

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2616 Session of  
1996

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HASTE, RAMOS AND DeLUCA, MAY 13, 1996

REFERRED TO COMMITTEE ON URBAN AFFAIRS, MAY 13, 1996

AN ACT

1 Providing for drug nuisance abatement; providing for the nature  
2 of action, jurisdiction, parties, notice, the issuance of  
3 orders, injunction and other relief, for civil and criminal  
4 penalties, settlements, liens, costs, contempt, the release  
5 of premises, evidence, liability and for civil actions and  
6 immunities; and establishing the Treatment for Displaced  
7 Residents Fund.

8 The General Assembly finds as follows:

9 (1) Despite efforts by law enforcement, private and  
10 commercial premises remain the sites of repeated drug  
11 distribution violations. These locations attract criminals and  
12 the violence and threat of violence associated with illicit drug  
13 trade.

14 (2) The continued occurrence of criminal activities at these  
15 locations is detrimental to the public health, safety and  
16 welfare. Drug nuisances reduce property values, injure  
17 legitimate businesses and commerce and erode the quality of life  
18 for law-abiding persons working or residing in or near these

1 locations.

2 (3) Property owners, landlords, managers and operators have  
3 an affirmative duty to take the actions necessary to prevent  
4 drug violations from occurring on their properties and to abate  
5 existing drug nuisances. These affirmative duties are no less  
6 important than the duty to maintain properties in accordance  
7 with applicable building, fire, zoning, safety and similar  
8 codes, ordinances, rules and regulations designed to protect the  
9 health, safety and welfare of residents, workers, invitees,  
10 neighbors and other persons.

11 (4) The ongoing existence of a drug nuisance is detrimental  
12 to the public interest and warrants prompt injunctive relief by  
13 the courts. It is the express policy of this Commonwealth to  
14 authorize and encourage courts to issue temporary restraining  
15 orders or preliminary injunctions pursuant to the provisions of  
16 this act upon a finding that a drug nuisance exists. It is not  
17 necessary for any authorized plaintiff seeking temporary or  
18 preliminary injunctive relief to establish any specific or  
19 irreparable injury arising from the drug nuisance. The existence  
20 of any remedy at law shall not prevent the granting of  
21 injunctive relief pursuant to this act.

22 (5) The civil actions for injunctive relief, damages and  
23 penalties authorized by this act are remedial rather than  
24 punitive in nature. Penalties collected pursuant to section 501  
25 are intended not to punish culpable defendants but rather to  
26 compensate the community at large by providing funding for  
27 additional treatment, neighborhood rehabilitation, drug  
28 prevention and drug education costs. Damages awarded to  
29 individual plaintiffs pursuant to section 512 are intended to  
30 compensate the individuals for specific losses to their

1 businesses or properties.

2 (6) It is the policy of this Commonwealth to ensure that the  
3 civil actions and remedies authorized by this act be heard by  
4 the courts on a priority basis to expeditiously identify and  
5 abate drug nuisances.

6 (7) It is necessary to ensure the certain, expeditious and  
7 uniform enforcement by the courts of the rights, duties and  
8 remedies established in this act. Certainty, predictability and  
9 uniformity in enforcement are essential to encourage property  
10 owners, landlords, managers and operators to take affirmative  
11 steps necessary to prevent their properties from first becoming  
12 the sites of drug violations.

13 (8) The purpose of this act is to authorize temporary,  
14 preliminary and permanent injunctive relief and other remedies  
15 to abate drug nuisances. An additional purpose is to encourage  
16 owners, landlords, operators and managers of buildings, places  
17 or premises, hereinafter referred to as "premises" to take the  
18 affirmative steps necessary to prevent drug violations on their  
19 properties.

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25 The General Assembly of the Commonwealth of Pennsylvania  
26 hereby enacts as follows:

27 CHAPTER 1

28 PRELIMINARY PROVISIONS

29 Section 101. Short title.

30 This act shall be known and may be cited as the Drug Nuisance

1 Abatement Act.

2 Section 102. Definitions.

3 The following words and phrases when used in this act shall  
4 have the meanings given to them in this section unless the  
5 context clearly indicates otherwise:

6 "Controlled substance," "manufacture," "distribution," "sale"  
7 and "possession with intent to sell or distribute." The terms  
8 shall have the same meaning as those terms are used in the act  
9 of April 14, 1972 (P.L.233, No.64), known as The Controlled  
10 Substance, Drug, Device and Cosmetic Act.

11 "Drug distribution event." The unlawful manufacture,  
12 distribution, sale or possession with intent to distribute, sell  
13 or deliver a controlled substance or an unlawful attempt or  
14 conspiracy to commit such act.

15 "Drug nuisance." A premises at which:

16 (1) the site was used or is being used in any way in  
17 furtherance of or to promote or facilitate the commission of  
18 any drug distribution event; or

19 (2) on two or more separate occasions within the period  
20 of one year prior to the commencement of the civil action  
21 under this act, two or more persons who did not reside in or  
22 upon such site gathered for the principal purpose of  
23 unlawfully ingesting, injecting, inhaling or otherwise using  
24 a controlled substance, whether or not any such controlled  
25 substance was unlawfully distributed or purchased at such  
26 location.

27 "Model Expedited Eviction of Drug Traffickers Act." The act  
28 of October 11, 1995 (1st Sp.Sess., P.L.1066, No.23).

