Bill as Introduced

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HB 1249 – AS AMENDED BY THE HOUSE

2001 SESSION

01-2310
09/04

HOUSE BILL ***1249***

AN ACT adopting the model Drug Dealer Liability Act.

SPONSORS: Rep. Clegg, Hills 23; Rep. Soltani, Merr 10; Sen. Johnson, Dist 3; Sen. Eaton, Dist 10

COMMITTEE: Judiciary

ANALYSIS

This bill adopts the model Drug Dealer Liability Act, which has been adopted by the bipartisan American Legislative Exchange Council.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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01-2310
09/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand One

AN ACT adopting the model Drug Dealer Liability Act.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; Model Drug Dealer Liability Act. Amend RSA by inserting after chapter 318-B the following new chapter:

CHAPTER 318-C

MODEL DRUG DEALER LIABILITY ACT

318-C:1 Title. This chapter may be cited as the Drug Dealer Liability Act.

318-C:2 Purpose. The purpose of this chapter is to:

I. Provide a civil remedy for damages to persons in a community injured as a result of illegal drug use. These persons include parents, employers, insurers, governmental entities, and others who pay for drug treatment or employee assistance programs, as well as infants injured as a result of exposure to drugs in utero ("drug babies"). The chapter will enable them to recover damages from those persons in the community who have joined the illegal drug market.

II. Shift, to the extent possible, the cost of the damage caused by the existence of the illegal drug market in a community to those who illegally profit from that market.

III. Establish the prospect of substantial monetary loss as a deterrent to those who have not yet entered into the illegal drug distribution market.

IV. Establish an incentive for drug users to identify and seek payment for their own drug treatment from those dealers who have sold drugs to the user in the past.

318-C:3 Findings. The legislature finds and declares all of the following:

I. Every community in the country is affected by the marketing and distribution of illegal drugs. A vast amount of state and local resources are expended in coping with the financial, physical, and emotional toll that results from the existence of the illegal drug market. Families, employers, insurers, and society in general bear the substantial costs of coping with the marketing of illegal drugs. Drug babies and parents, particularly those of adolescent illegal drug users, suffer significant non-economic injury as well.

II. Although the criminal justice system is an important weapon against the illegal drug market, the civil justice system can and must also be used. The civil justice system can provide an avenue of compensation for those who have suffered harm as a result of the marketing and distribution of illegal drugs. The persons who have joined the illegal drug market should bear the cost of the harm caused by that market in the community.

III. The threat of liability under this chapter serves as an additional deterrent to a recognizable segment of the illegal drug network. A person who has non-drug related assets, who markets illegal drugs at the workplace, who encourages friends to become users, among others, is likely to decide that the added cost of entering the market is not worth the benefit. This is particularly true for a first-time casual dealer who has not yet made substantial profits. This act provides a mechanism for the cost of the injury caused by illegal drug use to be borne by those who benefit from illegal drug dealing.

IV. This chapter imposes liability against all participants in the illegal drug market, including small dealers, particularly those in the workplace, who are not usually the focus of criminal investigations. The small dealers increase the number of users and are the people who become large dealers. These small dealers are most likely to be deterred by the threat of liability.

V. A parent of an adolescent illegal drug user often expends considerable financial resources, typically in the tens of thousands of dollars, for the child's drug treatment. Local and state governments provide drug treatment and related medical services made necessary by the distribution of illegal drugs. The treatment of drug babies is a considerable cost to local and state governments. Insurers pay large sums for medical treatment relating to drug addiction and use. Employers suffer losses as a result of illegal drug use by employees due to lost productivity, employee drug-related workplace accidents, employer contributions to medical plans, and the need to establish and maintain employee assistance programs. Large employers, insurers, and local and state governments have existing legal staffs that can bring civil suits against those involved in the illegal drug market, in appropriate cases, if a clear legal mechanism for liability and recovery is established.

VI. Drug babies, who are clearly the most innocent and vulnerable of those affected by illegal drug use, are often the most physically and mentally damaged due to the existence of an illegal drug market in a community. For many of these babies, the only hope is extensive medical and psychological treatment, physical therapy, and special education. All of these potential remedies are expensive. These babies, through their legal guardians and through court appointed guardians ad litem, should be able to recover damages from those in the community who have entered and participated in the marketing of the types of illegal drugs that have caused their injuries.

VII.(a) In theory, civil actions for damages for distribution of illegal drugs can be brought under existing law. They are not. Several barriers account for this. Under existing tort law, only those dealers in the actual chain of distribution to a particular user could be sued. Drug babies, parents of adolescent illegal drug users, and insurers are not likely to be able to identify the chain of distribution to a particular user. Furthermore, drug treatment experts largely agree that users are unlikely to identify and bring suit against their own dealers, even after they have recovered, given the present requirements for a civil action.

(b) Recovered users are similarly unlikely to bring suit against others in the chain of distribution, even if they know the user. A user is unlikely to know other dealers in the chain of distribution. Unlike the chain of distribution for legal products, in which records identifying the parties to each transaction in the chain are made and shared among the parties, the distribution of illegal drugs is clandestine. Its participants expend considerable effort to keep the chain of distribution secret.

VIII. Those involved in the illegal drug market in a community are necessarily interrelated and interdependent, even if their identity is unknown to one another. Each new dealer obtains the benefit of the existing illegal drug distribution system to make illegal drugs available to him or her. In addition, the existing market aids a new entrant by the prior development of people as users. Many experts on the illegal drug market agree that all participants are ultimately likely to be indirectly related. That is, beginning with any one dealer, given the theoretical ability to identify every person known by that dealer to be involved in illegal drug trafficking, and in turn each of such others know to them, and so on, the illegal drug market in a community would ultimately be fully revealed.

IX. Market liability has been created with respect to legitimate products by judicial decision in some states. It provides for civil recovery by plaintiffs who are unable to identify the particular manufacturer of the product that is claimed to have cause them harm, allowing recovery from all manufacturers of the product who participated in that particular market. The market liability theory has been shown to be destructive of market initiative and product development when applied to legitimate markets. Because of its potential for undermining markets, this chapter expressly adopts a legislatively crafted form of liability for those who intentionally join the illegal drug market. The liability established by this chapter grows out of, but is distinct from, existing judicially crafted market liability.

X. The prospect of a future suit for the costs of drug treatment may drive a wedge between prospective dealers and their customers by encouraging users to turn on their dealers. Therefore, liability for those costs, even to the user, is imposed under this chapter as long as the user identifies and brings suit against his or her own dealers.

XI. Allowing dealers who face a civil judgment for their illegal drug marketing to bring suit against their own sources for contribution may also drive a wedge into the relationships among some participants in the illegal drug distribution network.

