

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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INTRODUCED BY SERAFINI, CLARK, M. COHEN, ROSS, HARHAI, SEYFERT
AND STABACK, FEBRUARY 22, 1999

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 22, 1999

AN ACT

1 Rendering persons who participate in the illegal drug market
2 liable for civil damages; and providing for the recovery of
3 damages, for the joinder of parties, for comparative
4 responsibility, for contribution among and recovery from
5 multiple defendants, for standards of proof, for the
6 enforcement of judgments and for a statute of limitations.

7 The General Assembly finds and declares as follows:

8 (1) Every community in the country is affected by the
9 marketing and distribution of illegal drugs. A vast amount of
10 state and local resources are expended in coping with the
11 financial, physical and emotional toll that results from the
12 existence of the illegal drug market. Families, employers,
13 insurers and society in general bear the substantial costs of
14 coping with the marketing of illegal drugs. Drug babies and
15 parents, particularly those of adolescent illegal drug users,
16 suffer significant noneconomic injury as well.

17 (2) Although the criminal justice system is an important
18 weapon against the illegal drug market, the civil justice
19 system can and must also be used. The civil justice system

1 can provide an avenue of compensation for those who have
2 suffered harm as a result of the marketing and distribution
3 of illegal drugs. The persons who have joined the illegal
4 drug market should bear the cost of the harm caused by that
5 market in the community.

6 (3) The threat of liability under this act serves as an
7 additional deterrent to a recognizable segment of the illegal
8 drug network. A person who has nondrug-related assets, who
9 markets illegal drugs at the workplace and who encourages
10 friends to become users, among others, is likely to decide
11 that the added cost of entering the market is not worth the
12 benefit. This is particularly true for a first-time, casual
13 dealer who has not yet made substantial profits. This act
14 provides a mechanism for the cost of the injury caused by
15 illegal drug use to be borne by those who benefit from
16 illegal drug dealing.

17 (4) This act imposes liability against all participants
18 in the illegal drug market, including small dealers,
19 particularly those in the workplace, who are not usually the
20 focus of criminal investigations. The small dealers increase
21 the number of users and are the people who become large
22 dealers. These small dealers are most likely to be deterred
23 by the threat of liability.

24 (5) A parent of an adolescent illegal drug user often
25 expends considerable financial resources, typically in the
26 tens of thousands of dollars, for the child's drug treatment.
27 State and local governments provide drug treatment and
28 related medical services made necessary by the distribution
29 of illegal drugs. The treatment of drug babies is a
30 considerable cost to State and local governments. Insurers

1 pay large sums for medical treatment relating to drug
2 addiction and use. Employers suffer losses as a result of
3 illegal drug use by employees due to lost productivity,
4 employee drug-related workplace accidents, employer
5 contributions to medical plans and the need to establish and
6 maintain employee assistance programs. Large employers,
7 insurers and state and local governments have existing legal
8 staffs that can bring civil suits against those involved in
9 the illegal drug market, in appropriate cases, if a clear
10 legal mechanism for liability and recovery is established.

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

23 (7) In theory, civil actions for damages for
24 distribution of illegal drugs can be brought under existing
25 law. They are not. Several barriers account for this. Under
26 existing tort law, only those dealers in the actual chain of
27 distribution to a particular user can be sued. Drug babies,
28 parents of adolescent illegal drug users and insurers are not
29 likely to be able to identify the chain of distribution to a
30 particular user. Furthermore, drug treatment experts largely

1 agree that users are unlikely to identify and bring suit
2 against their own dealers, even after they have recovered,
3 given the present requirements for a civil action. Recovered
4 users are similarly unlikely to bring suit against others in
5 the chain of distribution, even if they are known to the
6 user. A user is unlikely to know other dealers in the chain
7 of distribution. Unlike the chain of distribution for legal
8 products, in which records identifying the parties to each
9 transaction in the chain are made and shared among the
10 parties, the distribution of illegal drugs is clandestine.
11 Its participants expend considerable effort to keep the chain
12 of distribution secret.

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

27 (9) Market liability has been created with respect to
28 legitimate products by judicial decision in some states. It
29 provides for civil recovery by plaintiffs who are unable to
30 identify the particular manufacturer of the product that is

1 claimed to have caused them harm, allowing recovery from all
2 manufacturers of the product who participated in that
3 particular market. The market liability theory has been shown
4 to be destructive of market initiative and product
5 development when applied to legitimate markets. Because of
6 its potential for undermining markets, this act expressly
7 adopts a legislatively crafted form of liability for those
8 who intentionally join the illegal drug market. The liability
9 established by this act grows out of but is distinct from
10 existing judicially crafted market liability.