29 "Neighborhood or community organization." A group, whether  
30 or not incorporated, which consists of persons who reside or

1 work at or in a building, complex of buildings, street, block or  
2 neighborhood any part of which is located on or within 1,000  
3 feet of the premises alleged to be a drug nuisance, which has  
4 the purpose of benefiting the quality of life in its  
5 neighborhood or community, including treatment programs.

6 "Owner." Any person in whom is vested the ownership and  
7 title of property and who is the owner of record. The term shall  
8 include any Federal, State, city or local governmental entity.

9 "Person." A natural person, corporation, association,  
10 partnership, trustee, lessee, agent, assignee, enterprise,  
11 governmental entity, and any other legal entity or group of  
12 individuals associated in fact which is capable of holding a  
13 legal or beneficial interest in property.

### 14 CHAPTER 3

#### 15 ABATEMENT PROCEDURE

16 Section 301. Nature of actions and jurisdiction.

17 The causes of action established in this act are civil  
18 actions to enjoin the commission of drug distribution events, to  
19 close down and physically secure premises or portions thereof  
20 which constitute drug nuisances and to otherwise abate such drug  
21 nuisances, and to impose civil penalties. These actions shall be  
22 brought in the court of common pleas, which shall have  
23 jurisdiction to issue temporary, preliminary or permanent  
24 injunctive or other equitable relief, whether or not an adequate  
25 remedy exists at law.

26 Section 302. Standard of proof.

27 Except as may otherwise be expressly provided, the civil  
28 causes of action established in this act shall be proved by a  
29 preponderance of the evidence.

30 Section 303. Parties.

1 (a) Who may bring actions.--A civil action for temporary,  
2 preliminary or permanent injunctive relief or for penalties  
3 pursuant to this act may be brought by:

4 (1) the solicitor for a county or a municipality  
5 representing any State, county or municipal governing body  
6 which has jurisdiction over the location at which the alleged  
7 drug nuisance exists;

8 (2) the Attorney General and district attorney having  
9 jurisdiction where the alleged drug nuisance exists;

10 (3) any neighborhood or community organization as  
11 defined in this act; or

12 (4) any person who resides, is employed full-time or  
13 part-time at the site of a business premises or owns or  
14 operates a business premises on or within 1,000 feet of any  
15 alleged drug nuisance.

16 (b) Defendants to the action.--A civil action pursuant to  
17 this act shall be brought against the owner and may also be  
18 brought against any person within the jurisdiction of the court  
19 who is a landlord, tenant, manager, operator or supervisor of  
20 any premises alleged to be a drug nuisance. In addition, the  
21 court shall have in rem jurisdiction over the premises alleged  
22 to be a drug nuisance, and the complaint initiating a civil  
23 action pursuant to this act shall name as a defendant the  
24 premises involved, describing it by block, lot number and street  
25 address, or by such other means as are appropriate in the  
26 circumstances.

27 (c) Protections against frivolous actions and sanctions for  
28 unfounded or unwarranted pleadings, motions or other papers.--

29 (1) In any action brought pursuant to this act, every  
30 pleading, motion and other paper of a party shall be signed

1 by at least one attorney of record in the attorney's  
2 individual name, whose address shall be stated. Such  
3 signature of an attorney constitutes a certificate by the  
4 signer that the signer has read the pleading, motion or other  
5 paper; that to the best of the signer's knowledge,  
6 information and belief formed after reasonable inquiry it is  
7 well grounded in fact and is warranted by existing law or a  
8 good faith argument for the extension, modification or  
9 reversal of existing law and that it is not interposed for  
10 any improper purpose, such as to harass or to cause  
11 unnecessary delay or needless increase in the cost of  
12 litigation.

13 (2) If a pleading, motion or other paper is not signed,  
14 it shall be stricken unless it is signed promptly after the  
15 omission is called to the attention of the pleader or movant.

16 (3) If a pleading, motion or other paper is signed in  
17 violation of this subsection, the court, upon motion or upon  
18 its own initiative, shall impose upon the person who signed  
19 it or a represented party, or both, an appropriate sanction,  
20 which may include an order to pay to the other party or  
21 parties the amount of the reasonable expenses incurred  
22 because of the filing of the pleading, motion or other paper,  
23 including a reasonable attorney fee.

24 (d) No bond or security required.--No person or entity shall  
25 be required to post any bond or security as a condition of  
26 initiating or prosecuting any action brought pursuant to this  
27 act.

28 (e) Ready availability of ownership information to potential  
29 plaintiffs.--Any person or entity who upon an oath in writing  
30 states the affiant is preparing to initiate an action pursuant



1 to this act may request that the county prothonotary promptly  
2 provide the name and address of all owners of the premises as  
3 reflected upon the current county records, without charge.

4 (f) Presumption of ownership.--The person in whose name the  
5 premises involved is recorded in the county prothonotary's  
6 office shall be presumed to be the owner thereof.

7 (g) Presumption of agency.--Whenever there is evidence that  
8 a person was the manager, operator or supervisor or was in any  
9 other way in charge of the premises involved at the time a  
10 conduct constituting the drug nuisance is alleged to have been  
11 committed, such evidence shall be rebuttably presumptive that he  
12 or she was an agent or employee of the owner, landlord or lessee  
13 of the premises.