XII. While not all persons who have suffered losses as a result of the marketing of illegal drugs will pursue an action for damages, at least some individuals, guardians of drug babies, government agencies that provide treatment, insurance companies, and employers will find such an action worthwhile. These persons deserve the opportunity to recover their losses. Some new entrants to retail illegal drug dealing are likely to be deterred even if only a few of these suits are actually brought.

318-C:4 Definitions. As used in this chapter:

I. "Illegal drug" means a drug whose distribution is a violation of RSA 318-B or other state law.

II. "Illegal drug market" means the support system of illegal drug related operations, from production to retail sales, through which an illegal drug reaches the user.

III. "Illegal drug market target community" is the area described under RSA 318-C:9.

IV. "Individual drug user" means the individual whose illegal drug use is the basis of an action brought under this chapter.

V. "Level 1 offense" means possession of 1/4 ounce or more, but less than 4 ounces, or distribution of less than one ounce of a specified illegal drug or possession of one pound or 25 plants or more, but less than 4 pounds or 50 plants, or distribution of less than one pound of marijuana.

VI. "Level 2 offense" means possession of 4 ounces or more, but less than 8 ounces, or distribution of one ounce or more, but less than 2 ounces, of a specified illegal drug or possession of 4 pounds or more or 50 plants or more, but less than 8 pounds or 75 plants, or distribution of more than one pound, but less than 5 pounds, of marijuana.

VII. "Level 3 offense" means possession of 8 ounces or more, but less than 16 ounces, or distribution of 2 ounces or more, but less than 4 ounces, of a specified illegal drug or possession of 8 pounds or more or 75 plants or more, but less than 16 pounds or 100 plants, or distribution of more than 5 pounds, but less than 10 pounds, of marijuana.

VIII. "Level 4 offense" means possession of 16 ounces or more or distribution of 4 ounces or more of a specified illegal drug or possession of 16 pounds or more or 100 plants or more or distribution of 10 pounds or more of marijuana.

IX. "Participate in the illegal drug market" means 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. "Participate in the illegal drug market" does not include the purchase or receipt of an illegal drug for personal use only.

X. "Person" means an individual, governmental entity, corporation, firm, trust, partnership, or incorporated or unincorporated association, existing under or authorized by the laws of this state, another state, or foreign country.

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

XII. "Place of illegal drug activity" means, in relation to the individual drug user, each house of representatives' legislative district in which the individual possesses or uses an illegal drug or in which the individual resides, attends school, or is employed during the period of the

individual's illegal drug use, unless the defendant proves otherwise by clear and convincing evidence.

XIII. "Place of participation" means, in relation to a defendant in an action brought under this chapter, each house of representatives' legislative district in which the person participates in the illegal drug market or in which the person resides, attends school, or is employed during the period of the person's participation in the illegal drug market.

XIV. "Specified illegal drug" means cocaine, heroin, or methamphetamine and any other drug the distribution of which is a violation of RSA 318-B or other state law.

318-C:5 Liability for Participation in the Illegal Drug Market.

I. A person who knowingly participates in the illegal drug market within this state is liable for civil damages as provided in this chapter. A person may recover damages under this chapter for injury resulting from an individual's use of an illegal drug.

II. 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 in furtherance of an official investigation.

318-C:6 Recovery of Damages.

I. One or more of the following persons may bring an action for damages caused by an individual's use of an illegal drug:

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

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

(c) An employer of the individual drug user.

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

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

II. A person entitled to bring an action under this section may seek damages from one or more of the following:

(a) 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.

(b) A person who knowingly participated in the illegal drug market if:

(1) The place of illegal drug activity by the individual drug user is within the illegal drug market target community of the defendant; and

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

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

III. A person entitled to bring an action under this section may recover all of the following damages:

(a) Economic damages, including, but not limited to, the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the illegal drug use.

(b) Non-economic damages, including, but not limited to, physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services and consortium, and other non-pecuniary losses proximately caused by an individual's use of an illegal drug.

(c) Exemplary damages.

(d) Reasonable attorney fees.

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

318-C:7 Limited Recovery of Damages.

I. An individual drug user shall not bring an action for damages caused by the use of an illegal drug, except as otherwise provided in this paragraph. An individual drug user may bring an action for damages caused by the use of an illegal drug only if all of the following conditions are met:

(a) The individual personally discloses to narcotics enforcement authorities, more than 6 months before filing the action, all of the information known to the individual regarding all that individual's sources of illegal drugs;

(b) The individual has not used an illegal drug within the 6 months before filing the action; and

(c) The individual continues to remain free of the use of an illegal drug throughout the pendency of the action.

II. A person entitled to bring an action under this section may seek damages only from a person who distributed, or is in the chain of distribution of, an illegal drug that was actually used by the individual drug user.

III. A person entitled to bring an action under this section may recover only the following damages:

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

(b) Reasonable attorney fees.

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

318-C:8 Third Party Cases. A third party shall not pay damages awarded under this chapter, or provide a defense or money for a defense, on behalf of an insured under a contract of insurance or indemnification.

318-C:9 Illegal Drug Market Target Community. A person whose participation in the illegal drug market constitutes the following level offense shall be considered to have the following illegal drug market target community:

I. For a level 1 offense, the house of representatives' legislative district in which the defendant's place of participation is situated;

II. For a level 2 offense, the target community described in paragraph I plus all house of representative's legislative districts with a border contiguous to that target community;

III. For a level 3 offense, the target community described in paragraph II plus all house of representatives' legislative districts with a border contiguous to that target community;

IV. For a level 4 offense, the state.

318-C:10 Joinder of Parties.

I. Two or more persons may join in one action under this chapter as plaintiffs if their respective actions have at least one place of illegal drug activity in common and if any portion of the period of illegal drug use overlaps with the period of illegal drug use for every other plaintiff.

II. Two or more persons may be joined in one action under this chapter as defendants if those persons are liable to at least one plaintiff.

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

318-C:11 Comparative Responsibility.

I. An action by an individual drug user is governed by the principles of comparative responsibility. Comparative responsibility attributed to the plaintiff does not bar recovery but diminishes the award of compensatory damages proportionally, according to the measure of responsibility attributed to the plaintiff.

II. The burden of proving the comparative responsibility of the plaintiff is on the defendant, which shall be shown by clear and convincing evidence.

III. Comparative responsibility shall not be attributed to a plaintiff who is not an individual drug user.

318-C:12 Contribution Among and Recovery from Multiple Defendants. A person subject to liability under this chapter has a right of action for contribution against another person subject to liability under this chapter. Contribution may be enforced either in the original action or by a separate action brought for that purpose. A plaintiff may seek recovery in accordance with this chapter and existing law against a person whom a defendant has asserted a right of contribution.

