician or practitioner is  
4           the basis of an action brought under this Article.
- 5           (3) 'Level one offense' means the illegal possession with the intent to  
6           distribute less than four ounces or the illegal distribution of less than  
7           one ounce of an illegal controlled substance.
- 8           (4) 'Level two offense' means the illegal possession with intent to  
9           distribute four ounces or more but less than eight ounces, or the illegal  
10          distribution of one ounce or more, but less than two ounces, of an  
11          illegal controlled substance.
- 12          (5) 'Level three offense' means the illegal possession with intent to  
13          distribute eight ounces or more but less than 16 ounces, or the illegal  
14          distribution of two ounces or more, but less than four ounces, of an  
15          illegal controlled substance.
- 16          (6) 'Level four offense' means the illegal possession with intent to  
17          distribute 16 ounces or more, or the illegal distribution of four ounces  
18          or more, of an illegal controlled substance.
- 19          (7) 'Marketing of an illegal controlled substance' means the possession  
20          with intent to distribute or distribution of a specified illegal controlled  
21          substance which is a violation of Article 5 of this Chapter.
- 22          (8) 'Participate in the marketing of an illegal controlled substance' means  
23          to distribute, possess with intent to distribute, commit an act intended  
24          to facilitate the marketing or distribution of, or agree to distribute,  
25          possess with an intent to distribute, or commit an act intended to  
26          facilitate the marketing and distribution of an illegal drug. 'Participate  
27          in the marketing of an illegal controlled substance' does not include the  
28          purchase or receipt of an illegal controlled substance for personal use  
29          only.
- 30          (9) 'Period of illegal use' means, in relation to the individual user of an  
31          illegal controlled substance, the time from the individual's first illegal  
32          use of an illegal controlled substance to the accrual of the cause of  
33          action.
- 34          (10) 'Person' means a natural person, governmental entity, or corporation,  
35          partnership, firm, trust, or incorporated or unincorporated association,  
36          existing under or authorized by the laws of this State, another state, or  
37          a foreign country.
- 38          (11) 'Place of illegal activity' means, in relation to the individual user of an  
39          illegal controlled substance, each county in which the individual  
40          illegally possesses or uses an illegal controlled substance during the  
41          period of the individual's use of an illegal controlled substance.
- 42          (12) 'Place of participation' means, in relation to a defendant in an action  
43          brought under this Article, each county in which the person  
44          participates in the marketing of illegal controlled substances during the

1 period of the person's participation in the marketing of illegal  
2 controlled substances.

3 (13) 'Conviction' means a conviction, guilty plea, or plea of nolo contendere  
4 and includes being convicted of a violation of a law of any other state  
5 or a city or county ordinance.

6 (14) 'Prior convictions' means felonies and misdemeanors, prior convictions  
7 not classified at the time of convictions, federal or out-of-state  
8 convictions, and juvenile adjudications if the offenses would be  
9 felonies if committed by an adult.

10 **"§ 90-113.88. Persons who may bring action; persons against whom actions may**  
11 **be brought; damages recoverable.**

12 (a) Any one or more of the following persons may bring an action for damages  
13 caused by an individual's use of an illegal controlled substance against those persons  
14 enumerated in subsection (b) of this section:

15 (1) A parent, legal guardian, child, spouse, or sibling of the individual  
16 user;

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

19 (3) An employer of the individual user;

20 (4) A medical facility, insurer, employer, governmental entity, or other  
21 legal entity that funds a drug treatment program or other employee  
22 assistance program for, or that otherwise expends money on, behalf of  
23 the individual user; or

24 (5) A person injured as a result of the willful, reckless, or negligent  
25 actions of an individual user.