14 Section 304. Notice to interested parties.

15 (a) Notice to defendants.--A complaint initiating an action  
16 pursuant to this act shall be personally served and notice to  
17 all in personam defendants shall be provided in the same manner  
18 as serving complaints in civil actions. After filing an  
19 affidavit that personal service cannot be had after due  
20 diligence on one or more in personam defendants within 20 days  
21 after the filing of the complaint, the plaintiff may:

22 (1) cause a copy of the complaint to be mailed to the  
23 defendant by certified mail, restricted delivery, return  
24 receipt to the clerk of court requested, and

25 (2) cause a copy of the complaint to be affixed  
26 conspicuously to the premises alleged to be a drug nuisance.  
27 Service shall be deemed completed five days after filing with  
28 the court proof of such mailing and an affidavit that a copy  
29 of the complaint has been affixed to the premises.

30 (b) Notice to affected tenants, residents and guests.--All

1 tenants or residents of any premises which is used in whole or  
2 in part as a business, home, residence or dwelling, other than  
3 transient guests of a guest house, hotel or motel, who may be  
4 affected by any order issued pursuant to this act shall be  
5 provided such reasonable notice as shall be ordered by the court  
6 and shall be afforded opportunity to be heard at all hearings.

7 (c) Lis pendens.--Notice of lis pendens shall be filed  
8 concurrently with the commencement of the action in the same  
9 manner as is generally provided for by law or court rule.

10 Section 305. Substitution of plaintiff.

11 When a court determines in its discretion that the plaintiff  
12 bringing an action pursuant to this act has failed to prosecute  
13 the matter with reasonable diligence, the court may substitute  
14 as plaintiff any person or entity that consents thereto,  
15 provided that such person or entity would have been authorized  
16 pursuant to this act to initiate the action.

17 Section 306. Continuances.

18 (a) General policy.--All actions for injunctive relief or  
19 civil penalties brought pursuant to this act shall be heard by  
20 the court on an expedited and priority basis.

21 (b) No continuances.--The court shall not grant a  
22 continuance except for compelling and extraordinary reasons or  
23 on the application of a criminal prosecuting agency for good  
24 cause shown.

25 (c) Stay pending criminal proceedings.--The court shall not  
26 stay the civil proceedings pending the disposition of any  
27 related criminal proceeding except for compelling and  
28 extraordinary reasons or except upon the application of a  
29 criminal prosecuting agency for good cause shown.

30 (d) Dismissal of actions for want of prosecution.--The court

1 shall not dismiss an action brought pursuant to this act for  
2 want of prosecution unless the court is clearly convinced that  
3 the interests of justice require such dismissal. In that event  
4 and upon such a finding, the dismissal shall be without  
5 prejudice to the right of the plaintiff or any other person or  
6 entity authorized to bring an action pursuant to this act to  
7 reinstitute the action.

8 Section 307. Issuance of preliminary orders.

9 (a) General rule.--Any person or entity authorized to bring  
10 a civil action for injunctive relief pursuant to this act may  
11 file a complaint seeking preliminary injunctive relief by  
12 alleging that the premises constitutes a drug nuisance. Upon  
13 receipt of the complaint, the court shall order a preliminary  
14 hearing which shall not be later than 30 days from the date of  
15 the order. Service shall be made upon the owners of the premises  
16 pursuant to section 304(a) not less than 5 days prior to the  
17 hearing. In the event that service cannot be completed in time  
18 to give the owners the minimum notice required by this  
19 subsection, the court may set a new hearing date.

20 (b) Preliminary closing order.--If the court finds that a  
21 substantial likelihood that the plaintiff by a preponderance of  
22 the evidence will be able to establish at trial:

23 (1) that the premises constitutes a drug nuisance;

24 (2) that at least 30 days prior to the filing of the  
25 complaint seeking preliminary injunctive relief, the owner or  
26 the owner's agent had been notified by certified letter of  
27 the drug nuisance; and

28 (3) that the public health, safety or welfare  
29 immediately requires a preliminary closing order,  
30 the court shall issue an order to close the premises involved or

1 the portions appropriate in the circumstances. The order shall  
2 direct actions necessary to physically secure the premises, or  
3 appropriate portions thereof, against use for any purpose. The  
4 preliminary closing order shall also restrain the defendant and  
5 all persons from removing or in any manner interfering with the  
6 furniture, fixtures and movable or personal property located on  
7 or within the premises constituting the drug nuisance.

8 (c) Other preliminary relief.--If the court finds that the  
9 premises constitutes a drug nuisance but that immediate closing  
10 of the premises is not required under subsection (b), the court  
11 may enjoin the drug nuisance and issue an order restraining the  
12 defendants and all other persons conducting, maintaining,  
13 aiding, abetting or permitting drug distribution events  
14 constituting the drug nuisance. Plaintiffs need not show that  
15 they have no adequate remedy at law or will suffer irreparable  
16 harm nor any other common law element applicable to a  
17 preliminary injunction to obtain a preliminary closing order.  
18 Additionally, the court may issue an order appointing a  
19 temporary receiver to manage or operate the premises. A  
20 temporary receiver shall have such powers and duties  
21 specifically authorized pursuant to section 312(f).

22 (d) Admissible evidence.--In determining whether the public  
23 health, safety or welfare immediately requires a preliminary  
24 closing order, the court shall consider any relevant evidence  
25 presented concerning any attendant circumstances, including, but  
26 not limited to, whether the alleged drug distribution events or  
27 related activities involve the use or threat of violence at or  
28 near the site alleged to be a drug nuisance or whether the  
29 alleged drug distribution events in any way involve distribution  
30 or sale of a controlled substance by or to a juvenile or whether

1 the site alleged to be a drug nuisance is located within a drug-  
2 free zone within the meaning of 18 Pa.C.S. § 6314 (relating to  
3 sentencing and penalties for trafficking drugs to minors).