318-C:13 Standard of Proof; Effect of Criminal Drug Conviction.

I. Proof of participation in the illegal drug market in an action brought under this chapter shall be shown by clear and convincing evidence. Except as otherwise provided in this chapter, other elements of the cause of action shall be shown by a preponderance of the evidence.

II. A person against whom recovery is sought who has a criminal conviction pursuant to RSA 318-B or other state drug laws or the Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law 91-513, 84 Stat. 1236, codified at 21 U.S.C. 801 et seq., is estopped from denying participation in the illegal drug market. Such a conviction is also prima facie evidence of the person's participation in the illegal drug market during the 2 years preceding the date of an act giving rise to a conviction.

III. The absence of a criminal drug conviction of a person against whom recovery is sought does not bar an action against that person.

318-C:14 Prejudgment Attachment and Execution on Judgments.

I. A plaintiff under this chapter, subject to paragraph II, 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 demonstrates that the assets will be available for a potential award or if the defendant posts a bond sufficient to cover a potential award.

II. Any assets sought to satisfy a judgment under this chapter that are named in a forfeiture action or have been seized for forfeiture by any state or federal agency may not be used to satisfy a judgment unless and until the assets have been released following the conclusion of the forfeiture action or released by the agency that seized the assets.

318-C:15 Statute of Limitations.

I. Except as otherwise provided in this section, a claim under this chapter shall not be brought more than 2 years after the cause of action accrues. A cause of action accrues under this chapter when a person who may recover has reason to know of the harm from illegal drug use that is the basis for the cause of action and has reason to know that the illegal drug use is the cause of the harm.

II. For a plaintiff, the statute of limitations under this section is tolled 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 as otherwise provided by law. For a defendant, the statute of limitations under this section is tolled until 6 months after the individual potential defendant is convicted of a criminal drug offense or as otherwise provided by law.

III. The statute of limitations under this chapter for a claim based on participation in the illegal drug market that occurred prior to the effective date of this chapter does not begin to run until the effective date of this chapter.

318-C:16 Representation of Governmental Entities: Stay of Action.

I. A prosecuting attorney may represent the state or a political subdivision of the state in an action brought under this chapter.

II. On motion by a governmental agency involved in a drug investigation or prosecution, an action brought under this chapter shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of the action.

318-C:17 Effect on Existing Laws. The provisions of this chapter are not intended to alter the law regarding intra-family tort immunity.

318-C:18 Severability. If any provision of this chapter or the application of any provision to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to any other person or circumstance shall not be affected by that invalidation.

2 Effective Date. This act shall take effect January 1, 2003.

Amendments

Senate Judiciary
April 17, 2002
2002-3563s
09/01

Amendment to HB 1249

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study providing a civil remedy for damages to persons in a community injured as a result of illegal drug abuse.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a committee to study providing a civil remedy for damages to persons in a community injured as a result of illegal drug use.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study providing a civil remedy for damages to persons in a community injured as a result of illegal drug use.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2002.

6 Effective Date. This act shall take effect upon its passage.

2002-3563s

AMENDED ANALYSIS

This bill establishes a committee to study providing a civil remedy for damages to persons in a community injured as a result of illegal drug abuse.

Committee Minutes

Date: March 20, 2002
Time: 11:15 a.m.
Room: Room 102 LOB

The Senate Committee on Judiciary held a hearing on the following:

HB 1249 adopting the model Drug Dealer Liability Act.

Members of Committee present: Senator Gordon
Senator Pignatelli
Senator Fernald

The Chair, Senator Gordon, opened the hearing on HB 1249, by calling on Representative Clegg, prime sponsor of the bill.

Representative Clegg: Sorry for being late, Senator. We were having such lively discussions in the hallway. Thank you, Senators. I am here to introduce HB 1249, adopting the model Drug Dealer Liability Act.

Just for a little background, this is a bill that is model legislation across the country and it has been passed by fourteen other states: Arizona, California, Colorado, Georgia, Hawaii, Illinois, Indiana, Louisiana, Michigan, New York, Oklahoma, Utah, South Carolina, and South Dakota.

In some of our discussions in the hallway we heard how this bill takes away the responsibility of drug users. Since I have to go first, I am going to tell you I strongly disagree with that. There is nothing in here that allows the user to avoid any responsibility or to sue anybody, but the bill does allow for parents, whose fourteen year old child has been doing drugs and has to go to rehab, to be able to recoup the costs of that rehab from drug dealers. There is market liability in here, which, unfortunately Representative Soltani couldn't stay. Market liability, from what I understand, allows for the recovery of every one in the drug dealing business, not just one. The hope is that we will go from the low-level street dealer all the way up to the major suppliers. Will we ever get to the top? I doubt it. If we could get to the top today, we would be able to stop the illegal drugs.

We are looking for the ability of hospitals, treatment facilities, typically subsidized by tax dollars, to be able to recoup their money.

I know it is late. That is the bill in a nutshell. I will answer any questions you might have.

I will say there was a change in the House from the original bill, which allowed for a family to maintain their home. If we sued a drug dealer, we didn't want to put his family out on the street at the expense of the taxpayer. So, there is a provision in here that allows the drug dealer's family to maintain their home and some ability to exist. But, anything else, any other proceeds obtained from illegal drug dealing, would be accessible.

Senator Edward M. Gordon, D. 2: Any questions? Senator Pignatelli?

Senator Debora B. Pignatelli, D. 13: What were the concerns expressed in the House? Tell me about this bi-partisan American Legislative Exchange Council.

Representative Clegg: ALEC (American Legislative Exchange Council) is a group. They are similar to NCSL. They propose or put out pieces of legislation that their committees have adopted as model legislation.

In the House, there were only 43 votes against the bill. We had wide bi-partisan support, nothing negative on the House floor. The only thing negative I have heard is from a member of NORMAL, who thinks that perhaps we wouldn't have these problems that exist if we had a regulated legal market to operate from. I am not of that persuasion.

Senator Edward M. Gordon, D. 2: The question I have, Representative Clegg, is recovery of damages. It lists people who might be able to bring an action for damages. The way the current legal system works, basically anybody can use the court system in order to obtain a remedy if they can show that they have been damaged. So, the list of people who can sue generally...There generally isn't, in regard to causes of action, specific listings of people who can and can't sue. In this particular case, you have parents, legal guardians, child, spouse, or sibling of the individual drug user. I guess I am trying to figure out why it is that we are making that type of listing in this particular bill? Or the employer of a drug user, which would be an unusual circumstance? I guess if you can provide the rationale for that, it would be helpful to me.

