

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 528 Session of
1997

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FEBRUARY 12, 1997

REFERRED TO COMMITTEE ON URBAN AFFAIRS, FEBRUARY 12, 1997

AN ACT

1 Providing for drug nuisance abatement, for the nature of action,
2 jurisdiction, parties, notice, the issuance of orders,
3 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
12 and the violence and threat of violence associated with
13 illicit drug trade.

14 (2) The continued occurrence of criminal activities at
15 these locations is detrimental to the public health, safety
16 and welfare. Drug nuisances reduce property values, injure
17 legitimate businesses and commerce and erode the quality of

1 life for law-abiding persons working or residing in or near
2 these locations.

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

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

25 (5) The civil actions for injunctive relief, damages and
26 penalties authorized by this act are remedial rather than
27 punitive in nature. Penalties collected pursuant to section
28 501 are intended not to punish culpable defendants but rather
29 to compensate the community at large by providing funding for
30 additional treatment, neighborhood rehabilitation, drug

1 prevention and drug education costs. Damages awarded to
2 individual plaintiffs pursuant to section 512 are intended to
3 compensate the individuals for specific losses to their
4 businesses or properties.

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

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

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

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28 The General Assembly of the Commonwealth of Pennsylvania
29 hereby enacts as follows:

30 CHAPTER 1

PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Drug Nuisance Abatement Act.

Section 102. Definitions.

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

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

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

"Drug nuisance." A premises at which:

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

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

"Model Expedited Eviction of Drug Traffickers Act." The act

1 of October 11, 1995 (1st Sp.Sess., P.L.1066, No.23).

2 "Neighborhood or community organization." A group, whether
3 or not incorporated, which consists of persons who reside or
4 work at or in a building, complex of buildings, street, block or
5 neighborhood any part of which is located on or within 1,000
6 feet of the premises alleged to be a drug nuisance, which has
7 the purpose of benefiting the quality of life in its
8 neighborhood or community, including treatment programs.

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

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

17 CHAPTER 3

18 ABATEMENT PROCEDURE

19 Section 301. Nature of actions and jurisdiction.

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

29 Section 302. Standard of proof.

30 Except as may otherwise be expressly provided, the civil

causes of action established in this act shall be proved by a preponderance of the evidence.

Section 303. Parties.

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

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

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

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

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

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

(c) Protections against frivolous actions and sanctions for

1 unfounded or unwarranted pleadings, motions or other papers.--

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

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

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

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

1 (e) Ready availability of ownership information to potential
2 plaintiffs.--Any person or entity who upon an oath in writing
3 states the affiant is preparing to initiate an action pursuant
4 to this act may request that the county prothonotary promptly
5 provide the name and address of all owners of the premises as
6 reflected upon the current county records, without charge.

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

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

17 Section 304. Notice to interested parties.

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

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

28 (2) cause a copy of the complaint to be affixed
29 conspicuously to the premises alleged to be a drug nuisance.

30 Service shall be deemed completed five days after filing with

1 the court proof of such mailing and an affidavit that a copy
2 of the complaint has been affixed to the premises.

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

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

13 Section 305. Substitution of plaintiff.

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

20 Section 306. Continuances.

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

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

28 (c) Stay pending criminal proceedings.--The court shall not
29 stay the civil proceedings pending the disposition of any
30 related criminal proceeding except for compelling and

1 extraordinary reasons or except upon the application of a
2 criminal prosecuting agency for good cause shown.

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

11 Section 307. Issuance of preliminary orders.

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

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

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

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

1 (3) that the public health, safety or welfare
2 immediately requires a preliminary closing order,
3 the court shall issue an order to close the premises involved or
4 the portions appropriate in the circumstances. The order shall
5 direct actions necessary to physically secure the premises, or
6 appropriate portions thereof, against use for any purpose. The
7 preliminary closing order shall also restrain the defendant and
8 all persons from removing or in any manner interfering with the
9 furniture, fixtures and movable or personal property located on
10 or within the premises constituting the drug nuisance.