4 Section 308. Enforcement of preliminary orders.

5 (a) Entities enforcing orders.--Upon order of the court,  
6 preliminary restraining and closing orders shall be enforced by  
7 the sheriff, local police department, or, if no local police are  
8 available, then by the Pennsylvania State Police.

9 (b) Inventory of personal property.--The officers serving a  
10 temporary closing order or a temporary restraining order shall  
11 file with the court an inventory of the personal property  
12 situated in or on the premises closed and shall be allowed to  
13 enter the premises to make the inventory. The inventory shall  
14 provide an accurate representation of the personal property  
15 subject to such inventory, including, but not limited to,  
16 photographing of furniture, fixtures and other personal or  
17 movable property.

18 (c) Vacation of premises.--The officers serving a  
19 preliminary closing order shall, upon service of the order,  
20 demand all persons present in the premises closed to vacate such  
21 premises, or portion thereof, forthwith unless the court orders  
22 otherwise. The premises or portion thereof shall be securely  
23 locked and all keys shall be held by the agency closing the  
24 premises.

25 (d) Posting of court order.--Upon service of a preliminary  
26 closing order or a preliminary restraining order, the officer  
27 shall post a copy thereof in a conspicuous place or upon one or  
28 more of the principal doors at entrances of the premises. In  
29 addition, where a preliminary closing order has been granted,  
30 the officers shall affix, in a conspicuous place or upon one or

1 more of the principal entrances of such premises, a printed  
2 notice that the entire premises or portion thereof have been  
3 closed by court order, which notice shall contain the legend  
4 "Closed by Court Order" in block lettering of sufficient size to  
5 be observed by anyone intending or likely to enter the premises.  
6 The printed notice shall also include the date of the order, the  
7 court which issued the order and the name of the office or  
8 agency posting the notice. In addition, where a preliminary  
9 restraining order has been granted, the officer shall affix, in  
10 the same manner, a notice similar to the notice provided for in  
11 relation to a preliminary closing order except that the notice  
12 shall state that certain activity is prohibited by court order  
13 and that removal of furniture, fixtures or other personal or  
14 movable property is prohibited by court order.

15 (e) Mutilation or removal of posted court order.--Any person  
16 who without lawful authority mutilates or removes any order or  
17 notice posted in accordance with the provisions of subsection  
18 (d) commits a misdemeanor.

19 (f) Violation of court order.--Any person who knowingly or  
20 purposely violates any preliminary restraining order or closing  
21 order issued pursuant to this act shall be subject to civil  
22 contempt as well as punishment for criminal contempt pursuant to  
23 18 Pa.C.S. §§ 4955 (relating to violation of orders) and 5101  
24 (relating to obstructing administration of law or other  
25 governmental function).

26 Section 309. Notification and provision of treatment resources.

27 (a) Notification to persons present.--The officers serving a  
28 preliminary closing order as provided in section 308(c) shall  
29 provide outreach information and referral materials to all  
30 residents present on how to obtain alcohol and other drug

1 treatment.

2 (b) Notification to social services agencies.--The court, no  
3 less than 10 days prior to the removal of any persons pursuant  
4 to this act, shall cause notice to be provided to the local  
5 alcohol and other drug agency, the local child welfare agency  
6 and other appropriate social service agencies of the ordered  
7 removal of any persons pursuant to this act.

8 (c) Posting of notification.--A one-page summary of such  
9 information and materials shall be posted next to any  
10 preliminary closing order or preliminary restraining order  
11 posted in accordance with section 308(d).

12 (d) Preparation and dissemination of treatment resource  
13 information.--The Office of Drug and Alcohol Programs in the  
14 Department of Health or its designee shall prepare all materials  
15 described in subsections (a) and (b) and shall disseminate them  
16 to all sheriff departments, local police departments or other  
17 appropriate agencies which are empowered to enforce closing  
18 orders under this act.

19 Section 310. Premises involving multiple residences or  
20 businesses.

21 (a) Limiting order to nuisance portion of premises.--Where  
22 the premises constituting the drug nuisance includes multiple  
23 residences, dwellings or business establishments, a preliminary  
24 or permanent closing order issued pursuant to any provision of  
25 this act shall, so far as is practicable, be limited to that  
26 portion of the entire premises necessary to abate the nuisance  
27 and prevent the recurrence of drug distribution events.

28 (b) Duty of certain landlords to displaced innocent  
29 tenants.--In addition to any other relief expressly authorized  
30 by this act, the court may order a defendant who knew or had

1 reason to know of the nuisance to provide relocation assistance  
2 to any tenant ordered to vacate a premises pursuant to this act,  
3 provided that the court determines that such tenant was not  
4 involved in any drug distribution event constituting the  
5 nuisance and did not knowingly aid in the commission of any such  
6 drug distribution event. Relocation assistance shall be in the  
7 amount necessary to cover moving costs, security deposits for  
8 utilities and comparable housing, any lost rent and any other  
9 reasonable expenses the court may deem fair and reasonable as a  
10 result of the court's order to close a premises or any portion  
11 thereof pursuant to this act.

