

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: 06/21/2001

Received By: nelsorp1

Wanted: As time permits

Identical to LRB:

For: Assembly Republican Caucus

By/Representing: Raschka

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Addl. Drafters:

Subject: Courts - immunity liability

Extra Copies: MGD, RLR

Submit via email: NO

Requester's email:

Pre Topic:

ARC:.....Raschka - AM1,

Topic:

Liability of drug dealers

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	nelsorp1 06/21/2001	wjackson 06/21/2001		_____			
/1			pgreensl 06/22/2001	_____	lrb_docadmin 06/22/2001		
				_____	lrb_docadmin		

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

_____ 06/22/2001

FE Sent For:

<END>

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: 06/21/2001

Received By: nelsorp1

Wanted: As time permits

Identical to LRB:

For: Assembly Republican Caucus

By/Representing: Raschka

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Addl. Drafters:

Subject: Courts - immunity liability

Extra Copies: MGD, RLR

Submit via email: NO

Requester's email:

Pre Topic:

ARC:.....Raschka - AM1,

Topic:

Liability of drug dealers

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	nelsorp1	1 Wlj 6/21	6/21 pg	6/22 pg/ch			

FE Sent For:

<END>

RPN
1333

Reserve judge requirement (1999 AB 826)
This bill prohibits the appointment of any person as a reserve judge if that person was defeated at the most recent time that he or she sought election to a circuit court judgeship.

Fair employment (2001 AB 186)
Permitting an employer to refuse to employ or to terminate from employment an individual who has been convicted of a felony and who has not been pardoned.

RPN
1336

Drug Dealer Liability (LRB 2602/P2) *Send to Art. 2*
Creating liability for a person involved in the distribution, possession or sale of illegal drugs.

Sex offenders working with children (1999 AB 284)
Prohibit child sex offenders from working or volunteering with children and providing a penalty.

RPN
1339

Civil forfeitures for criminal acts (1999 SB 78)
Eliminating recovery for personal injury for persons injured while involved in a felony.

Justice

Attorney General Authority In Civil Rights Actions and Inquests (Comparative Document JFC/Gov. p. 482, #19)

RPN
1343

Remove part of the state statute pertaining to **165.10 Civil rights enforcement**. If any person, whether or not acting under color of law, interferes with the exercise or enjoyment by any individual of a right secured by the constitution or laws of the United States, or of a right secured by the constitution or laws of this state, the attorney general may bring an action for injunction or other appropriate equitable relief to protect the peaceable exercise or enjoyment of the right secured. *No Fiscal Effect.*

- Corrections package agreed to by Kaufert, Huber and Coggs saved \$44 million GPR (Motion 1250)

- Corrections package passed out of JFC saved \$36.3 million GPR + \$10 million debt service = Total \$46.3 million

ARC package:

Spends \$535,000

Saves \$ 16,033,400

2001

Date (time) needed soon

LRB b 1336 1 1

**ARC CAUCUS BUDGET AMENDMENT
[ONLY FOR CAUCUS]**

APN: WLj:

See form **AMENDMENTS — COMPONENTS & ITEMS.**

**CAUCUS AMENDMENT
TO ASSEMBLY SUBSTITUTE AMENDMENT 1
TO 2001 SENATE BILL 55**

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

At the locations indicated, amend the substitute amendment as follows:

#. Page 1217, line 25: *after that line insert*
(insert 1217-25)

#. Page 1219, line 4: *after that line insert*
(insert 1219-4)

~~#. Page, line~~
~~#. Page, line~~
~~#. Page, line~~
~~#. Page, line~~

inserts

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT to create 893.575, 895.90, 895.91, 895.92, 895.93, 895.94 and 895.95 of
2 the statutes; relating to: the liability of a person who is involved in the
3 distribution, possession or sale of illegal drugs.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 ✓ ^{3862 w/g} SECTION 893.575 of the statutes is created to read:

5 **893.575 Actions concerning illegal drug use.** (1) Except as otherwise
6 provided in this section, an action under s. 895.92 shall be commenced within two
7 years after the cause of action accrues or be barred. A cause of action under s. 895.92
8 accrues when a person who may recover has reason to know of the harm from illegal
9 drug use that is the basis for the cause of action and has reason to know that the
10 illegal drug use is the cause of the harm.

insert
12/17-25

1 (2) For a plaintiff, the time limit under this section is tolled while the individual
 2 potential plaintiff is incapacitated by the use of an illegal drug to the extent that the
 3 individual cannot reasonably be expected to seek recovery under s. 895.92. For a
 4 defendant, the time limit under this section is tolled until six months after the
 5 individual potential defendant is convicted of a criminal drug offense.