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

25 (d) Admissible evidence.--In determining whether the public
26 health, safety or welfare immediately requires a preliminary
27 closing order, the court shall consider any relevant evidence
28 presented concerning any attendant circumstances, including, but
29 not limited to, whether the alleged drug distribution events or
30 related activities involve the use or threat of violence at or

1 near the site alleged to be a drug nuisance or whether the
2 alleged drug distribution events in any way involve distribution
3 or sale of a controlled substance by or to a juvenile or whether
4 the site alleged to be a drug nuisance is located within a drug-
5 free zone within the meaning of 18 Pa.C.S. § 6314 (relating to
6 sentencing and penalties for trafficking drugs to minors).

7 Section 308. Enforcement of preliminary orders.

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

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

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

28 (d) Posting of court order.--Upon service of a preliminary
29 closing order or a preliminary restraining order, the officer
30 shall post a copy thereof in a conspicuous place or upon one or

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

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

22 (f) Violation of court order.--Any person who knowingly or
23 purposely violates any preliminary restraining order or closing
24 order issued pursuant to this act shall be subject to civil
25 contempt as well as punishment for criminal contempt pursuant to
26 18 Pa.C.S. §§ 4955 (relating to violation of orders) and 5101
27 (relating to obstructing administration of law or other
28 governmental function).

29 Section 309. Notification and provision of treatment resources.

30 (a) Notification to persons present.--The officers serving a

1 preliminary closing order as provided in section 308(c) shall
2 provide outreach information and referral materials to all
3 residents present on how to obtain alcohol and other drug
4 treatment.

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

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

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

22 Section 310. Premises involving multiple residences or
23 businesses.

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

1 (b) Duty of certain landlords to displaced innocent
2 tenants.--In addition to any other relief expressly authorized
3 by this act, the court may order a defendant who knew or had
4 reason to know of the nuisance to provide relocation assistance
5 to any tenant ordered to vacate a premises pursuant to this act,
6 provided that the court determines that such tenant was not
7 involved in any drug distribution event constituting the
8 nuisance and did not knowingly aid in the commission of any such
9 drug distribution event. Relocation assistance shall be in the
10 amount necessary to cover moving costs, security deposits for
11 utilities and comparable housing, any lost rent and any other
12 reasonable expenses the court may deem fair and reasonable as a
13 result of the court's order to close a premises or any portion
14 thereof pursuant to this act.

15 Section 311. Vacating or modifying closing order.

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

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

29 (2) establishes by clear and convincing evidence that
30 the drug nuisance has been satisfactorily abated and will not

1 recur. In determining whether the drug nuisance has been
2 satisfactorily abated and will not recur, the court shall
3 consider the nature, severity and duration of the drug
4 nuisance and all other relevant factors, including, but not
5 limited to, the following:

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

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

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

24 (A) Hiring an onsite manager to prevent the
25 recurrence of drug distribution events.

26 (B) Making capital improvements to the property,
27 such as security gates.

28 (C) Installing improved interior or exterior
29 lighting.

30 (D) Employing security guards.

1 (E) Installing electronic security or visual
2 monitoring systems.

3 (F) Establishing tenant-approved security
4 procedures.

5 (G) Attending property management training
6 programs.

7 (H) Making cosmetic improvements to the
8 property.

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

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

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

24 Section 312. Permanent injunction and other relief.

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

1 (1) Seizure and sale of personal property.--Directing
2 the sheriff or other appropriate agency to seize and remove
3 from the premises all material, equipment and
4 instrumentalities used in the creation and maintenance of the
5 drug nuisance and directing the sheriff to sell the property
6 in the manner provided for the sale of personal property
7 under execution in accordance with the general rules of civil
8 procedure. The net proceeds of any such sale, after the
9 deduction of all lawful expenses involved, shall be paid into
10 the dedicated fund established in section 501(d).

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

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

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

1 (5) Suspension of government subsidies.--Ordering the
2 suspension of any State, city or local governmental subsidies
3 payable to the owners of the property, such as tenant
4 assistance payments to landlords, until the nuisance is
5 satisfactorily abated.

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

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

15 (ii) Leasing or renting portions of the premises
16 involved.

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

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

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

23 (vi) Expending funds from the collected rents in
24 furtherance of the foregoing powers.

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

1 will faithfully discharge his duties.