12 Section 311. Vacating or modifying closing order.

13 (a) General rule.--The court upon application of a defendant  
14 may, at any time before trial, vacate or modify a closing order,  
15 after notice to the person or entity bringing the action  
16 pursuant to this act, where the defendant clearly and  
17 convincingly shows that he was not in any way involved in the  
18 commission of any drug distribution event constituting the  
19 nuisance, and he further:

20 (1) provides a bond or undertaking in an amount equal to  
21 the assessed value, for property tax purposes, of the  
22 premises or portion thereof subject to the closure order or  
23 such other amount fixed by the court, and the court  
24 determines that the public safety or welfare will be  
25 adequately protected thereby; or

26 (2) establishes by clear and convincing evidence that  
27 the drug nuisance has been satisfactorily abated and will not  
28 recur. In determining whether the drug nuisance has been  
29 satisfactorily abated and will not recur, the court shall  
30 consider the nature, severity and duration of the drug



1 nuisance and all other relevant factors, including, but not  
2 limited to, the following:

3 (i) whether the defendant through the exercise of  
4 reasonable diligence should have known that drug  
5 distribution events were occurring on the premises and  
6 whether the defendant took steps necessary and  
7 appropriate in the circumstances to prevent the  
8 commission of such events;

9 (ii) whether the defendant has in good faith  
10 initiated eviction or removal actions pursuant to the  
11 Model Expedited Eviction of Drug Traffickers Act against  
12 tenants or other persons who committed drug distribution  
13 events on the premises involved, immediately upon  
14 learning of a factual basis for initiating such eviction  
15 or removal action;

16 (iii) whether the defendant has developed an  
17 abatement plan which has been agreed to by the person or  
18 entity bringing the action pursuant to this act and has  
19 been approved by the court. Such abatement plan may  
20 provide for the following:

21 (A) Hiring an on-site manager to prevent the  
22 recurrence of drug distribution events.

23 (B) Making capital improvements to the property,  
24 such as security gates.

25 (C) Installing improved interior or exterior  
26 lighting.

27 (D) Employing security guards.

28 (E) Installing electronic security or visual  
29 monitoring systems.

30 (F) Establishing tenant-approved security

1 procedures.

2 (G) Attending property management training  
3 programs.

4 (H) Making cosmetic improvements to the  
5 property.

6 (I) Providing, at no cost, suitable space and  
7 facilities for a local enforcement agency to  
8 establish a police substation or ministration on or  
9 near the site of the drug nuisance.

10 (J) Establishing any other program or initiative  
11 designed to enhance security and prevent the  
12 recurrence of drug distribution events on or near the  
13 premises involved.

14 (b) Forfeiture of bond.--Where the court accepts a bond or  
15 undertaking under subsection (a) and conduct constituting a drug  
16 nuisance recurs, the bond or undertaking shall be forfeited  
17 unless the court finds compelling and extraordinary reasons why  
18 such forfeiture would not be in the interests of justice. Any  
19 moneys forfeited pursuant to this section shall be paid into the  
20 dedicated fund established in section 501(d).

21 Section 312. Permanent injunction and other relief.

22 Where the court after trial finds that a premises is a drug  
23 nuisance, the court shall grant permanent injunctive relief and  
24 shall issue orders as are necessary to abate the drug nuisance  
25 and to prevent to the extent reasonably possible the recurrence  
26 of the drug nuisance. The court's order may include, but need  
27 not be limited to, all of the following:

28 (1) Seizure and sale of personal property.--Directing  
29 the sheriff or other appropriate agency to seize and remove  
30 from the premises all material, equipment and

1       instrumentalities used in the creation and maintenance of the  
2       drug nuisance and directing the sheriff to sell the property  
3       in the manner provided for the sale of personal property  
4       under execution in accordance with the general rules of civil  
5       procedure. The net proceeds of any such sale, after the  
6       deduction of all lawful expenses involved, shall be paid into  
7       the dedicated fund established in section 501(d).

8       (2) Restoration of premises.--Authorizing the plaintiffs  
9       to make repairs, renovations and construction and structural  
10      alterations or to take such other actions necessary to bring  
11      the premises into compliance with all applicable housing,  
12      building, fire, zoning, health and safety codes, ordinances,  
13      rules, regulations or statutes. Expenditures may be filed as  
14      a lien against the property.

15      (3) Closing of premises.--Directing the closing of the  
16      premises, or appropriate portion thereof, to the extent  
17      necessary to abate the nuisance, and directing the officer or  
18      agency enforcing the closure order to post a copy of the  
19      judgment and a printed notice of such closing order  
20      conforming to the requirements of section 308(d). The closing  
21      directed by the judgment shall be for such period of time as  
22      the court may direct but, subject to the provisions of  
23      section 503, shall not be for a period of more than one year  
24      from the posting of the judgment provided for in this  
25      subsection.

26      (4) Suspension of licenses.--Suspending or revoking any  
27      business, professional, operational or liquor license.

28      (5) Suspension of government subsidies.--Ordering the  
29      suspension of any State, city or local governmental subsidies  
30      payable to the owners of the property, such as tenant

1 assistance payments to landlords, until the nuisance is  
2 satisfactorily abated.

3 (6) Appointment of receiver.--Appointing a temporary  
4 receiver to manage or operate the premises for such time as  
5 the court deems necessary to abate the nuisance. A receiver  
6 appointed pursuant to this section shall be paid by the owner  
7 of the property a reasonable fee as established by the court  
8 and shall have such powers and duties as the court shall  
9 direct, including, but not limited to, the following:

10 (i) Collecting, holding and dispersing the proceeds  
11 of all rents due from all tenants.