****NOTE: Providing for the tolling of a time limit to begin action based on action affecting the defendant seems strange.

****NOTE: The last sentence of this subsection seems to imply that if the potential defendant is never convicted the time limit is tolled indefinitely. OK?

6 (3) The time limit under this section for an action under s. 895.92 based on
 7 participation in the illegal drug market that occurred prior to the effective date of
 8 this subsection [revisor inserts date], does not begin to run until the effective date
 9 of this subsection [revisor inserts date].

****NOTE: Generally, all of the statutes of limitations are placed in chapter 893 of the statutes.

10 SECTION 2. 895.90 of the statutes is created to read:

11 895.90 Short title. Sections 895.90 to 895.95 shall be known as the "Drug
 12 Dealer Liability Law."

13 SECTION 3. 895.91 of the statutes is created to read:

14 895.91 Definitions. In ss. 895.90 to 895.95:

15 (1) "Illegal drug" means a controlled substance or controlled substance analog
 16 whose distribution is a violation of s. 961.41.

17 (2) "Illegal drug market" means the support system of illegal drug related
 18 operations, from production to retail sales, through which an illegal drug reaches the
 19 user.

20 (3) "Individual drug user" means the individual whose illegal drug use is the
 21 basis of an action brought under s. 895.92.

1 (4) "Level 1 offense" means possession of 7 grams or more, but less than 113
2 grams, or distribution of less than 28 grams of a specified illegal drug other than
3 marijuana, or possession of 454 grams or more, but less than 1.8 kilograms, of
4 marijuana, or possession of 25 plants or more, but less than 50 plants, containing
5 tetrahydrocannabinols, or distribution of less than 454 grams of marijuana.

6 (5) "Level 2 offense" means possession of 113 grams or more, but less than 227
7 grams, or distribution of 28 grams or more, but less than 56 grams, of a specified
8 illegal drug other than marijuana, or possession of 1.8 kilograms or more, but less
9 than 3.6 kilograms of marijuana, or possession of 50 plants or more, but less than 75
10 plants, containing tetrahydrocannabinols, or distribution of more than 454 grams,
11 but less than 2.3 kilograms, of marijuana.

12 (6) "Level 3 offense" means possession of 227 grams or more, but less than 454
13 grams, or distribution of 56 grams or more, but less than 113 grams, of a specified
14 illegal drug other than marijuana, or possession of 3.6 kilograms or more, but less
15 than 7.3 kilograms of marijuana, or possession of 75 plants or more, but less than 100
16 plants, containing tetrahydrocannabinols, or distribution of more than 2.3
17 kilograms, but less than 4.5 kilograms, of marijuana.

18 (7) "Level 4 offense" means possession of 454 grams or more or distribution of
19 113 grams or more of a specified illegal drug other than marijuana, or possession of
20 7.3 kilograms or more of marijuana, or possession of 100 plants or more containing
21 tetrahydrocannabinols, or distribution of 4.5 kilograms or more of marijuana.

***NOTE: I used metric numbers, grams and kilograms, because our criminal drug
statutes are based on metric numbers.

22 (8) "Marijuana" has the meaning given in s. 961.01 (14).

1 (9) "Participate in the illegal drug market" means to distribute, possess with
2 an intent to distribute, commit an act intended to facilitate the marketing or
3 distribution of, or agree to distribute, possess with an intent to distribute, or commit
4 an act intended to facilitate the marketing and distribution of an illegal drug.
5 "Participate in the illegal drug market" does not include the purchase or receipt of
6 an illegal drug for personal use only.

7 (10) "Period of illegal drug use" means, in relation to the individual drug user,
8 the time of the individual's first use of an illegal drug to the accrual of the cause of
9 action under s. 895.92. The period of illegal drug use is presumed to commence 2
10 years before the cause of action accrues unless the defendant proves otherwise by
11 clear and convincing evidence.