Representative Clegg: We are trying very hard not to make this a bill that could be used willy nilly to make money. We excluded the individual drug

user because we do believe they bear some responsibility. Employers were added specifically because of the damage it may have caused their business. We tried to limit the scope so that the assets we were going after could be used for the purposes intended, which would be for the rehabilitation or the cost of medical services, the cost of having your child, having to get them off the drugs and able to live life. That would include therapy, besides being the detox, but the years or months of therapy that fall. But, we didn't want to open it up to anybody and everybody, because we didn't want Grandma to think, "Well, she missed my birthday. So, maybe I should get a lawyer and try to sue, too."

Senator Edward M. Gordon, D. 2: I guess I am not being very articulate. When I see an employer of an individual drug user, and I see the cause of action as you just described. We had a guy who was killed in an automobile accident as a result of negligence of someone else. They worked for the oil company in the town. They were an indispensable employee. They knew everything that was going on, pretty valuable to the company. They were killed as a result of somebody's negligence and misconduct, in essence. Now, under the current law, that oil company doesn't have any right to a remedy under current law. They couldn't sue that negligent driver and say our business has been harmed by virtue of the fact that Mr. Lane was killed in this accident, that I am aware of.

So, it seems to me that we are extending the current law that we have in regard to these types of actions simply in relationship to drug use. I guess I am trying to figure out why we might be doing that.

Representative Clegg: Well, I don't know if the accident which occurred was the result of an illegal action, but I think the difference in this case is that the drug dealing is an illegal action, it is one that we have attempted to stop, can't stop, or we haven't been totally successful. We have probably slowed it down. As a layman, I would say, in my opinion, that would be the difference. If you are driving your car and you are drunk, that is an illegal activity, but the substance that you purchased wasn't. But, I am not so sure that this bill wouldn't affect someone who was on heroine, drove a vehicle and hit you. I'm not sure if it doesn't extend beyond, under those circumstances.

What we are trying to do is, we are trying to, I like sometimes to call if a "consumer protection" bill. We are trying to say that if you are going to sell illegal substances, you are going to have to bear some responsibility. And the responsibility, obviously, is the recovery of the addict. I think we do the same thing in alcohol treatment. I think we force the insurance companies to pay for recovery programs. I think the State uses some of its funds and different methods to do the same thing. And, of course, the State of New Hampshire

sells the alcohol. Now I am asking the drug dealer to put up as well. I will tell you, if I had my choice, I would have added that the drug dealers have to pay the business profits tax.

Senator Edward M. Gordon, D. 2: And maybe Arthur Andersen will do their accounting for them. Any other questions? Senator Fernald?

Senator Mark Fernald, D. 11: On page 6, line 11, I have forgotten what exemplary damages are. Can someone tell me?

Representative Clegg: I can't. You need to ask a lawyer.

Senator Mark Fernald, D. 11: Do you know?

Senator Edward M. Gordon, D. 2: I think that they would be substantially the same as punitive damages.

Senator Mark Fernald, D. 11: That is what I was wondering. Do we otherwise have punitive damages in our law in New Hampshire?

Senator Edward M. Gordon, D. 2: We have enhanced damages in certain cases, but not punitive damages.

Senator Mark Fernald, D. 11: I think I have another question, but I am trying to figure out what it was. I guess, the one question I have has to do with the sort of proper use of the legal system in that is the legal system directed towards individual wrongs, so that we have individuals duking it out, if you will? Or, is the legal system there to right social wrongs and to make social policy?

I am not aware of the details of this other thing I am going to mention, so I may be slightly off track, because I am relying on what I have read in the media, and we know that is always a dangerous thing to do. But, there are legal moves afoot by some cities and maybe some states to sue the gun industry as a whole. To say that you are selling a product that is not illegal, but it is dangerous, that you have and you have had the opportunity to make these things less dangerous because you didn't put in trigger locks or you didn't put in this or that or the other thing. Therefore, you are liable as a group for a whole bunch of damages and mayhem and mishaps and at least, without knowing the details of the arguments they are making, I look at that and there are people who are trying to make social policy out of a court system that really is set up to address individuals' claims. It seems like we are trying to do the same thing here that those people are trying to do to the gun industry. It puzzles me, it just seems odd.

Representative Clegg: I will agree that the gun set-up and trying to sue gun manufacturers is an issue, but I think you will find that gun manufacture is a regulated industry. They conform to the regulations put upon them. So, I think that is different than what we have done here. What we have done here is that we have opened up the ability in the civil area for a lawsuit. If my fifteen-year-old son gets hooked on heroine, which I guess is the cheapest stuff now, where is my remedy? Well, typically what happens is that the police departments arrest them or bust the drug dealer, take all the assets, and I am left looking for help? My insurance company will cover so much. The rest of it comes out of my pocket. By the way, the Police Chiefs' Association had their people here because they are in support of this bill.

Under this bill, I don't have to wait for them to bust anybody. I can form the civil action and say, "the product you sold caused harm to my child and I want to be reimbursed for the costs". I don't think there is anything wrong with that. If I bought bad aspirin, children's aspirin, and it was tainted and my child took it, I could go to the attorney and I could sue the manufacturer. But, in this case, everybody in the drug business says, "It's not me, it's not me, it's not me", but it is an industry unto itself. It is an underground industry. So, I can pretty much tell you who in my community sells drugs and I have the ability to sue them. It might be too simple, but I don't think it is the same as guns. I think it is an illegal activity and an illegal substance versus something that we already regulate.

Senator Mark Fernald, D. 11: I guess the concern is. Let's just use your fact situation. Your son gets hooked on heroine and, on page 5, line 19, you are a parent of a drug user, so you can bring an action and you can seek damages, as we go further down the page, from anybody who has distributed or participated in the chain of distribution or participated in an illegal drug market.

Senator Edward M. Gordon, D. 2: Does that mean that anyone who has, or the person who has distributed to your son?

Senator Mark Fernald, D. 11: It means anybody who has distributed to anybody. This is my guess, but I don't know. My guess is that most of the people who are dealing in drugs, they don't own houses and assets for you to go after, generally speaking. So, even though we know the drug market is relatively big and there are lots of people involved, the number of people that you would probably bother trying to sue isn't as great as the number of people that might be out there because, as we say, they are "empty bags". They haven't got anything, so why waste your time. I guess my concern is that we have a case where a doctor gives an illegal prescription for oxycontin to somebody and the doctor is worth a million bucks. At that point, he

becomes a target for everybody is the State who has been touched by the drug trade. He is a target until he becomes an empty bag because he has been sued for every penny, or every penny she has. I mean, on the one hand, I can see where it makes the doctor think about writing that prescription, but presumably, the reason why we are suing him is because he was found guilty and he paid a fine or did jail time, or whatever. Is that really where we want to go? If you think about it, how often are we really going to recover money from anybody in a suit like this? It is going to be the unusual case where somebody has indeed participated in the illegal drug market who has assets. That one person in a thousand, or one person is a hundred who really has assets that are accessible to the court system is going to get nailed. The e-mails are going to go out and say, "Here's the guy to sue. We finally found someone who is not an empty bag who fits the definitions of this statute". I guess my question is, is that what really what we want to set up?