12 (ii) Leasing or renting portions of the premises  
13 involved.

14 (iii) Making or authorizing other persons to make  
15 necessary repairs or to maintain the property.

16 (iv) Hiring security or other personnel necessary  
17 for the safe and proper operation of the premises.

18 (v) Retaining counsel to prosecute or defend suits  
19 arising from his or her management of the premises.

20 (vi) Expending funds from the collected rents in  
21 furtherance of the foregoing powers.

22 A receiver appointed by the court pursuant to this section or  
23 section 307(c) shall upon entering his duties be sworn and  
24 shall affirm faithfully and fairly to discharge the trust  
25 committed to him. In addition, the receiver may be required  
26 to post a bond or undertaking in an amount to be fixed by the  
27 court making the appointment to ensure that such receiver  
28 will faithfully discharge his duties.

29 (7) Combination of remedies.--Imposing any or all of the  
30 foregoing remedies in combination with each other.

1 Section 313. Closure.

2 (a) Presumption of closure.--Where the court after trial  
3 determines that a premises constitutes a drug nuisance, the  
4 court shall order the closure of the premises or appropriate  
5 portion or portions thereof pursuant to section 312(c), unless  
6 the court is clearly convinced that any vacancy resulting from  
7 the closure would exacerbate rather than abate the nuisance or  
8 would otherwise be extraordinarily harmful to the community or  
9 the public interest.

10 (b) Vacation of closure order.--The court at any time after  
11 trial may vacate the provisions of the judgment that direct the  
12 closing of the premises or any portion thereof provided that the  
13 defendant establishes by clear and convincing evidence that the  
14 drug nuisance has been satisfactorily abated and is not likely  
15 to recur. In determining whether the drug nuisance has been  
16 satisfactorily abated and is not likely to recur, the court  
17 shall consider the nature, severity and duration of the drug  
18 nuisance and all other relevant factors, including, but not  
19 limited to, those factors set forth in section 311(a).

20 CHAPTER 5

21 OTHER RELATED MATTERS

22 Section 501. Penalties.

23 (a) Civil penalties for culpable defendants.--Where the  
24 court after trial finds that a premises is a drug nuisance, the  
25 court in addition to granting appropriate injunctive relief  
26 shall impose a civil penalty against a defendant who knowingly  
27 conducted, maintained, aided, abetted or permitted a drug  
28 nuisance. The penalty shall be \$25,000 or the market value of  
29 the entire premises involved, whichever amount is greater,  
30 unless the court finds, based on the evidence, that imposition

1 of such penalty would constitute a miscarriage of justice under  
2 the totality of the circumstances. In such case it may lower the  
3 penalty amount to the extent necessary to avoid such miscarriage  
4 of justice.

5 (b) Prima facie evidence of defendant's culpability.--For  
6 the purpose of imposing a civil penalty pursuant to this  
7 section, the following shall be prima facie evidence that the  
8 defendant knowingly permitted the drug nuisance:

9 (1) the defendant failed to initiate an eviction action  
10 under the Model Expedited Eviction of Drug Traffickers Act,  
11 against a tenant after being notified by certified or  
12 registered mail of the tenant's drug distribution events  
13 committed on the leased premises; or

14 (2) a closure order was vacated under section 313(b)  
15 within two years before the occurrence of the instant drug  
16 nuisance.

17 (c) Waiver of penalty upon transfer of title.--The court at  
18 any time shall waive, suspend or revoke any unpaid civil penalty  
19 imposed pursuant to this section where it is satisfied that:

20 (1) the defendant against whom the penalty has been  
21 imposed has not violated any order issued pursuant to any  
22 provision of this act; and

23 (2) the defendant has transferred title to the premises  
24 to the plaintiff or any other neighborhood or community  
25 organization approved by the court, provided that the  
26 recipient is a nonprofit incorporated organization or  
27 association which is exempt from taxation under 26 U.S.C. §  
28 501(c) (relating to list of exempt organizations) and which  
29 is authorized by its corporate charter or bylaws to  
30 rehabilitate, restore, maintain, manage or operate any

commercial or residential premises. Unless otherwise agreed to by the recipient organization, the defendant shall personally retain all State and local tax liability, and the obligation shall attach to any other real property in the county owned by the defendant.

(d) Collection and disposition of proceeds.--All civil penalties imposed pursuant to this section shall be collected in the manner provided by law or by rule of court. Ten percent of the penalties shall be retained by the court to offset the costs of collection. Half of all remaining moneys collected pursuant to this section shall be deposited in a nonlapsing revolving county fund to be known as the Nuisance Abatement and Neighborhood Rehabilitation Fund. Moneys in this fund shall be appropriated by the county on an annual basis for the purpose of funding local drug nuisance abatement, drug prevention, education and housing and neighborhood rehabilitation programs. All of the remaining funds shall be deposited in a nonlapsing revolving fund which is hereby established in the State Treasury, and which shall be known as the Treatment for Displaced Residents Fund. This fund shall be administered by the Office of Drug and Alcohol Programs, in the Department of Health. Its purpose shall be to fund the treatment of displaced residents determined to be addicted pursuant to section 26 of the Model Expedited Eviction of Drug Traffickers Act or for providing treatment for displaced residents under this act. None of these funds shall be used to supplant existing Federal, State, county or municipal resources for the courts, nuisance abatement, drug prevention, education, housing or neighborhood rehabilitation programs or treatment.

Section 502. Settlements.