12 (11) "Place of illegal drug activity" means, in relation to the individual drug
13 user and unless the defendant proves otherwise by clear and convincing evidence,
14 each assembly district in which a claim is made that the individual possesses or uses
15 an illegal drug or in which the individual resides, attends school, or is employed
16 during the period of the individual's illegal drug use.

17 (12) "Place of participation" means, in relation to a defendant in an action
18 brought under s. 895.92, each assembly district in which the person participates in
19 the illegal drug market or in which the person resides, attends school, or is employed
20 during the period of the person's participation in the illegal drug market.

21 ³⁸⁹¹⁴ SECTION 895.92 of the statutes is created to read:

22 **895.92 Liability for participation in the illegal drug market.** (1) A
23 person who knowingly participates in the illegal drug market within this state is
24 liable for civil damages as provided in this section. A person may recover damages
25 under this section for injury resulting from an individual's use of an illegal drug.

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

5 (3) One or more of the following persons may bring an action for damages
6 caused by an individual's use of an illegal drug:

12/19-4 7 (a) A parent, legal guardian, child, spouse, or sibling of the individual drug
8 user.

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

10 (c) An employer of the individual drug user.

11 (d) A medical facility, insurer, governmental entity, employer, or other entity
12 that funds a drug treatment program or employee assistance program for the
13 individual drug user or that otherwise expended money on behalf of the individual
14 drug user.

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

17 (4) A person entitled to bring an action under this section may seek damages
18 from one or more of the following:

19 (a) A person who knowingly distributed, or knowingly participated in the chain
20 of distribution of, an illegal drug that was used by the individual drug user.

21 (b) A person who knowingly participated in the illegal drug market if all of the
22 following apply:

23 1. The place of illegal drug activity by the individual drug user is within the
24 illegal drug market target community of the person under s. 895.93 (2).

1 2. The person's participation in the illegal drug market was connected with the
2 same type of illegal drug used by the individual drug user.

3 3. The person participated in the illegal drug market at any time during the
4 individual drug user's period of illegal drug use.

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

7 (a) Economic damages, including the cost of treatment and rehabilitation,
8 medical expenses, loss of economic or educational potential, loss of productivity,
9 absenteeism, support expenses, accidents or injury, and any other pecuniary loss
10 proximately caused by the illegal drug use.

11 (b) Non-economic damages, including physical and emotional pain, suffering,
12 physical impairment, emotional distress, mental anguish, disfigurement, loss of
13 enjoyment, loss of companionship, services, and consortium, and other nonpecuniary
14 losses proximately caused by an individual's use of an illegal drug.

15 (c) Exemplary damages.

16 (d) Reasonable attorney fees.

17 (e) Costs of the suit, including reasonable expenses for expert testimony.

18 (6) (a) An individual drug user may not bring an action for damages under this
19 section caused by the use of an illegal drug, except as provided in this subsection.

20 An individual drug user may bring an action for damages caused by the use of an
21 illegal drug only if all of the following conditions are met:

22 1. The individual personally discloses to law enforcement authorities, more
23 than 6 months before filing the action, all of the information known to the individual
24 regarding all that individual's sources of illegal drugs.

1 2. The individual has not used an illegal drug within the 6 months before filing
2 the action.

3 3. The individual continues to remain free of the use of an illegal drug
4 throughout the pendency of the action.

5 (b) A person entitled to bring an action under this subsection may seek
6 damages only from a person who distributed, or is in the chain of distribution of, an
7 illegal drug that was actually used by the individual drug user.

8 (c) A person entitled to bring an action under this subsection may recover only
9 the following damages:

10 1. Economic damages, including, but not limited to, the cost of treatment,
11 rehabilitation, and medical expenses, loss of economic or educational potential, loss
12 of productivity, absenteeism, accidents or injury, and any other pecuniary loss
13 proximately caused by the person's illegal drug use.

14 2. Reasonable attorney fees.

15 3. Costs of the suit, including reasonable expenses for expert testimony.

16 ^{387/m}
SECTION 5. 895.93 of the statutes is created to read:

17 **895.93 Third party cases and target communities.** (1) A third party may
18 not pay damages awarded under s. 895.92, or provide a defense or money for a
19 defense, on behalf of an insured under a contract of insurance or indemnification.

20 (2) A person whose participation in the illegal drug market constitutes the
21 following level of offense shall be considered to have the following illegal drug market
22 target community:

23 (a) For a level 1 offense, all assembly districts that comprise the person's place
24 of participation.