26 (b) A person entitled to bring an action pursuant to subsection (a) of this section  
27 may seek damages from one or more of the following:

28 (1) A person who sold, administered, or furnished an illegal controlled  
29 substance to the individual user; or

30 (2) A person who knowingly participated in the marketing of an illegal  
31 controlled substance, if all of the following apply:

32 a. The place of illegal activity by the individual user is within the  
33 municipality, county, or unincorporated area of the county in  
34 which the defendant's place of participation is situated.

35 b. The defendant's participation in the marketing of illegal  
36 controlled substances was connected with the same type of  
37 illegal controlled substance used by the individual user and the  
38 defendant has been convicted of an offense for that type of  
39 specified illegal controlled substance, which the defendant  
40 committed in the same county as the individual user's place of  
41 use.

42 c. The defendant participated in the marketing of illegal controlled  
43 substances at anytime during the period in which the individual  
44 user used the illegal controlled substance.

1       (c) As used in subdivision (b)(2) of this section, 'knowingly participated in the  
2 marketing of an illegal controlled substance' means an individual was convicted of  
3 possession with the intent to distribute or distribution of an illegal controlled substance  
4 in violation of Chapter 90 of the General Statutes.

5       (d) A person entitled to bring an action under this section may recover all of the  
6 following damages:

7           (1) Economic damages including, but not limited to, the cost of treatment  
8 and rehabilitation, medical expenses, loss of economic or educational  
9 potential, loss of productivity, absenteeism, support expenses,  
10 accidents or injury, and any other pecuniary loss proximately caused  
11 by the use of an illegal controlled substance;

12           (2) Noneconomic damages including, but not limited to, physical and  
13 emotional pain and suffering, physical impairment, emotional distress,  
14 mental anguish, disfigurement, loss of enjoyment, loss of  
15 companionship, services, and consortium, and other nonpecuniary  
16 losses proximately caused by an individual's use of an illegal  
17 controlled substance;

18           (3) Exemplary damages;

19           (4) Reasonable attorneys' fees; and

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

22 **"§ 90-113.89. Actions by individual users; damages recoverable.**

23       (a) An individual user is entitled to bring an action for damages caused by the  
24 use of an illegal controlled substance only if all of the following conditions are met:

25           (1) Not less than six months before filing the action, the individual  
26 personally discloses to a law enforcement agency all of the  
27 information known to the individual regarding the individual's sources  
28 of illegal controlled substances.

29           (2) The individual has not used an illegal controlled substance within 30  
30 days before filing the action.

31           (3) The individual does not use an illegal controlled substance while the  
32 action is pending.

33       (b) The individual user entitled to bring an action under this section may recover  
34 only the following damages:

35           (1) Economic damages including, but not limited to, the cost of treatment,  
36 rehabilitation, and medical expenses, loss of economic or educational  
37 potential, loss of productivity, absenteeism, accidents or injury, and  
38 any other pecuniary loss proximately caused by the person's use of an  
39 illegal controlled substance;

40           (2) Reasonable attorneys' fees; and

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

1 (c) The individual user entitled to bring an action under this section may seek  
2 damages only from a person who distributed, or possessed with the intent to distribute,  
3 the illegal controlled substance actually used by the individual user.

4 **"§ 90-113.90. Assignment of cause of action.**

5 A cause of action authorized by this Article shall not be assigned, either expressly,  
6 by subrogation, or by any other means, directly or indirectly, to any public or publicly  
7 funded agency or institution.

8 **"§ 90-113.91. Responsibility for damages; level of offense.**

9 Any person whose participation in the marketing of illegal controlled substances  
10 constitutes any of the following levels of offense shall be subject to a rebuttable  
11 presumption of responsibility in the following amounts:

12 (1) For a level one offense, twenty-five percent (25%) of the damages;

13 (2) For a level two offense, fifty percent (50%) of the damages;

14 (3) For a level three offense, seventy-five percent (75%) of the damages;

15 or

16 (4) For a level four offense, one hundred percent (100%) of the damages.