1 (a) Court-approved settlements.--Nothing in this act shall be  
2 construed in any way to prevent the parties to the action at any  
3 time before or after trial from negotiating and agreeing to a  
4 fair settlement of the dispute, subject to the approval of the  
5 court.

6 (b) Vacation of closure order upon transfer of title.--The  
7 court, on application of a plaintiff may vacate a closing order  
8 issued pursuant to this act, where the defendant has transferred  
9 title to the premises to the plaintiff or any other neighborhood  
10 or community organization approved by the court, provided that  
11 the recipient is a nonprofit incorporated organization or  
12 association which is exempt from taxation under 26 U.S.C. §  
13 501(c) (relating to list of exempt organizations) and which is  
14 authorized by its corporate charter or bylaws to rehabilitate,  
15 restore, maintain, manage or operate any commercial or  
16 residential premises. In that event, the requirements for  
17 prerelease inspection set forth in section 506 shall not apply.  
18 Section 503. Recovery of costs.

19 Whenever an action for injunctive relief or penalties brought  
20 pursuant to this act terminates in a settlement or judgment  
21 favorable to the plaintiff, the plaintiff shall be entitled to  
22 recover the actual cost of the suit, including, but not limited  
23 to, reasonable attorney fees and all expenses and disbursements  
24 by the plaintiff and any other governmental entity in  
25 investigating, bringing, maintaining and enforcing the action  
26 and any court orders issued pursuant thereto. All defendants  
27 shall be jointly and severally liable for the payment of taxed  
28 costs imposed pursuant to this section.

29 Section 504. Liens.

30 A judgment awarding a permanent injunction pursuant to this



1 act shall be a lien upon the premises declared to be a drug  
2 nuisance. In addition, a judgment against an in personam  
3 defendant imposing a civil penalty or bill of taxed costs  
4 pursuant to this act shall be a lien upon the real estate owned  
5 by the defendant at the time of such rendition, and also upon  
6 all real estate the defendant may subsequently acquire, for a  
7 period of ten years from the date of the judgment.

8 Section 505. Contempt.

9 Any person who knowingly violates any order issued pursuant  
10 to this act shall be subject to civil contempt as well as  
11 punishment for criminal contempt under 18 Pa.C.S. §§ 4955  
12 (relating to violation of orders) and 5101 (relating to  
13 obstructing administration of law or other governmental  
14 function). Nothing in this act shall be construed in any way to  
15 preclude or preempt a criminal prosecution for violation of a  
16 controlled substance offense or any other criminal offense.

17 Section 506. Release of premises upon inspection or repair.

18 (a) Compliance with codes as prerequisite to opening.--  
19 Subject to the provision of section 502(b), and unless the court  
20 expressly orders otherwise, no premises or portion thereof  
21 ordered to be closed pursuant to any provision of this act shall  
22 be released or opened unless it has been inspected by the  
23 appropriate county agency and found to be in compliance with  
24 applicable State or local housing, building, fire, zoning,  
25 health and safety codes, ordinances, rules, regulations or  
26 statutes. Where the inspection reveals violations of any such  
27 code, ordinance, rule, regulation or statute, the court shall  
28 issue such orders or grant such relief as may be necessary to  
29 bring the premises or portion thereof into compliance. In that  
30 event, the court may order the premises or portion thereof to

1 remain closed pending such necessary repairs or modification,  
2 notwithstanding that the order of closure may exceed the one-  
3 year time limit prescribed in section 312(c).

4 (b) Authorization to inspect or repair.--The court may  
5 authorize any person or government official to enter a premises  
6 or portion thereof closed pursuant to this act for the purpose  
7 of conducting an inspection or making any repairs or  
8 modifications necessary to abate the nuisance or to bring the  
9 premises or portion thereof into compliance with any applicable  
10 housing, building, fire, zoning, health or safety code,  
11 ordinance, rule, regulation or statute.

12 Section 507. Cumulative remedies.

13 The causes of action and remedies authorized by this act  
14 shall be cumulative with each other and shall be in addition to,  
15 not in lieu of, any other causes of action or remedies which may  
16 be available at law or equity.

17 Section 508. Admissibility of evidence.

18 (a) General rule.--In any action brought pursuant to this  
19 act, all relevant evidence, including evidence of the use or  
20 threat of violence, evidence of reputation in a community and  
21 any prior efforts or lack of efforts by the defendant to abate  
22 the drug nuisance shall be admissible to prove the existence of  
23 a drug nuisance.

24 (b) Effect of criminal conviction or adjudication of  
25 delinquency.--Where a criminal prosecution or adjudication  
26 proceeding involving the drug distribution event constituting  
27 the drug nuisance results in a criminal conviction or  
28 adjudication of delinquency, such conviction or adjudication  
29 shall create a rebuttable presumption that the drug distribution  
30 event occurred. Any evidence or testimony admitted in the

1 criminal or juvenile proceedings, including transcripts or a  
2 court reporter's notes of the transcripts of the adult or  
3 juvenile criminal proceedings, whether or not they have been  
4 transcribed, may be admitted in the civil action brought  
5 pursuant to this act.

6 (c) Use of sealed criminal proceeding records.--In the event  
7 that the evidence or records of a criminal proceeding which did  
8 not result in a conviction or adjudication of delinquency have  
9 been sealed in accordance with applicable law, the court in a  
10 civil action brought pursuant to this act may, notwithstanding  
11 any other provision of this act, order such evidence or records  
12 to be unsealed if the court finds that such evidence or records  
13 would be relevant to the fair disposition of the civil action.