1 (b) For a level 2 offense, the target community described in par. (a) plus all
2 assembly districts with a border contiguous to that target community.

3 (c) For a level 3 offense, the target community described in par. (b) plus all
4 assembly districts with a border contiguous to that target community.

5 (d) For a level 4 offense, the state.

6 ^{3871P}
SECTION 895.94 of the statutes is created to read:

7 **895.94 Joinder, responsibility, contribution, and standard of proof. (1)**

8 JOINDER OF PARTIES. (a) Two or more persons may join in one action under s. 895.92
9 as plaintiffs if their respective actions have at least one place of illegal drug activity
10 in common and if any portion of the period of illegal drug use for one plaintiff overlaps
11 with the period of illegal drug use for every other plaintiff.

12 (b) Two or more persons may be joined in one action under s. 895.92 as
13 defendants if those persons are liable to at least one plaintiff.

14 (c) A plaintiff need not be interested in obtaining and a defendant need not be
15 interested in defending against all the relief demanded. Judgment may be given for
16 one or more plaintiffs according to their respective rights to relief and against one
17 or more defendants according to their respective liabilities.

18 (2) COMPARATIVE RESPONSIBILITY. (a) Section 895.045 applies to an action under
19 s. 895.92.

20 (b) The burden of proving the comparative negligence of the plaintiff is on the
21 defendant, which shall be shown by clear and convincing evidence.

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

24 (3) CONTRIBUTION AMONG AND RECOVERY FROM MULTIPLE DEFENDANTS. A person
25 subject to liability under s. 895.92 has a right of action for contribution against

1 another person subject to liability under that section. Contribution may be enforced
2 either in the original action or by a separate action brought for that purpose. A
3 plaintiff may seek recovery in accordance with s. 895.92 and existing law against a
4 person whom a defendant has asserted a right of contribution.

5 (4) STANDARD OF PROOF: EFFECT OF CRIMINAL DRUG CONVICTION. (a) Proof of
6 participation in the illegal drug market in an action brought under s. 895.92 shall
7 be shown by clear and convincing evidence. Except as otherwise provided in ss.
8 895.91 to 895.95, other elements of the cause of action shall be shown by a
9 preponderance of the evidence.

10 (b) A person against whom recovery is sought who has a criminal conviction
11 under ch. 961 or ~~the Comprehensive Drug Abuse Prevention and Control Act of 1970,~~
12 21 USC 801 to 971, is estopped from denying participation in the illegal drug market.
13 Such a conviction is also prima facie evidence of the person's participation in the
14 illegal drug market during the two years preceding the date of an act giving rise to
15 a conviction.

16 (c) The absence of a criminal conviction described under par. (b) of a person
17 against whom recovery is sought does not bar an action against that person.

18 SECTION ^{3871r} 895.95 of the statutes is created to read:

19 **895.95 Attachment, execution, and stay.** (1) Except as provided in sub. (3),
20 a plaintiff under s. 895.92 may request an ex parte prejudgment attachment order
21 from the court against all assets of a defendant sufficient to satisfy a potential award.
22 If attachment is instituted, a defendant is entitled to an immediate hearing.
23 Attachment may be lifted if the defendant demonstrates that the assets will be
24 available for a potential award or if the defendant posts a bond sufficient to cover a
25 potential award.

1 (2) A person against whom a judgment has been rendered under s. 895.92 is
 2 not eligible to exempt any property, of whatever kind, from process to levy or process
 3 to execute on the judgment.

1219-9
 4 ~~****NOTE: Does this mean that the all of the property exemptions under/s. 815.18
 and the homestead exemption under s. 815.21 are no longer available in these cases?~~

5 (3) Any assets sought to satisfy a judgment in an action under s. 895.92 that
 6 are named in a forfeiture action or that have been seized for forfeiture by any state
 7 or federal agency may not be used to satisfy a judgment unless and until the assets
 8 have been released following the conclusion of the forfeiture action or released by the
 9 agency that seized the assets.

10 (4) The district attorney may represent the state or a political subdivision of
 the state in an action brought under s. 895.92.