11 (10) The prospect of a future suit for the costs of drug
12 treatment may drive a wedge between prospective dealers and
13 their customers by encouraging users to turn on their
14 dealers. Therefore, liability for those costs, even to the
15 user, is imposed under this act as long as the user
16 identifies and brings suit against his or her own dealers.

17 (11) Allowing dealers who face a civil judgment for
18 their illegal drug marketing to bring suit against their own
19 sources for contribution may also drive a wedge into the
20 relationships among some participants in the illegal drug
21 distribution network.

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

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22	The General Assembly of the Commonwealth of Pennsylvania
23	hereby enacts as follows:
24	Section 1. Short title.
25	This act shall be known and may be cited as the Drug Dealer
26	Liability Act.
27	Section 2. Definitions.
28	The following words and phrases when used in this act shall
29	have the meanings given to them in this section unless the
30	context clearly indicates otherwise:

1 "Illegal drug." A drug whose distribution violates the laws
2 of this Commonwealth.

3 "Illegal drug market." The support system of illegal drug-
4 related operations, from production to retail sales, through
5 which an illegal drug reaches the user.

6 "Illegal drug market target community." The area described
7 under section 9.

8 "Individual drug user." The individual whose illegal drug
9 use is the basis of an action brought under this act.

10 "Level 1 offense." Possession of 1/4 ounce or more, but less
11 than four ounces, or distribution of less than one ounce of a
12 specified illegal drug or possession of one pound or 25 plants
13 or more, but less than four pounds or 50 plants, or distribution
14 of less than one pound of marijuana.

15 "Level 2 offense." Possession of four ounces or more, but
16 less than eight ounces, or distribution of one ounce or more,
17 but less than two ounces, of a specified illegal drug or
18 possession of four pounds or more or 50 plants or more, but less
19 than eight pounds or 75 plants, or distribution of more than one
20 pound, but less than five pounds, of marijuana.

21 "Level 3 offense." Possession of eight ounces or more, but
22 less than 16 ounces, or distribution of two ounces or more, but
23 less than four ounces, of a specified illegal drug or possession
24 of eight pounds or more or 75 plants or more, but less than 16
25 pounds or 100 plants, or distribution of more than five pounds,
26 but less than 10 pounds, of marijuana.

27 "Level 4 offense." Possession of 16 ounces or more or
28 distribution of four ounces or more of specified illegal drug or
29 possession of 16 pounds or more or 100 plants or more or
30 distribution of 10 pounds or more of marijuana.

1 "Municipality." A city, borough, incorporated town or
2 township, or a home rule municipality other than a county.

3 "Participate in the illegal drug market." To distribute,
4 possess with an intent to distribute, commit an act intended to
5 facilitate the marketing or distribution of or agree to
6 distribute, possess with an intent to distribute or commit an
7 act intended to facilitate the marketing and distribution of an
8 illegal drug. The term does not include the purchase or receipt
9 of an illegal drug for personal use only.

10 "Person." An individual, governmental entity, corporation,
11 firm, trust, partnership or incorporated or unincorporated
12 association existing under or authorized by the laws of this
13 Commonwealth, another state or a foreign country.

14 "Period of illegal drug use." In relation to the individual
15 drug user, the time of the individual's first use of an illegal
16 drug to the accrual of the cause of action. The period of
17 illegal drug use is presumed to commence two years before the
18 cause of action accrues unless the defendant proves otherwise by
19 clear and convincing evidence.

20 "Place of illegal drug activity." In relation to the
21 individual drug user, each municipality in which the individual
22 possesses or uses an illegal drug or in which the individual
23 resides, attends school or is employed during the period of the
24 individual's illegal drug use, unless the defendant proves
25 otherwise by clear and convincing evidence.

26 "Place of participation." In relation to a defendant in an
27 action brought under this act, each municipality in which the
28 person participates in the illegal drug market or in which the
29 person resides, attends school or is employed during the period
30 of the person's participation in the illegal drug market.

1 "Specified illegal drug." Cocaine, heroin or methamphetamine
2 and any other drug the distribution of which violates the laws
3 of this Commonwealth.

4 Section 3. Liability for participation in illegal drug market.

5 (a) General rule.--A person who knowingly participates in
6 the illegal drug market within this Commonwealth is liable for
7 civil damages as provided in this act. A person may recover
8 damages under this act for injury resulting from an individual's
9 use of an illegal drug.