Representative Clegg: First off, I am going to strongly disagree with your statements that people who sell drugs don't have assets. I can tell you that most of the drug dealers have a lot of assets. I think the last bust that my local police department did turned up somewhere around $300,00 or $400,000 of assets without even looking. I think you will know that there is a place called Sharp Shooters Billiards in Nashua that did a civil forfeiture of both the location and all the vacation houses. So, the old theory that drug dealers are empty bags and there are users that have nothing no longer applies in today's market. They are a very sophisticated group and they have lots of assets.

As far as the doctor that is putting out illegal prescriptions for oxycontin for people to use as an illegal substance, I don't hold them any different from anybody else who sells drugs illegally, whether it is oxycontin or anything else. If you are selling drugs illegally to the detriment of the public health, then you should be... I don't care if you are worth a million dollars, or five hundred thousand dollars, or fifty thousand dollars, you should stand up to the same laws.

But the idea that drug dealers don't have anything and that we are going to get one out of a thousand to forfeit, that is wrong. I can tell you. I work with canine units as a decoy and I have heard the stories and I am pretty familiar with what the forfeitures have been and they have been very extensive.

Senator Mark Fernald, D. 11: But, I guess my question is, to follow up on what you said. I know there are forfeitures, but they catch the bad guy and they prosecute him. They do a civil forfeiture. And, then we have this statute. What are you going to go after after the civil forfeiture? What's left? What practical purpose does this really serve?

Representative Clegg: If I do a civil suit against the same dealer?

Senator Mark Fernald, D. 11: But, he has already civilly forfeited everything he's got.

Representative Clegg: You don't just forfeit. If I am a drug dealer and they come and bust me, I don't forfeit my stuff right away. It takes a long process. If I am a dealer who has caused harm and somebody wants to sue me, does it tie up some of the forfeiture that goes to the federal government? Absolutely. But, part of that, what we are holding back, what doesn't go to the federal government or the Department of Justice, is now going to pay for the health care costs that usually fall upon the taxpayer. And, there is nothing in this bill that says he has to be arrested. If I know he is the one and the police department can't make the bust for a number of reasons, doesn't stop me from going there and suing him anyways, or her. Nothing in the bill says he has to be arrested.

Senator Mark Fernald, D. 11: Let me go back to the doctor for a second because we have a doctor who writes one illegal prescription. You talked about the harm that this person has done. If the doctor has stepped out of line once, the amount of harm might have been very minor and yet everybody who has been touched by any illegal drug activity in the State of New Hampshire can sue that doctor. I just see a penalty that is disproportionate to the harm.

My understanding of civil forfeiture, which is very rudimentary, is that you forfeit all your ill-gotten gains from the drug trading that you have been engaged in. This goes much further than that and is much broader than that.

Representative Clegg: I think if you read on page 5, Senator, you will find that a person is entitled to bring an action, it has to be the same type of illegal drug used by the individual user, it has to be in the target community of the defendant. So, I don't think everybody in the State of New Hampshire could go to Claremont, for instance. If you lived on the seacoast, you couldn't sue the doctor in Claremont for writing illegal oxycontin. The way I read it, and I am not an attorney, but the way I read it, it would have to have been an addiction caused by the same drug that that person was selling. So, your marijuana dealer is not responsible for your heroine dealer.

Senator Mark Fernald, D. 11: Let me make sure that we are talking about the same thing. Line 17 through 26 describes the people who can sue. Using your circumstance, your son used heroine and you are the parent, so you get

to sue on line 19. Then, we go down to line 27 we find out who you can sue, and you are entitled to bring an action against. Lines 29 and 30 says, "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." So that says you can sue all the heroine people, not necessarily just the dealers who were in the chain to your son, but any heroine dealer in the State. But then 31 says ,"A person who knowingly participated in the illegal drug market". Same type of illegal drug in line 35. I am trying to figure out what the difference is between 29 and 30 and then 31 through 37.

Representative Clegg: If I might, Senator, I read line 29 "A person who knowingly distributed or knowingly participated in the chain of distribution of ...drug...actually used by the ...drug user." I think, my opinion, or my reading of that, is that if my son was a heroine addict, the person he bought the heroine from, the person that dealer bought the heroine from, all the way up that chain. And then we get into the second section where I can't go outside of the target community. I think 29 and 30 was meant to be restrictive, but 31 was meant to say that you could go outside that group, but it had to be within the target community.

Senator Edward M. Gordon, D. 2: May I ask a question?

Senator Mark Fernald, D. 11: Yes, you may, Mr. Chairman.

Senator Edward M. Gordon, D. 2: Representative Clegg, I think I see an intended purpose and that is that you want to use a civil process or civil procedure as opposed to the criminal procedure which right now, I would make an assumption, is based upon the fact that you want to do this, you feel inadequate in dealing with the distribution of drugs. Is that a correct assumption?

Representative Clegg: That is correct.

Senator Edward M. Gordon, D. 2: So, and I appreciate that, and I think that has some value. Then the question becomes, how can we use a civil procedure to do that that makes some sense? The question is, does it make sense to give the ability to sue? My concern there is, just looking at the bill and the two pages of findings in order to make that nexus, that that is going to be a difficult rationale to defend legally if ultimately it is ever challenged. That is just my sense. I am thinking of another way to use the civil process to make that happen.

We have long established in this State, recognizing that the criminal process didn't adequately deal with abuse and neglect cases. What we did in this

case was that we put in place a civil procedure. That was a mandatory reporting system when anybody knew of abuse and neglect taking place. Where people called in to a state agency, that state agency was, at that point in time, required to investigate each and every inquiry and make a determination as to whether or not the inquiry was founded on a civil basis using lower standards of evidence, all the things that go along with civil process, lower standards of evidence, lower expectation with regard to what people's rights might be, and so forth. So, I guess, that is a long way to get there, but I guess what I am asking is, rather than creating a willy nilly system over which we really would have no control, do you think it might not be better to do what you want to do and that is, put together a civil process for dealing with dealers, but do it in a manner that we have done, for example with abuse and neglect, that says if I think I know somebody like you do, that is in my community selling marijuana, that I can provide that name to a state agency and that will trigger a civil process whereby that person will get a knock on the door and someone saying, "Someone has made a complaint that you are selling marijuana and we need to have an interview".

Representative Clegg: I believe that process already exists, to be able to do that. But the process doesn't go far enough to try to recoup some of the damages caused by those people. I understand what you are saying, and it makes it easy, but I know that if you turn in someone as being a dealer now, the first course of action is never a knock on the door. It is usually to monitor the individual.