11 (5) On motion by a governmental agency involved in a drug investigation or
 12 prosecution, an action brought under s. 895.92 shall be stayed until the completion
 13 of the criminal investigation or prosecution that gave rise to the motion for a stay of
 14 the action. ✓ ⊙

15 (END)

ARC:.....Raschka – AM1, Liability of drug dealers

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1217, line 25: after that line insert:

3 **“SECTION 3862wg. 893.575** of the statutes is created to read:

4 **893.575 Actions concerning illegal drug use.** (1) Except as otherwise
5 provided in this section, an action under s. 895.92 shall be commenced within two
6 years after the cause of action accrues or be barred. A cause of action under s. 895.92
7 accrues when a person who may recover has reason to know of the harm from illegal
8 drug use that is the basis for the cause of action and has reason to know that the
9 illegal drug use is the cause of the harm.

1 (2) For a plaintiff, the time limit under this section is tolled while the individual
2 potential plaintiff is incapacitated by the use of an illegal drug to the extent that the
3 individual cannot reasonably be expected to seek recovery under s. 895.92. For a
4 defendant, the time limit under this section is tolled until six months after the
5 individual potential defendant is convicted of a criminal drug offense.

6 (3) The time limit under this section for an action under s. 895.92 based on
7 participation in the illegal drug market that occurred prior to the effective date of
8 this subsection [revisor inserts date], does not begin to run until the effective date
9 of this subsection [revisor inserts date].”.

10 **2.** Page 1219, line 4: after that line insert:

11 “**SECTION 3871g.** 895.90 of the statutes is created to read:

12 **895.90 Short title.** Sections 895.90 to 895.95 shall be known as the “Drug
13 Dealer Liability Law.”

14 **SECTION 3871j.** 895.91 of the statutes is created to read:

15 **895.91 Definitions.** In ss. 895.90 to 895.95:

16 (1) “Illegal drug” means a controlled substance or controlled substance analog
17 whose distribution is a violation of s. 961.41.

18 (2) “Illegal drug market” means the support system of illegal drug related
19 operations, from production to retail sales, through which an illegal drug reaches the
20 user.

21 (3) “Individual drug user” means the individual whose illegal drug use is the
22 basis of an action brought under s. 895.92.

23 (4) “Level 1 offense” means possession of 7 grams or more, but less than 113
24 grams, or distribution of less than 28 grams of a specified illegal drug other than

1 marijuana, or possession of 454 grams or more, but less than 1.8 kilograms, of
2 marijuana, or possession of 25 plants or more, but less than 50 plants, containing
3 tetrahydrocannabinols, or distribution of less than 454 grams of marijuana.

4 (5) "Level 2 offense" means possession of 113 grams or more, but less than 227
5 grams, or distribution of 28 grams or more, but less than 56 grams, of a specified
6 illegal drug other than marijuana, or possession of 1.8 kilograms or more, but less
7 than 3.6 kilograms of marijuana, or possession of 50 plants or more, but less than 75
8 plants, containing tetrahydrocannabinols, or distribution of more than 454 grams,
9 but less than 2.3 kilograms, of marijuana.

10 (6) "Level 3 offense" means possession of 227 grams or more, but less than 454
11 grams, or distribution of 56 grams or more, but less than 113 grams, of a specified
12 illegal drug other than marijuana, or possession of 3.6 kilograms or more, but less
13 than 7.3 kilograms of marijuana, or possession of 75 plants or more, but less than 100
14 plants, containing tetrahydrocannabinols, or distribution of more than 2.3
15 kilograms, but less than 4.5 kilograms, of marijuana.

16 (7) "Level 4 offense" means possession of 454 grams or more or distribution of
17 113 grams or more of a specified illegal drug other than marijuana, or possession of
18 7.3 kilograms or more of marijuana, or possession of 100 plants or more containing
19 tetrahydrocannabinols, or distribution of 4.5 kilograms or more of marijuana.

20 (8) "Marijuana" has the meaning given in s. 961.01 (14).

21 (9) "Participate in the illegal drug market" means to distribute, possess with
22 an intent to distribute, commit an act intended to facilitate the marketing or
23 distribution of, or agree to distribute, possess with an intent to distribute, or commit
24 an act intended to facilitate the marketing and distribution of an illegal drug.

1 “Participate in the illegal drug market” does not include the purchase or receipt of
2 an illegal drug for personal use only.

3 (10) “Period of illegal drug use” means, in relation to the individual drug user,
4 the time of the individual’s first use of an illegal drug to the accrual of the cause of
5 action under s. 895.92. The period of illegal drug use is presumed to commence 2
6 years before the cause of action accrues unless the defendant proves otherwise by
7 clear and convincing evidence.

