

FIRST REGULAR SESSION

SENATE BILL NO. 233

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIGGINS.

Read 1st time January 3, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0029L.021

AN ACT

To amend chapter 195, RSMo, relating to drug regulations, by adding thereto eight new sections relating to civil liability for drug dealing.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 195, RSMo, is amended by adding thereto eight new sections, to be known as sections 195.650, 195.655, 195.660, 195.665, 195.670, 195.675, 195.680 and 195.685, to read as follows:

195.650. As used in sections 195.650 to 195.685, the following terms mean:

(1) "Controlled substance", a drug, substance or immediate precursor in Schedules I through V listed in sections 195.005 to 195.425;

(2) "Illegal drug", a controlled substance or drug whose distribution is a violation of state law;

(3) "Illegal drug market", the support system of illegal drug-related operations, from manufacture to retail sales, through which an illegal drug reaches the user;

(4) "Participate in the illegal drug market", to distribute, possess with an intent to distribute, commit an act intended to facilitate the marketing or distribution of, or agree to distribute, possess with an intent to distribute, or commit an act intended to facilitate the marketing and distribution of an illegal drug. The term does not include the purchase or receipt of an illegal drug for personal use only;

(5) "Place of illegal drug activity", any county in which the user possesses or uses an illegal drug or in which the user resides, attends school or is employed during the period of the user's illegal drug use, unless the defendant proves otherwise by clear and convincing evidence;

(6) "User", a person who uses illegal drugs.

195.655. A cause of action may be brought by any person, as specified in section 195.660, who has suffered damages as a proximate result of another person's use of an illegal drug. Such damages may include any or all of the following:

(1) Economic damages, including the cost of medical expenses, treatment and rehabilitation, loss of economic or educational potential, loss of productivity, absenteeism, support expenses and any other pecuniary loss proximately caused by the illegal drug use;

(2) Noneconomic damages, including physical and emotional pain and suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services and consortium, and other nonpecuniary losses proximately caused by a user's illegal drug use; and

(3) Attorneys' fees.

195.660. The cause of action authorized in section 195.655 may be brought by any of the following persons whose damages are the proximate result of another person's use of an illegal drug:

(1) A parent, legal guardian, child, spouse or sibling of the illegal drug user;

(2) Any person who is being or has been exposed to an illegal drug while an embryo or fetus;

(3) Any employer of the user;

(4) A medical facility, insurer, governmental entity or other entity that has funded a drug treatment program or employee assistance program for the user or that has otherwise expended funds on behalf of the user; or

(5) Any person injured as a result of the willful, reckless or negligent actions or conduct of the user.

195.665. Any person entitled to bring an action pursuant to section 195.660 may seek damages from the following persons:

(1) Any person who knowingly distributed, or knowingly participated in the chain of distribution of, an illegal drug that was actually used by the user;

(2) Any person who knowingly participated in the illegal drug market if:

(a) The defendant participated in the illegal drug market in the user's place of illegal drug activity;

(b) The defendant's participation in the illegal drug market was connected with the same type of illegal drug used by the user; and

(c) The defendant participated in the illegal drug market at any time during the user's period of illegal drug use.

195.670. A person authorized pursuant to section 195.660 to bring a cause of action pursuant to section 195.655 may recover damages from any person who

knowingly distributed, or knowingly participated in the chain of distribution of, an illegal drug that was actually used by the user. Any law enforcement officer or agency or a person acting at the direction of a law enforcement officer or agency is not liable for participating in the chain of distribution if the participation is in furtherance of an official investigation.

195.675. 1. Proof of participation in the illegal drug market in an action brought pursuant to section 195.655 shall be shown by clear and convincing evidence. Except as otherwise provided in sections 195.650 to 195.685, other elements of the cause of action shall be shown by a preponderance of the evidence.

2. Any person against whom recovery is sought who has a criminal conviction pursuant to state or federal drug laws is estopped from denying participation in the illegal drug market during the two years preceding the date of an act giving rise to a conviction.

3. The absence of criminal drug conviction of a person against whom recovery is sought shall not bar an action against such person.

195.680. Any person against whom a judgment has been rendered pursuant to sections 195.650 to 195.685 is not eligible to exempt any property, of whatever kind, from process to levy or process to execute on the judgment. Any assets sought to satisfy a judgment pursuant to sections 195.650 to 195.685 that are named in a forfeiture action or have been seized for forfeiture by any state or federal agency shall not be used to satisfy a judgment unless the assets have been released following the conclusion of the forfeiture action or released by the agency that seized the assets.

195.685. On motion by a governmental agency involved in a drug investigation or prosecution, an action brought pursuant to sections 195.650 to 195.685 shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of the action.