10 (b) Law enforcement investigations.--A law enforcement
11 officer or agency, the Commonwealth or a person acting at the
12 direction of a law enforcement officer or agency or the State is
13 not liable for participating in the illegal drug market, if the
14 participation is in furtherance of an official investigation.

15 Section 4. Recovery of damages.

16 (a) Who may bring action.--One or more of the following may
17 bring an action for damages caused by an individual's use of an
18 illegal drug:

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

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

23 (3) An employer of the individual drug user.

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

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

1 (b) Damages.--A person entitled to bring an action under
2 this section may seek damages from one or more of the following:

3 (1) A person who knowingly distributed or knowingly
4 participated in the chain of distribution of an illegal drug
5 that was actually used by the individual drug user.

6 (2) A person who knowingly participated in the illegal
7 drug market if:

8 (i) the place of illegal drug activity by the
9 individual drug user is within the illegal drug market
10 target community of the defendant;

11 (ii) the defendant's participation in the illegal
12 drug market was connected with the same type of illegal
13 drug used by the individual drug user; and

14 (iii) the defendant participated in the illegal drug
15 market at any time during the individual drug user's
16 period of illegal drug use.

17 (c) Recovery.--A person entitled to bring an action under
18 this section may recover all of the following damages:

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

25 (2) Noneconomic damages, including, but not limited to,
26 physical and emotional pain, suffering, physical impairment,
27 emotional distress, medical anguish, disfigurement, loss of
28 enjoyment, loss of companionship, services and consortium and
29 other nonpecuniary losses proximately caused by an
30 individual's use of an illegal drug.

1 (3) Exemplary damages.

2 (4) Reasonable attorney fees.

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

5 Section 5. Limited recovery of damages.

6 (a) General rule.--An individual drug user shall not bring
7 an action for damages caused by the use of an illegal drug,
8 except as otherwise provided in this subsection. An individual
9 drug user may bring an action for damages caused by the use of
10 an illegal drug only if all of the following conditions are met:

11 (1) The individual personally discloses to narcotics
12 enforcement authorities, more than six months before filing
13 the action, all of the information known to the individual
14 regarding all that individual's sources of illegal drugs.

15 (2) The individual has not used an illegal drug within
16 the six months before filing the action.

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

19 (b) Distribution.--A person entitled to bring an action
20 under this section may seek damages only from a person who
21 distributed or is in the chain of distribution of an illegal
22 drug that was actually used by the individual drug user.

23 (c) Recovery.--A person entitled to bring an action under
24 this section may recover only the following damages:

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

30 (2) Reasonable attorney fees.

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

3 Section 6. Third-party cases.

4 A third party shall not pay damages awarded under this act or
5 provide a defense or money for a defense on behalf of an insured
6 under a contract of insurance or indemnification.

7 Section 7. Illegal drug market target community.

8 A person whose participation in the illegal drug market
9 constitutes the following level offense shall be considered to
10 have the following illegal drug market target community:

11 (1) For a level 1 offense, the municipality in which the
12 defendant's place of participation is situated.

13 (2) For a level 2 offense, the target community
14 described in paragraph (1) plus all municipalities with a
15 border contiguous to that target community.

16 (3) For a level 3 offense, the county in which the
17 defendant's place of participation is situated.

18 (4) For a level 4 offense, the entire Commonwealth.

19 Section 8. Joinder of parties.

20 (a) General rule.--Two or more persons may join in one
21 action under this act as plaintiffs if their respective actions
22 have at least one place of illegal drug activity in common and
23 if any portion of the period of illegal drug use overlaps with
24 the period of illegal drug use for every other plaintiff.

25 (b) Two or more persons.--Two or more persons may be joined
26 in one action under this act as defendants if those persons are
27 liable to at least one plaintiff.

28 (c) Judgment.--A plaintiff need not be interested in
29 obtaining and a defendant need not be interested in defending
30 against all the relief demanded. Judgment may be given for one

1 or more plaintiffs according to their respective rights to
2 relief and against one or more defendants according to their
3 respective liabilities.

4 Section 9. Comparative responsibility.

5 (a) General rule.--An action by an individual drug user is
6 governed by the principals of comparative responsibility.
7 Comparative responsibility attributed to the plaintiff does not
8 bar recovery but diminishes the award of compensatory damages
9 proportionally, according to the measure of responsibility
10 attributed to the plaintiff.