8 (11) “Place of illegal drug activity” means, in relation to the individual drug
9 user and unless the defendant proves otherwise by clear and convincing evidence,
10 each assembly district in which a claim is made that the individual possesses or uses
11 an illegal drug or in which the individual resides, attends school, or is employed
12 during the period of the individual’s illegal drug use.

13 (12) “Place of participation” means, in relation to a defendant in an action
14 brought under s. 895.92, each assembly district in which the person participates in
15 the illegal drug market or in which the person resides, attends school, or is employed
16 during the period of the person’s participation in the illegal drug market.

17 **SECTION 3871k.** 895.92 of the statutes is created to read:

18 **895.92 Liability for participation in the illegal drug market.** (1) A
19 person who knowingly participates in the illegal drug market within this state is
20 liable for civil damages as provided in this section. A person may recover damages
21 under this section for injury resulting from an individual’s use of an illegal drug.

22 (2) A law enforcement officer or agency, the state, or a person acting at the
23 direction of a law enforcement officer or agency or the state, is not liable for
24 participating in the illegal drug market, if the participation is in furtherance of an
25 official investigation.

1 **(3)** One or more of the following persons may bring an action for damages
2 caused by an individual's use of an illegal drug:

3 (a) A parent, legal guardian, child, spouse, or sibling of the individual drug
4 user.

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

6 (c) An employer of the individual drug user.

7 (d) A medical facility, insurer, governmental entity, employer, or other entity
8 that funds a drug treatment program or employee assistance program for the
9 individual drug user or that otherwise expended money on behalf of the individual
10 drug user.

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

13 **(4)** A person entitled to bring an action under this section may seek damages
14 from one or more of the following:

15 (a) A person who knowingly distributed, or knowingly participated in the chain
16 of distribution of, an illegal drug that was used by the individual drug user.

17 (b) A person who knowingly participated in the illegal drug market if all of the
18 following apply:

19 1. The place of illegal drug activity by the individual drug user is within the
20 illegal drug market target community of the person under s. 895.93 (2).

21 2. The person's participation in the illegal drug market was connected with the
22 same type of illegal drug used by the individual drug user.

23 3. The person participated in the illegal drug market at any time during the
24 individual drug user's period of illegal drug use.

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

3 (a) Economic damages, including the cost of treatment and rehabilitation,
4 medical expenses, loss of economic or educational potential, loss of productivity,
5 absenteeism, support expenses, accidents or injury, and any other pecuniary loss
6 proximately caused by the illegal drug use.

7 (b) Non-economic damages, including physical and emotional pain, suffering,
8 physical impairment, emotional distress, mental anguish, disfigurement, loss of
9 enjoyment, loss of companionship, services, and consortium, and other nonpecuniary
10 losses proximately caused by an individual's use of an illegal drug.

11 (c) Exemplary damages.

12 (d) Reasonable attorney fees.

13 (e) Costs of the suit, including reasonable expenses for expert testimony.

14 (6) (a) An individual drug user may not bring an action for damages under this
15 section caused by the use of an illegal drug, except as provided in this subsection.
16 An individual drug user may bring an action for damages caused by the use of an
17 illegal drug only if all of the following conditions are met:

18 1. The individual personally discloses to law enforcement authorities, more
19 than 6 months before filing the action, all of the information known to the individual
20 regarding all that individual's sources of illegal drugs.

21 2. The individual has not used an illegal drug within the 6 months before filing
22 the action.

23 3. The individual continues to remain free of the use of an illegal drug
24 throughout the pendency of the action.

1 (b) A person entitled to bring an action under this subsection may seek
2 damages only from a person who distributed, or is in the chain of distribution of, an
3 illegal drug that was actually used by the individual drug user.

4 (c) A person entitled to bring an action under this subsection may recover only
5 the following damages:

6 1. Economic damages, including, but not limited to, the cost of treatment,
7 rehabilitation, and medical expenses, loss of economic or educational potential, loss
8 of productivity, absenteeism, accidents or injury, and any other pecuniary loss
9 proximately caused by the person's illegal drug use.

10 2. Reasonable attorney fees.

11 3. Costs of the suit, including reasonable expenses for expert testimony.

