

IC 34-24-4

Chapter 4. Drug Dealer Liability

IC 34-24-4-0.3

Application of statute of limitations

Sec. 0.3. The statute of limitations under this chapter (or IC 34-1-70 before its repeal) for a claim based on participation in the illegal drug market that occurred before July 1, 1997, does not begin to run until July 1, 1997.

As added by P.L.220-2011, SEC.561.

IC 34-24-4-1

Liability of person participating in illegal drug market; exception for law enforcement investigations

Sec. 1. (a) A person who knowingly participates in the illegal drug market in Indiana is liable for civil damages as provided in this chapter.

(b) A person may recover damages under this chapter for an injury that results from an individual's use of an illegal drug.

(c) A law enforcement officer or agency, the state, or a person acting at the direction of a law enforcement officer or agency or the state is not liable for participating in the illegal drug market if the participation is to further an official investigation.

As added by P.L.1-1998, SEC.19.

IC 34-24-4-2

Parties plaintiff

Sec. 2. The following persons may bring an action for damages caused by an individual drug user's use of an illegal drug:

(1) A:

- (A) parent;
- (B) legal guardian;
- (C) child;
- (D) spouse; or
- (E) sibling;

of the individual drug user.

(2) An individual who was exposed to an illegal drug in utero.

(3) An employer of the individual drug user.

(4) A medical facility, insurer, governmental entity, employer, or other entity that:

- (A) funds a drug treatment program or employee assistance program for the individual drug user; or
- (B) otherwise expends money on behalf of the individual drug user.

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

(6) Any neighborhood association registered with the municipal governing body, the official geographic boundaries of which encompass the location of the complained-of illegal drug dealing or use.

As added by P.L.1-1998, SEC.19.

IC 34-24-4-3

Parties defendant

Sec. 3. A person who may bring an action under section 2 of this chapter may recover damages from the following persons:

- (1) A person who knowingly distributed or knowingly participated in the chain of distribution of an illegal drug that was actually used by the individual drug user.
- (2) A person who knowingly participated in the illegal drug market if the:
 - (A) individual drug user's place of illegal drug activity is within the person's illegal drug market target community;
 - (B) person's participation in the illegal drug market was connected with the same type of illegal drug used by the individual drug user; and
 - (C) person participated in the illegal drug market at any time during the individual drug user's period of illegal drug use.

As added by P.L.1-1998, SEC.19.

IC 34-24-4-4

Recovery of damages, costs, and attorney's fees

Sec. 4. A person who may bring an action under section 2 of this chapter may recover the following damages:

- (1) Economic damages, including costs for the following:
 - (A) Treatment and rehabilitation.
 - (B) Medical expenses.
 - (C) Loss of economic or educational potential.
 - (D) Loss of productivity.
 - (E) Absenteeism.
 - (F) Support expenses.
 - (G) Accidents or injury.
 - (H) Any other pecuniary loss proximately caused by the illegal drug use.
- (2) Noneconomic damages, including costs for the following:
 - (A) Physical and emotional pain and suffering.
 - (B) Physical impairment.
 - (C) Emotional distress.
 - (D) Medical anguish.
 - (E) Disfigurement.
 - (F) Loss of enjoyment.
 - (G) Loss of companionship, services, and consortium.
 - (H) Any other nonpecuniary loss proximately caused by the illegal drug use.
- (3) Exemplary damages.
- (4) Reasonable attorney's fees.
- (5) Court costs, including reasonable expenses for expert testimony.

As added by P.L.1-1998, SEC.19.

IC 34-24-4-5

Action by individual drug user

Sec. 5. (a) Except as provided in this section, an individual drug user may not bring an action for damages caused by the use of an illegal drug.

(b) An individual drug user may bring an action for damages caused by the use of an illegal drug if the individual drug user satisfies all of the following conditions:

(1) At least six (6) months before filing an action, the individual drug user personally discloses to law enforcement officers all of the information known to the individual drug user regarding all the individual drug user's sources of illegal drugs.

(2) The individual drug user does not use an illegal drug within the six (6) months immediately preceding the date the individual drug user files the action.

(3) The individual drug user does not use an illegal drug while the action is pending.

(c) An individual drug user who brings an action under this section (or IC 34-1-70-12 before its repeal) may recover damages only from a person who:

(1) distributed; or

(2) is in the chain of distribution of;

an illegal drug that was used by the individual drug user.

(d) An individual drug user who may bring an action under this section (or IC 34-1-70-12 before its repeal) may recover only the following damages:

(1) Economic damages, including costs for the following:

(A) Treatment and rehabilitation.

(B) Medical expenses.

(C) Loss of economic or educational potential.

(D) Loss of productivity.

(E) Absenteeism.

(F) Accidents or injury.

(G) Any other pecuniary loss proximately caused by the illegal drug use.

(2) Reasonable attorney's fees.

(3) Court costs, including reasonable expenses for expert testimony.

As added by P.L.1-1998, SEC.19.

IC 34-24-4-6

Third party insurance or indemnification prohibited

Sec. 6. A third party may not:

(1) pay damages awarded under this chapter (or IC 34-1-70 before its repeal); or

(2) provide a defense or money for a defense;

on behalf of an insured under a contract of insurance or indemnification.

As added by P.L.1-1998, SEC.19.

IC 34-24-4-7

Joinder of parties and actions

Sec. 7. (a) Two (2) or more persons may join as plaintiffs in one (1) action under this chapter (or IC 34-1-70 before its repeal) if:

- (1) each plaintiff's respective actions have at least one (1) place of illegal drug activity in common; and
- (2) any portion of the period of illegal drug use in one (1) plaintiff's action overlaps with the period of illegal drug use for every other plaintiff's action.