17 **"§ 90-113.92. Multiple parties to action; relief according to respective liabilities.**

18 (a) Two or more persons may join in one action under this Article as plaintiffs if  
19 their respective actions have at least one market for illegal controlled substances in  
20 common and if any portion of the period of use of an illegal controlled substance is  
21 concurrent with the period of use of an illegal controlled substance for every other  
22 plaintiff.

23 (b) Two or more persons may be joined in one action under this Article as  
24 defendants if those persons are liable to at least one plaintiff.

25 (c) A plaintiff need not participate in obtaining, and a defendant need not  
26 participate in defending, against all of the relief demanded. Judgment may be given for  
27 one or more plaintiffs according to their respective rights to relief and against one or  
28 more defendants according to their respective liabilities.

29 **"§ 90-113.93. Standard of proof; effect of conviction for distribution of controlled**  
30 **substance.**

31 (a) Proof of liability in an action brought under this Article shall be by a  
32 preponderance of the evidence.

33 (b) A person against whom recovery is sought who has been convicted of the  
34 distribution of an illegal controlled substance under Chapter 90 of the General Statutes  
35 or under the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21  
36 U.S.C. § 801, et seq., is precluded from denying participation in the marketing of an  
37 illegal controlled substance.

38 **"§ 90-113.94. Defense; liability of law enforcement officer or agency.**

39 (a) It is a defense to any action brought under this Article that the person who  
40 possessed with the intent to distribute or distributed an illegal controlled substance did  
41 so under the authority of law as a licensed physician or practitioner, as an ultimate user  
42 of the illegal controlled substance pursuant to a lawful prescription, or as a person  
43 otherwise authorized by law.

1       (b) A law enforcement officer or agency, the State, or any person acting at the  
2 direction of a law enforcement officer or agency of the State is not liable for  
3 participating in the marketing of an illegal controlled substance if the participation is in  
4 furtherance of an illegal investigation.

5 **"§ 90-113.95. Seizure of property; injunctions.**

6       A person authorized to file an action under this Article may seek a seizure or  
7 injunction or other remedial action against all assets of a defendant sufficient to satisfy a  
8 potential award, except an asset named in or seized pursuant to a forfeiture action by the  
9 State or federal agency before a plaintiff commences an action pursuant to this Article,  
10 unless the asset is released by the agency that seized it.

11 **"§ 90-113.96. Statute of limitations.**

12       (a) Except as otherwise provided in this section, a cause of action under this  
13 Article shall not be brought more than two years after the cause of action accrues. A  
14 cause of action accrues under this Article when a person who may recover has reason to  
15 know of the harm from illegal drug use that is the basis for the cause of action and has  
16 reason to know that the illegal drug use is the cause of the harm.

17       (b) For a plaintiff, the statute of limitation under this section is tolled while the  
18 individual potential plaintiff is incapacitated by the use of an illegal controlled  
19 substance to the extent that the individual cannot reasonably be expected to seek  
20 recovery under this Article or as otherwise provided by law. For a defendant, the statute  
21 of limitation under this section is tolled until six months after the individual potential  
22 defendant is convicted under Chapter 90 of the General Statutes or as otherwise  
23 provided by law.

24 **"§ 90-113.97. Continuance pending completion of criminal investigation.**

25       On motion by a governmental entity involved in an investigation or prosecution  
26 involving an illegal controlled substance, an action brought under this Article shall be  
27 continued until the completion of the criminal investigation or prosecution that gave rise  
28 to the motion for a continuance of the action."

29       **SECTION 2.** The Administrative Office of the Courts shall develop forms  
30 needed to a file a cause of action under this Article and provide training to judicial  
31 personnel.

32       **SECTION 3.** There is appropriated from the General Fund to the  
33 Administrative Office of the Courts the sum of fifty thousand dollars (\$50,000) to be  
34 used to develop forms, to train judicial personnel, and to otherwise implement this  
35 Article.

36       **SECTION 4.** This act becomes effective December 1, 2006.