Senator Edward M. Gordon, D. 2: Because that is the criminal process because you need to protect their rights. But let's say we make it a civil process.

Representative Clegg: But again, Senator, how do I recoup my dollars? If they go knock on the door and say we have a complaint, we need to talk to you, we think you are selling drugs, it doesn't recoup any of the damages they have done. It doesn't allow me to attach the assets that they have made illegally. I don't really think it would get them to stop. The only thing that gets them to stop is when you move in and you take everything. Then they suddenly realize that, "Oops, I guess it's not such a lucrative business". And, I will use Sharp Shooters in Nashua as a perfect example. The guy was making a ton of money selling cocaine over the counter until they did, through civil process, they seized his assets.

Senator Edward M. Gordon, D. 2: That was law enforcement that did that?

Representative Clegg: That was law enforcement.

Senator Edward M. Gordon, D. 2: What I am saying is, for example, if you have an abuse and neglect case today, what will happen is that the Department of Children, Youth & Families will make a determination that it is founded and that some child was abused, molested, whatever and what that does is precipitate lawsuits on behalf of the child. As you might expect, family members of that child will then turn around and, through civil process, sue because now basically they have a founded case, somebody who has been determined to be responsible for the abuse and neglect.

If we had that where there was some type of civil finding made against individuals that in fact they were distributing, adjudicated, that would in fact get to where you want to be because it would precipitate those types of civil actions. But, directly, specifically in the damage that individual has done as opposed to making everybody subject to a willy nilly system. I guess that is my concern.

Representative Clegg: You are making sense.

Senator Edward M. Gordon, D. 2: I'm sorry. I interrupted your questioning and I have to leave. I was wondering, Senator Pignatelli, if you could take over the hearing for me.

Senator Debora B. Pignatelli, D. 13: If it is only going to be another ten minutes I will.

Representative Clegg: Oh, I am all done. It is the people behind me that will want to talk for a long time. As long as Senator Fernald is done with me.

Senator Mark Fernald, D. 11: I guess the other question I would put to you in terms of how this is supposed to work is you can sue, you the parent, can sue somebody who is in the drug market target community of the defendant. And, the drug market target community is based on the level of offense committed by the defendant at four different levels. The levels have to do with have you possessed a little, have you possessed a lot, have you been distributing, or whatever. I guess my question is, because you were saying we don't have to wait for the police to arrest these people and prosecute, we can go out and sue the drug dealers because we know who they are now. I guess my question is, practically speaking, can you really do that until they have been prosecuted and proved guilty of one of these offenses?

Representative Clegg: I would think you could. I don't think that you could go very far, but I think you can get at least the beginning. I think it is pretty easy to prove that somebody has sold drugs.

Senator Mark Fernald, D. 11: But, you are going to have to prove possession.

Representative Clegg: What page are you on, Senator?

Senator Mark Fernald, D. 11: The definitions are on page 4 of level 1, 2, 3 and 4 offense, lines 9 through 22. The definition of the illegal drug market target community is page 7, lines 4 through 13. So, you can't sue a defendant unless they are in the illegal drug market target community and they are not in the community unless they have committed an offense. I suppose, in theory, you could sue a drug dealer and say he has been in possession of a quarter ounce or more of something and therefore, it is a level 1 offense and he lives in this house district and I live in this house district, too, and my son bought heroine and this guy possessed heroine.

Representative Clegg: I guess you would have to prove which offense or you would have to decide which offense you were going to sue them on. Whether he is a major dealer, a small dealer.

Senator Mark Fernald, D. 11: My point is, I guess you would have to prove in civil court what would normally be proved against these people in criminal court, that they have violated the drug laws.

Representative Clegg: Absolutely. You would have to prove in the civil manner that they are in violation of the drug laws. I guess you would do that with witnesses. It is a lot easier to get people to roll today. It is a lot easier to get people to tell on drug dealers than it ever was before.

Senator Mark Fernald, D. 11: Because?

Representative Clegg: I have no idea. There is no honor among thieves anymore, I guess. That is the easiest way to explain it.

Senator Debora B. Pignatelli, D. 13: Thank you very much. Phil Greazzo?

Phil Greazzo: I may be listed in the wrong section. I am not in favor of this bill. I am not sure where I signed up at.

Senator Debora B. Pignatelli, D. 13: You did sign up in favor.

Mr. Greazzo: Then, let somebody else speak before me. That's fine.

Senator Debora B. Pignatelli, D. 13: No, why don't you speak. I will just move you down. Alright?

Mr. Greazzo: I am from Manchester, New Hampshire. I do not support this bill. I do support it in the respect from a parent's point of view, from a parent being able to sue if their child used drugs because the child is a minor and not able to do that themselves. But, this bill basically takes away the responsibility of the drug user. It doesn't hold the drug user liable for any of these damages. That is the person who went out and sought the drug dealer. The person who went out and purchased the drugs, used them, became afflicted, but you, through this bill, give the opportunity for hospitals, insurance agencies, all these other agencies, to sue a drug dealer who may not actually have been the person who actually sold this person the drugs in the first place, just somebody who may have actually possessed drugs, from what this says. That is not really our system of justice in this country. Just because somebody possesses drugs or may have sold them to somebody else, that some person has the right now to sue whoever they can catch with a substance.

If a person is not arrested, how can you prove that they sold the drugs in the first place? If someone's child used heroine, the parent is now able to sue any drug dealer? That is my understanding of this bill, that they can just sue any drug dealer in the community. That doesn't seem appropriate. That a person wasn't even selling drugs, or just possessing drugs, and had nothing to do with this person seeking them out and using that substance. How could they be held liable? That doesn't seem like fair and due process.

I guess that would be most of my reason for opposing this. That it doesn't put the responsibility in the right place. It just gives an open card to sue anybody that you may believe to be selling drugs, whether they sold them to you or not.

Senator Mark Fernald, D. 11: Thank you for your testimony.

Senator Debora B. Pignatelli, D. 13: Jennifer Farrell, would you like to speak? Why don't you come forward to speak, Jennifer?

Jennifer Farrell: I am the Executive Director of the New Hampshire Trial Lawyers Association and we are in very strong support of this bill. The reason why we are in support of this bill is because we believe that drug dealers should be subject to all the laws and principles of deterrence and accountability that everyone else is. We would like to make a point that market liability is not a new concept. Imposing that on drug dealers, I think is pretty ingenious, actually.

If you have a ton of questions, I am not going to tell you that I know the answers to them all, but this particular statute has a website that is completely devoted to it. I don't know exactly the website address, but if you just type in "model drug dealer liability", something like that, it comes up and it goes through all questions for legislators, questions for a regular person. It is very very comprehensive and easy to understand. Model Drug Dealer Liability Act, I believe that is what it is. www.