(b) Two (2) or more persons may be joined in one (1) action under this chapter (or IC 34-1-70 before its repeal) as defendants if all the persons may be liable to at least one (1) plaintiff.

(c) A plaintiff does not have to be interested in obtaining and a defendant does not have to be interested in defending against all relief demanded under this chapter. Judgment may be given:

- (1) for one (1) or more plaintiffs according to each plaintiff's respective rights to relief; and
- (2) against one (1) or more defendants according to each defendant's respective liabilities.

As added by P.L.1-1998, SEC.19.

IC 34-24-4-8

Comparative liability of individual drug user as plaintiff

Sec. 8. (a) An action by an individual drug user brought under this chapter (or IC 34-1-70 before its repeal) is governed by the principles of comparative liability under state law. Comparative liability attributed to a plaintiff does not bar recovery but diminishes the award of compensatory damages proportionally according to the measure of responsibility attributed to the plaintiff.

(b) The burden of proving the comparative liability of the plaintiff:

- (1) is on the defendant; and
- (2) must be shown by clear and convincing evidence.

(c) Comparative liability may not be attributed to a plaintiff who is not an individual drug user.

As added by P.L.1-1998, SEC.19.

IC 34-24-4-9

Right of contribution

Sec. 9. (a) A person who is subject to liability under this chapter (or IC 34-1-70 before its repeal) has a right of action for contribution against another person subject to liability under this chapter (or IC 34-1-70 before its repeal).

(b) Contribution may be enforced in:

- (1) the original action; or
- (2) a separate action brought for that purpose.

(c) A plaintiff may seek recovery under this chapter and any other applicable law against a person whom a defendant has asserted a right of contribution.

As added by P.L.1-1998, SEC.19.

IC 34-24-4-10

Burden of proof

Sec. 10. (a) Proof of participation in the illegal drug market in an action brought under this chapter (or IC 34-1-70 before its repeal) must be shown by clear and convincing evidence. Unless otherwise provided in this chapter, other elements of an action brought under this chapter must be shown by a preponderance of the evidence.

(b) A person:

(1) against whom recovery is sought; and

(2) who has a criminal conviction under:

(A) a state drug law; or

(B) the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.);

is estopped from denying participation in the illegal drug market.

(c) A conviction described in subsection (b) constitutes prima facie evidence of the person's participation in the illegal drug market during the two (2) years preceding the date of the act that was the basis for the conviction.

(d) Notwithstanding subsection (c), a person may not be prohibited from bringing an action under this chapter (or IC 34-1-70 before its repeal) against another person because the other person has not been convicted of a criminal drug offense.

As added by P.L.1-1998, SEC.19.

IC 34-24-4-11

Prejudgment attachment

Sec. 11. (a) Subject to subsection (c), a plaintiff in an action brought under this chapter may request an ex parte prejudgment attachment order from the court against all assets of a defendant sufficient to satisfy a potential award. If attachment is instituted, a defendant is entitled to an immediate hearing. Attachment may be lifted if the defendant:

(1) demonstrates that the defendant's assets will be available for a potential award; or

(2) posts a bond in an amount that is sufficient to cover a potential award.

(b) A person against whom a judgment has been rendered under this chapter (or IC 34-1-70 before its repeal) may not exempt any property from process to levy or process to execute on the judgment.

(c) Any assets that are:

(1) sought to satisfy a judgment under this chapter (or IC 34-1-70 before its repeal); and

(2) involved in a forfeiture action or that have been seized for forfeiture by any state or federal agency;

may not be used to satisfy a judgment until the assets have been released following the conclusion of the forfeiture action or released by the agency that seized the assets.

As added by P.L.1-1998, SEC.19.

IC 34-24-4-12

Limitation of actions

Sec. 12. (a) Except as otherwise provided in this section, a claim under this chapter (or IC 34-1-70 before its repeal) may not be brought more than two (2) years after the date the cause of action accrues. A cause of action accrues under this chapter (or IC 34-1-70 before its repeal) when a person who may bring the cause of action has reason to know:

- (1) of the harm from illegal drug use that is the basis for the cause of action; and
- (2) that the illegal drug use is the cause of the harm.

(b) The statute of limitations under this section is tolled for a:

- (1) plaintiff while the individual potential plaintiff is incapacitated by the use of an illegal drug to the extent that the individual cannot reasonably be expected to seek recovery under this chapter (or IC 34-1-70 before its repeal) or as otherwise provided by any other law; and
- (2) defendant until six (6) months after the individual potential defendant is convicted of a criminal drug offense or as otherwise provided by law.

As added by P.L.1-1998, SEC.19.

IC 34-24-4-13

Attorney general representing state or political subdivision; stay of action pending investigation or prosecution

Sec. 13. (a) The attorney general may represent the state or a political subdivision of the state in an action brought under this chapter (or IC 34-1-70 before its repeal).

(b) On motion by a governmental agency involved in a drug investigation or prosecution, an action brought under this chapter (or IC 34-1-70 before its repeal) must be stayed until the completion of the drug investigation or prosecution that was the basis for the motion for a stay of the action.

As added by P.L.1-1998, SEC.19.

IC 34-24-4-14

Intrafamilial tort immunity

Sec. 14. This chapter may not be construed to alter any law regarding tort immunity within a family.

As added by P.L.1-1998, SEC.19.