14 (d) Protection of threatened witnesses or affiants.--If  
15 proof of the existence of the drug nuisance depends, in whole or  
16 in part, upon the affidavits or testimony of witnesses who are  
17 not peace officers, the court may, upon a showing of prior  
18 threats of violence or acts of violence by any defendant or any  
19 other person, issue orders to protect those witnesses,  
20 including, but not limited to, the nondisclosure of the name,  
21 address or any other information which may identify those  
22 witnesses.

23 (e) Availability of law enforcement resources to plaintiffs  
24 or potential plaintiffs.--A law enforcement agency may make  
25 available to any person or entity seeking to secure compliance  
26 with this act any police report, or edited portion thereof, or  
27 forensic laboratory report, or edited portion thereof,  
28 concerning drug distribution events committed on or within the  
29 premises involved. A law enforcement agency may also make any  
30 officer or officers available to testify as a fact or expert

1 witness in a civil action brought pursuant to this act. The  
2 agency shall not disclose such information where, in the  
3 agency's opinion, such disclosure would jeopardize an  
4 investigation, prosecution or other proceeding or where such  
5 disclosure would violate any Federal or State statute.

6 Section 509. Relationship to criminal proceedings.

7 A civil action may be brought and maintained pursuant to this  
8 act, and the court may find the existence of a drug nuisance,  
9 notwithstanding that a drug distribution event or events used to  
10 establish the existence of the drug nuisance have not resulted  
11 in an arrest, prosecution, conviction or adjudication of  
12 delinquency.

13 Section 510. Liability for damage to closed properties.

14 (a) Effect of court-ordered closing.--A court-ordered  
15 closing of a premises or portion thereof pursuant to this act  
16 shall not constitute an act of possession, ownership or control  
17 by the court, the plaintiff or any government official or entity  
18 responsible for enforcing the court order.

19 (b) Immunity of plaintiffs and enforcing agencies.--Any  
20 person or entity bringing, maintaining or enforcing any civil  
21 action or order issued in accordance with the provisions of this  
22 act shall have immunity from any civil liability that might  
23 otherwise be incurred for any theft of or loss, damage or injury  
24 to any premises constituting the drug nuisance, or to any  
25 fixture, furniture or personal or movable property located in or  
26 on any such premises.

27 Section 511. Civil immunity.

28 Any person or entity who in good faith institutes,  
29 participates in, testifies in or encourages any person or entity  
30 to institute, participate in or testify in a civil action

1 brought pursuant to this act or who in good faith provides any  
2 information relied upon by any person or entity in instituting  
3 or participating in a civil action pursuant to this act shall  
4 have immunity from any civil liability that might otherwise be  
5 incurred or imposed for such actions or conduct.

6 Section 512. Civil action.

7 (a) Right of action for damages.--Notwithstanding the  
8 provisions of section 303(a), any person damaged in his business  
9 or property by reason of a drug nuisance may bring a separate  
10 civil action for actual damages in the court of common pleas  
11 against any persons who knowingly conducted, maintained, aided,  
12 abetted or permitted any drug distribution event constituting  
13 the drug nuisance.

14 (b) Effect of prior notification of owner concerning  
15 nuisance.--In a civil action for damages pursuant to this  
16 section, the failure of an owner or landlord to initiate an  
17 eviction action against a tenant under the Model Expedited  
18 Eviction of Drug Traffickers Act if the owner or landlord has  
19 been notified by certified or registered mail of the tenant's  
20 drug distribution events committed on the leased premises shall  
21 be prima facie evidence that the owner knowingly gave permission  
22 to engage in conduct constituting the drug nuisance.

23 (c) Admissibility of expert testimony.--In a civil action  
24 for damages pursuant to this section, expert testimony may be  
25 used to determine the amount of any actual damage or loss  
26 incurred by reason of the drug nuisance.

27 (d) Attorney fees and other costs to prevailing plaintiff.--  
28 Whenever an action for damages brought pursuant to this section  
29 terminates in a settlement or judgment favorable to the  
30 plaintiff, the plaintiff shall be entitled to recover the actual

1 cost of the suit, including, but not limited to, reasonable  
2 attorney fees and all expenses and disbursements by the  
3 plaintiff in investigating, bringing and maintaining the action.  
4 All defendants shall be jointly and severally liable for the  
5 payments of taxed costs imposed pursuant to this section.

6 (e) General admissibility of evidence.--In any civil action  
7 for damages brought pursuant to this section, any evidence  
8 admitted or admissible in a civil action for injunctive relief  
9 or penalty pursuant to this act shall be admissible.

10 Section 513. Use of property for treatment and other purposes.

11 Where title to property has been transferred to any  
12 neighborhood or community organization pursuant to section  
13 501(c), or pursuant to any negotiated settlement of any action  
14 brought pursuant to this act, such property may, subject to the  
15 approval of the court in which the civil action was initiated,  
16 be used to house an alcohol and other drug prevention,  
17 education, intervention or licensed alcohol and other drug  
18 counseling or treatment program. Nothing herein shall be  
19 construed in any way to exempt such property from the  
20 requirements of any applicable zoning, fire, safety or health  
21 code, ordinance, rule, regulation or statute.

## 22 CHAPTER 11

### 23 MISCELLANEOUS PROVISIONS

24 Section 1101. Effective date.

25 This act shall take effect in 180 days.