Do you have any questions?

Senator Mark Fernald, D. 11: Have other states done this?

Ms. Farrell: Other states? Yes, lots of other states have done it.

Senator Mark Fernald, D. 11: Exactly like this?

Ms. Farrell: There have been some small changes, but I would say mostly it has been adopted in its entirety.

Senator Debora B. Pignatelli, D. 13: Fourteen states did you say?

Ms. Farrell: Arizona, California, Colorado, Georgia, Hawaii, Illinois, Indiana, Louisiana, Michigan, New York, Oklahoma, Utah, South Carolina and South Dakota. And, like I said, it really is a great website.

Senator Mark Fernald, D. 11: Where else do we see the concept of market liability?

Ms. Farrell: You know what, I can't tell you the exact industries, but I can tell you that if I tried to reach back into my first year of law school and think about torts, basically what that has to do with is somebody who sees a market, knows they have a bad product, enters into it, and develops that market. Therefore, even if somebody on the sidelines is directly responsible for the cause of harm, other people who have helped create that market and infused it with more illegal activity are also responsible. Actually, I can get you a memo on it, if you would like me to.

Senator Mark Fernald, D. 11: I have enough to read right now.

Ms. Farrell: OK. I could just write you three different things. I could give you those three things.

Senator Mark Fernald, D. 11: You could do that. I am sort of remembering market liability as being when you are injured by a defective product and you

have a products liability claim and it is no longer possible to tell which manufacturer made the defective product, that there are a whole bunch of them that did, and you can get them under a market liability theory. I think that is where I have seen it before, but I may be speaking from a very low knowledge base, shall we say.

Senator Debora B. Pignatelli, D. 13: Any other questions? Thank you very much. Claire Ebel?

Claire Ebel: Madam Chair, how many hours am I allotted?

Senator Debora B. Pignatelli, D. 13: Three minutes.

Ms. Ebel: I am still the Executive Director of the New Hampshire Civil Liberties Union.

This bill is a catastrophe; it is a catastrophe from a whole lot of different perspectives, but I think the major perspective that ought to occupy this Committee is that this is model legislation and model legislation is not a one size fits all product. This model doesn't fit New Hampshire.

I will try not to repeat what has been said. I have gone through the bill, dreadfully, line by line.

Since Senator Fernald was talking about market liability, I think your memory is correct, Senator. It involves being injured by a product and you are not able to identify who the specific manufacturer was, so you can sue them all. But I am not aware of a single court anywhere that has found liability for an individual who shares a substance with another person.

One of the one size does not fit all parts of this bill is it repeatedly uses the word "distribute". The law in the State of New Hampshire does not use the word "distribute". It uses the word "dispense". That is 318:B1, VIII. "Dispense means to distribute, to leave with, to give away, to dispose of, deliver or sell, one or more doses of..." And, then it goes to be specific about particular distribution and particular drugs. So, included in our equivalent of distribute, the word dispense, is to give away. The person that covers is the person who shares a joint with another. That brings you under the purview of this bill because, since we do not have a distribute in our law, they would go to the word dispense. That is one of the reasons why taking a model bill and applying it does not work and it especially does not work in New Hampshire.

I think, Senator Fernald, it was you or Senator Gordon, who raised the issue of punitive damages, which we do not have in the State of New Hampshire, yet the exemplary damages are the equivalent of punitive damages in other jurisdictions. So, that expansion of our law would be unprecedented and it would cause, I think, considerable difficulty.

I will try to go through this line by line and try not to take any more time than I need to.

On page 2, line 31: the issue here is not that you can't now sue under our existing civil law. The issue in this paragraph is that it is tough and so we are theoretically going to make it easier with model legislation that is so complex that it is going to take ten years for anybody to figure out what it does anyway. But the reality is, you can already do what this bill seeks to do. It is just a difficult burden to prove. And so, one of the things that they have done is lower the burden.

On page 4, line 11: a Level 1 offense includes distribution of less than one pound of marijuana. So that means anybody who gives a one ounce bag to another, or sells some of his own stash to another and it involves a one ounce or two ounce bag, they are now brought under the aegis of this law. They now become able to be sued. Now, you as policy makers, may decide that is what you want to do, but I simply want to point out that you need to be aware of all of the people who are being swept up because of the model legislation nature of this.

Page 4, line 35: spreads the net extraordinarily widely so that the place of illegal drug activity includes the representative district in which the person lives, the representative district in which the person attends school, or the representative district in which the person is employed. So eventually, you are going to have the entire state covered. I think Senator Fernald was correct when he made that statement. It seems like hours ago, but I think it was probably only half an hour ago.

Page 5, lines 11 and 12: I don't even understand what "A person may recover damages...for injury resulting from an individual's use of an illegal drug." That, to me, is a little bizarre, but is trying to set the stage for people who are not harmed directly by the drug to sue because they have some sort of a relationship. Even if it is only as an employer or as an insurer, which is really an incredible stretch. We are going to allow under this bill insurers of persons who used an illegal drug to sue. We are getting kind of far out there on the very thin ledge when we are expanding the powers of suit this far.

Page 5, Paragraph I: I think you have already discussed, so I won't extend that.

Page 5, Paragraph II:

Senator Mark Fernald, D. 11: Are you talking about line 27?

Ms. Ebel: It was talking about line 17 and then 27 down through. You have widened the net so far that if you were to draw analogies and I believe, Senator Fernald, it was you who drew the gun analogy, you are absolutely correct. That is precisely what this bill is seeking to do. It is seeking to punish the people who are so far removed from the event as to have no nexus at all and yet you sweep them in when you make these definitions so broadly. If you wanted to analogize this to underage drinking, anyone who was under twenty-one and attended a party and had a beer, could be sued under the provisions set up in this bill if someone else who was under twenty-one had a beer and then did something, was damaged by, say he had alcohol poisoning and died. Those individuals could be sued by all of the people in Paragraph I on page 5 if you extended this, analogized it, to the underage drinking which is, of course, an illegal activity. The nexus that they are trying to create here really is preposterous and it is so far-reaching as to give no meaning at all to the law.

If you go to Page 6, Paragraph III the kinds of damages we have talked about, punitive damages I won't reiterate. Then you have the extraordinary section, which begins on Page 6 on line 14. You are talking here about damage recovery for the user. So basically what you are saying is that the individual who made the choice to use the drug now has the ability to sue those who provided the drug in this extremely broad net, if they have been clean for six months and stay clean during the prosecution. If there were ever a bill that eliminated personal responsibility, this section of the bill does exactly that.

Senator Debora B. Pignatelli, D. 13: So you don't like this bill?