11 (b) Burden of proof.--The burden of proving the comparative
12 responsibility of the plaintiff is on the defendant, which shall
13 be shown by clear and convincing evidence.

14 (c) Plaintiff not drug user.--Comparative responsibility
15 shall not be attributed to a plaintiff who is not an individual
16 drug user.

17 Section 10. Contribution among and recovery from multiple
18 defendants.

19 A person subject to liability under this act has a right of
20 action for contribution against another person subject to
21 liability under this act. Contribution may be enforced either in
22 the original action or by a separate action brought for that
23 purpose. A plaintiff may seek recovery in accordance with this
24 act and existing law against a person whom a defendant has
25 asserted a right of contribution.

26 Section 11. Standards of proof.

27 (a) General rule.--Proof of participation in the illegal
28 drug market in an action brought under this act shall be shown
29 by clear and convincing evidence. Except as other provided in
30 this act, other elements of the cause of action shall be shown

1 by a preponderance of the evidence.

2 (b) Estoppel.--A person against whom recovery is sought who
3 has a criminal conviction pursuant to State drug laws or the
4 Comprehensive Drug Abuse Prevention and Control Act of 1970
5 (Public Law 91-513, 84 Stat. 1236), is estopped from denying
6 participation in the illegal drug market. Such a conviction is
7 also prima facie evidence of the person's participation in the
8 illegal drug market during the two years preceding the date of
9 an act giving rise to a conviction.

10 (c) Absence of conviction.--The absence of a criminal drug
11 conviction of a person against whom recovery is sought does not
12 bar an action against that person.

13 Section 12. Prejudgment attachment and execution on judgments.

14 (a) Prejudgment order.--A plaintiff under this act, subject
15 to subsection (c), may request an ex parte prejudgment
16 attachment order from the court against all assets of a
17 defendant sufficient to satisfy a potential award. If attachment
18 is instituted, a defendant is entitled to an immediate hearing.
19 Attachment may be lifted if the defendant demonstrates that the
20 assets will be available for potential award or if the defendant
21 posts a bond sufficient to cover a potential award.

22 (b) Nonexemption.--A person against whom a judgment has been
23 rendered under this act is not eligible to exempt any property,
24 of whatever kind, from process to levy or process to execute on
25 the judgment.

26 (c) Forfeiture.--Any assets sought to satisfy a judgment
27 under this act that are named in a forfeiture action or have
28 been seized for forfeiture by any Federal or State agency may
29 not be used to satisfy a judgment unless and until the assets
30 have been released following the conclusion of the forfeiture

1 action or released by the agency that seized the assets.

2 Section 13. Statute of limitations.

3 (a) General rule.--Except as otherwise provided in this
4 section, a claim under this act shall not be brought more than
5 two years after the cause of action accrues. A cause of action
6 accrues under this act when a person who may recover has reason
7 to know of the harm from illegal drug use that is the basis for
8 the cause of action and has reason to know that the illegal drug
9 use is the cause of the harm.

10 (b) Tolling.--For a plaintiff, the statute of limitations
11 under this section is tolled while the individual potential
12 plaintiff is incapacitated by the use of an illegal drug to the
13 extent that the individual cannot reasonably be expected to seek
14 recovery under this act or as otherwise provided by law. For a
15 defendant, the statute of limitations under this section is
16 tolled until six months after the individual potential defendant
17 is convicted of a criminal drug offense or as otherwise provided
18 by law.

19 (c) Participation prior to act.--The statute of limitations
20 under this act for a claim based on participation in the illegal
21 drug market that occurred prior to the effective date of this
22 act does not begin to run until the effective date of this act.

23 Section 14. Representation of governmental entities.

24 (a) General rule.--A district attorney or an appointee of
25 the Attorney General may represent the Commonwealth or a
26 political subdivision of the Commonwealth in an action brought
27 under this act.

28 (b) Stay of action.--On motion by a governmental agency
29 involved in a drug investigation or prosecution, an action
30 brought under this act shall be stayed until the completion of

1 the criminal investigation or prosecution that gave rise to the
2 motion for a stay of the action.

3 Section 15. Effect on existing law.

4 The provisions of this act are not intended to alter the law
5 regarding intrafamily tort immunity.

6 Section 16. Repeals.

7 All acts and parts of acts are repealed insofar as they are
8 inconsistent with this act.

9 Section 17. Effective date.

10 This act shall take effect in 60 days.