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

4 Section 313. Closure.

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

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

23 CHAPTER 5

24 OTHER RELATED MATTERS

25 Section 501. Penalties.

26 (a) Civil penalties for culpable defendants.--Where the
27 court after trial finds that a premises is a drug nuisance, the
28 court in addition to granting appropriate injunctive relief
29 shall impose a civil penalty against a defendant who knowingly
30 conducted, maintained, aided, abetted or permitted a drug

1 nuisance. The penalty shall be \$25,000 or the market value of
2 the entire premises involved, whichever amount is greater,
3 unless the court finds, based on the evidence, that imposition
4 of such penalty would constitute a miscarriage of justice under
5 the totality of the circumstances. In such case it may lower the
6 penalty amount to the extent necessary to avoid such miscarriage
7 of justice.

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

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

17 (2) a closure order was vacated under section 313(b)
18 within two years before the occurrence of the instant drug
19 nuisance.

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

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

26 (2) the defendant has transferred title to the premises
27 to the plaintiff or any other neighborhood or community
28 organization approved by the court, provided that the
29 recipient is a nonprofit incorporated organization or
30 association which is exempt from taxation under 26 U.S.C. §

501(c) (relating to list of exempt organizations) and which is authorized by its corporate charter or bylaws to 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

1 prevention, education, housing or neighborhood rehabilitation
2 programs or treatment.

3 Section 502. Settlements.

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

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

21 Section 503. Recovery of costs.

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

1 costs imposed pursuant to this section.

2 Section 504. Liens.

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

11 Section 505. Contempt.

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

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

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

1 issue such orders or grant such relief as may be necessary to
2 bring the premises or portion thereof into compliance. In that
3 event, the court may order the premises or portion thereof to
4 remain closed pending such necessary repairs or modification,
5 notwithstanding that the order of closure may exceed the one-
6 year time limit prescribed in section 312(c).

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

15 Section 507. Cumulative remedies.

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

20 Section 508. Admissibility of evidence.

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

27 (b) Effect of criminal conviction or adjudication of
28 delinquency.--Where a criminal prosecution or adjudication
29 proceeding involving the drug distribution event constituting
30 the drug nuisance results in a criminal conviction or

1 adjudication of delinquency, such conviction or adjudication
2 shall create a rebuttable presumption that the drug distribution
3 event occurred. Any evidence or testimony admitted in the
4 criminal or juvenile proceedings, including transcripts or a
5 court reporter's notes of the transcripts of the adult or
6 juvenile criminal proceedings, whether or not they have been
7 transcribed, may be admitted in the civil action brought
8 pursuant to this act.

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

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

26 (e) Availability of law enforcement resources to plaintiffs
27 or potential plaintiffs.--A law enforcement agency may make
28 available to any person or entity seeking to secure compliance
29 with this act any police report, or edited portion thereof, or
30 forensic laboratory report, or edited portion thereof,

1 concerning drug distribution events committed on or within the
2 premises involved. A law enforcement agency may also make any
3 officer or officers available to testify as a fact or expert
4 witness in a civil action brought pursuant to this act. The
5 agency shall not disclose such information where, in the
6 agency's opinion, such disclosure would jeopardize an
7 investigation, prosecution or other proceeding or where such
8 disclosure would violate any Federal or State statute.

9 Section 509. Relationship to criminal proceedings.

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

16 Section 510. Liability for damage to closed properties.

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

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

30 Section 511. Civil immunity.

1 Any person or entity who in good faith institutes,
2 participates in, testifies in or encourages any person or entity
3 to institute, participate in or testify in a civil action
4 brought pursuant to this act or who in good faith provides any
5 information relied upon by any person or entity in instituting
6 or participating in a civil action pursuant to this act shall
7 have immunity from any civil liability that might otherwise be
8 incurred or imposed for such actions or conduct.

9 Section 512. Civil action.

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

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

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

30 (d) Attorney fees and other costs to prevailing plaintiff.--

1 Whenever an action for damages brought pursuant to this section
2 terminates in a settlement or judgment favorable to the
3 plaintiff, the plaintiff shall be entitled to recover the actual
4 cost of the suit, including, but not limited to, reasonable
5 attorney fees and all expenses and disbursements by the
6 plaintiff in investigating, bringing and maintaining the action.
7 All defendants shall be jointly and severally liable for the
8 payments of taxed costs imposed pursuant to this section.

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

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

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

25 CHAPTER 11

26 MISCELLANEOUS PROVISIONS

27 Section 1101. Effective date.

28 This act shall take effect in 180 days.