Ms. Ebel: I don't like this bill, Senator, and there are very specific reasons why I don't.

Senator Debora B. Pignatelli, D. 13: Is there anything salvageable that you can see?

Ms. Ebel: Senator, I think perhaps a study committee is salvageable to explore the suggestions that Senator Gordon made where, when we found that the criminal justice system wasn't working in child abuse and neglect,

you created for every adult in the State of New Hampshire an affirmative responsibility to report child abuse if we observe it. And, you don't give any of us a pass. The way this bill is set up, it really is mind boggling and I don't care how wonderfully scholarly or effective the website might be, this is New Hampshire and this bill does not work with New Hampshire law. It gives a pass to so many people and then it creates burdens on the defendant.

For example, I know you asked me a question, but this is one specific that I want to stick into your heads before I go. That is Page 7, on lines 29 and 30. What this bill sets up is, first of all, it establishes comparative responsibility and says that the individual drug user may have comparative responsibility. Then it says, in order to prove that, the defendant has to show by clear and convincing evidence that the individual drug user was comparatively responsible. Any sane piece of legislation would say that there is prima facie evidence that the user of the drug was comparatively responsible and that the burden of proof is rebuttable by those filing the suit. Not saying that the poor drug user may have comparative responsibility, but you need to prove that by clear and convincing evidence. To me, that is absolutely insane.

I would suggest, and I have more, but I won't go any further. Is this bill salvageable in its present form? Senator, it is not. Is the idea here salvageable? Yes, I think it may be. It may be worth a study committee, but I would urge one of the things that you need to study is the fact that the drugs that are contained in 318:B, some of them were legal at the beginning of the twentieth century, some of them were legal until almost the middle of the twentieth century. Our list of illegal drugs changes and the fact is we have declared war on illegal drugs and that war has been an abject failure. We have tried a criminal justice approach and that hasn't worked. This is attempting to use a civil approach. This will not work either. The only thing that will work is to make this what it is: a medical problem and an educational necessity.

Senator Debora B. Pignatelli, D. 13: I just have one question. The House passed this almost unanimously. What happened?

Ms. Ebel: Senator, there has been pressure in the House that is almost unbelievable in terms of the legislative deadlines, which now are being pushed back. But they were, at one time, the end of February. They have pushed them back to the 24th of March. And so there were days when I was supposed to be at the same time in twelve different hearing rooms. You chose your poison; you present yourself in the place where you think you can have the most impact, or where you think the catastrophe is worse. So, I never testified on this bill because I couldn't get there. I think for a lot of people it was impossible to vote against this bill on the floor because it made you seem

like you supported the drug dealers. It has been left to the Senate to be the wiser cooler heads and look at what the individual provisions are. I am not saying ITL it, Senator, I am saying change it to a study committee and that way you can look at the problem and try to make a reasoned conclusion.

Senator Debora B. Pignatelli, D. 13: We will see what we can do. Thank you Claire. Is there anybody else who wishes to testify? I am going to close the hearing on this bill.

Hearing concluded at 1:00 p.m.

Respectfully submitted,

L. Gail Brown
Senate Secretary

Speakers

HB 1249 An Act adopting the model Drug Dealer Liability Act

SENATE JUDICIARY COMMITTEE

Date 03/20/02 **Time** 11:15 a.m. **Public Hearing on HB 1249**

Appearing in FAVOR: *(Please print)* *Please check box at left to speak.*

Speaking?	Name	Address	Representing
☒	~~Phil Greazzo~~	~~Manchester NH~~	~~Self~~
☐	Tony F. Soltani	Epsom NH	Mem 10th.
☐	Lee Quant	Exeter, NH	
☒	Robert Clegg	Hudson NH	Sponsor
☑	Jennifer Farrell		NH Trial Lawyer's Assn.
☐			
☐			
☐			
☐			
☐			

Appearing in OPPOSITION: *(Please Print)* *Please check box at left to speak.*

☑	Claire Eliel	18 Low Av Conc.	VHCLU
☑	Phil Greazzo	Manchester NH	self
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Voting Sheets

3/20/02

Senate Judiciary Committee

EXECUTIVE SESSION

Bill # HB 1249

Hearing date: 4/17/02 Room: LOB 102

Motion of: _____ OTP/A

Made by Senator:		*Seconded by Senator:*		4-0
Gordon	☐	Gordon	☐	
Pignatelli	☐	Pignatelli	☐	
Prescott	☐	Prescott	☐	
Roberge	☑	Roberge	☐	
Fernald	☐	Fernald	☑	

Committee Member	*Present*	*Vote*	*Reported out by*
Senator N. Gordon, Chairman	☑		✓
Senator D. Pignatelli, Vice-Chair	☑		
Senator R. Prescott	☐		
Senator S. Roberge	☑		
Senator M. Fernald	☑		

*Amendments: _____

NOTES: need civil remedy Pignatelli: study comm.
study 3 Senate members

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: {Type FLOOR DATE}

THE COMMITTEE ON Judiciary

to which was referred House Bill 1249

AN ACT adopting the model Drug Dealer Liability Act.

VOTE: 4-0

2002- 3563s

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Edward M. Gordon
For the Committee

|HB1249 Docket

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Bill Title: adopting the model Drug Dealer Liability Act.

Date	Body	Description
6/26/2001	**H**	Introduced and ref to Judiciary; HJ78, p1995
12/14/2001	**H**	Copy to Chairman on 12/18/2001 Report due on 2/21/2002
12/14/2001	**H**	Hearing Jan 23 9:30 RM208,LOB
2/5/2002	**H**	Maj Report OTP/AM for Feb 14 (vote 10-9;Reg)
2/5/2002	**H**	Prop Comm Am{2437}; HC13, p518
2/14/2002	**H**	Comm Am, AA VV; Passed with Am RC(306-45); HJ20, p802-804 + 821
2/20/2002	**S**	Introduced and Ref. to Judiciary; SJ 6, Pg.172
3/12/2002	**S**	Hearing; March 20, 2002, Room 102, LOB, 11:15 a.m.; SC16
4/17/2002	**S**	Committee Report; Ought to Pass with Amendment {3563},(New Title) [04/18/02]
4/18/2002	**S**	Ought to Pass with Amendment {3563},(New Title), [Not Voted On]
4/18/2002	**H**	Sen. Francoeur Moved Laid On Table, MA, VV
4/18/2002	**S**	Sen. Francoeur Moved Remove From Table MA, VV
4/18/2002	**S**	Ought to Pass with Amendment {3563},(New Title), RC 13y - 10n AA
4/18/2002	**S**	OT3rdg, MA, VV
4/25/2002	**H**	House Nonconcurred with Sen Am, Rep Mock MA VV;

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Docket Abbreviations