12 **SECTION 3871m.** 895.93 of the statutes is created to read:

13 **895.93 Third party cases and target communities.** (1) A third party may
14 not pay damages awarded under s. 895.92, or provide a defense or money for a
15 defense, on behalf of an insured under a contract of insurance or indemnification.

16 (2) A person whose participation in the illegal drug market constitutes the
17 following level of offense shall be considered to have the following illegal drug market
18 target community:

19 (a) For a level 1 offense, all assembly districts that comprise the person's place
20 of participation.

21 (b) For a level 2 offense, the target community described in par. (a) plus all
22 assembly districts with a border contiguous to that target community.

23 (c) For a level 3 offense, the target community described in par. (b) plus all
24 assembly districts with a border contiguous to that target community.

25 (d) For a level 4 offense, the state.

1 **SECTION 3871p.** 895.94 of the statutes is created to read:

2 **895.94 Joinder, responsibility, contribution, and standard of proof. (1)**

3 **JOINDER OF PARTIES.** (a) Two or more persons may join in one action under s. 895.92
4 as plaintiffs if their respective actions have at least one place of illegal drug activity
5 in common and if any portion of the period of illegal drug use for one plaintiff overlaps
6 with the period of illegal drug use for every other plaintiff.

7 (b) Two or more persons may be joined in one action under s. 895.92 as
8 defendants if those persons are liable to at least one plaintiff.

9 (c) A plaintiff need not be interested in obtaining and a defendant need not be
10 interested in defending against all the relief demanded. Judgment may be given for
11 one or more plaintiffs according to their respective rights to relief and against one
12 or more defendants according to their respective liabilities.

13 **(2) COMPARATIVE RESPONSIBILITY.** (a) Section 895.045 applies to an action under
14 s. 895.92.

15 (b) The burden of proving the comparative negligence of the plaintiff is on the
16 defendant, which shall be shown by clear and convincing evidence.

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

19 **(3) CONTRIBUTION AMONG AND RECOVERY FROM MULTIPLE DEFENDANTS.** A person
20 subject to liability under s. 895.92 has a right of action for contribution against
21 another person subject to liability under that section. Contribution may be enforced
22 either in the original action or by a separate action brought for that purpose. A
23 plaintiff may seek recovery in accordance with s. 895.92 and existing law against a
24 person whom a defendant has asserted a right of contribution.

1 (4) STANDARD OF PROOF: EFFECT OF CRIMINAL DRUG CONVICTION. (a) Proof of
2 participation in the illegal drug market in an action brought under s. 895.92 shall
3 be shown by clear and convincing evidence. Except as otherwise provided in ss.
4 895.91 to 895.95, other elements of the cause of action shall be shown by a
5 preponderance of the evidence.

6 (b) A person against whom recovery is sought who has a criminal conviction
7 under ch. 961 or 21 USC 801 to 971, is estopped from denying participation in the
8 illegal drug market. Such a conviction is also prima facie evidence of the person's
9 participation in the illegal drug market during the two years preceding the date of
10 an act giving rise to a conviction.

11 (c) The absence of a criminal conviction described under par. (b) of a person
12 against whom recovery is sought does not bar an action against that person.

13 **SECTION 3871r.** 895.95 of the statutes is created to read:

14 **895.95 Attachment, execution, and stay.** (1) Except as provided in sub. (3),
15 a plaintiff under s. 895.92 may request an ex parte prejudgment attachment order
16 from the court against all assets of a defendant sufficient to satisfy a potential award.
17 If attachment is instituted, a defendant is entitled to an immediate hearing.
18 Attachment may be lifted if the defendant demonstrates that the assets will be
19 available for a potential award or if the defendant posts a bond sufficient to cover a
20 potential award.

21 (2) A person against whom a judgment has been rendered under s. 895.92 is
22 not eligible to exempt any property, of whatever kind, from process to levy or process
23 to execute on the judgment.

24 (3) Any assets sought to satisfy a judgment in an action under s. 895.92 that
25 are named in a forfeiture action or that have been seized for forfeiture by any state

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

4 (4) The district attorney may represent the state or a political subdivision of
5 the state in an action brought under s. 895.92.

6 (5) On motion by a governmental agency involved in a drug investigation or
7 prosecution, an action brought under s. 895.92 shall be stayed until the completion
8 of the criminal investigation or prosecution that gave rise to the motion for a stay of
9 the action.”.

10

(END)