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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SIPTROTH, CURRY AND BELFANTI, MARCH 6, 2007

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AN ACT

1 Providing for civil liability relating to illegal drug use, for  
2 damages, for limitations of action and for government action.

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8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 Section 1. Short title.

11 This act shall be known and may be cited as the Drug Dealer  
12 Liability Act.

13 Section 2. Purpose.

14 The purpose of this act is to:

15 (1) Provide a civil remedy for damages to persons in a  
16 community injured as a result of illegal drug use. These  
17 persons include parents, employers, insurers, governmental  
18 entities and others who pay for drug treatment or employee  
19 assistance programs, as well as infants injured as a result  
20 of exposure to drugs in utero. This act will enable the  
21 recovery of damages from those persons who have joined the  
22 illegal drug market.

23 (2) Shift, to the extent possible, the cost of the  
24 damage caused by the existence of the illegal drug market in  
25 a community to those who illegally profit from that market.

26 (3) Establish the prospect of substantial monetary loss  
27 as a deterrent to those who have not yet entered into the  
28 illegal drug distribution market.

29 (4) Establish an incentive for drug users to identify  
30 and seek payment for their own drug treatment from those

dealers who have sold drugs to the user in the past.

### Section 3. Findings.

The General Assembly finds and declares as follows:

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

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

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

1 illegal drug dealing.

2 (4) This act imposes liability against all participants  
3 in the illegal drug market, including small dealers,  
4 particularly those in the workplace, who are not usually the  
5 focus of criminal investigations. The small dealers increase  
6 the number of users and are the people who become large  
7 dealers. These small dealers are most likely to be deterred  
8 by the threat of liability.

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

26 (6) Drug babies, who are clearly the most innocent and  
27 vulnerable of those affected by illegal drug use, are often  
28 the most physically and mentally damaged due to the existence  
29 of an illegal drug market in a community. For many of these  
30 babies, the only hope is extensive medical and psychological

1 treatment, physical therapy and special education. All of  
2 these potential remedies are expensive. These babies, through  
3 their legal guardians and through court-appointed guardians  
4 ad litem, should be able to recover damages from those in the  
5 community who have entered and participated in the marketing  
6 of the types of illegal drugs that have caused their  
7 injuries.

8 (7) (i) In theory, civil actions for damages for  
9 distribution of illegal drugs can be brought under  
10 existing law, but these civil actions are not pursued  
11 because of several barriers. Under existing tort law,  
12 only those dealers in the actual chain of distribution to  
13 a particular user can be sued. Drug babies, parents of  
14 adolescent illegal drug users and insurers are not likely  
15 to be able to identify the chain of distribution to a  
16 particular user. Furthermore, drug treatment experts  
17 largely agree that users are unlikely to identify and  
18 bring suit against their own dealers, even after they  
19 have recovered, given the present requirements for a  
20 civil action.

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

1           (8) Those involved in the illegal drug market in a  
2 community are necessarily interrelated and interdependent,  
3 even if their identities are unknown to one another. Each new  
4 dealer obtains the benefit of the existing illegal drug  
5 distribution system to make illegal drugs available to that  
6 dealer. In addition, the existing market aids a new entrant  
7 by the prior development of people as users. Many experts on  
8 the illegal drug market agree that all participants are  
9 ultimately likely to be indirectly related. That is,  
10 beginning with any one dealer, given the theoretical ability  
11 to identify every person known by that dealer to be involved  
12 in illegal drug trafficking, and in turn each of the other  
13 dealers known to them, the illegal drug market in a community  
14 would ultimately be fully revealed.

15           (9) Market liability has been created with respect to  
16 legitimate products by judicial decision in some states. It  
17 provides for civil recovery by plaintiffs who are unable to  
18 identify the particular manufacturer of the product that is  
19 claimed to have caused them harm, allowing recovery from all  
20 manufacturers of the product who participated in that  
21 particular market. The market liability theory has been shown  
22 to be destructive of market initiative and product  
23 development when applied to legitimate markets. Because of  
24 its potential for undermining markets, this act expressly  
25 adopts a legislatively crafted form of liability for those  
26 who intentionally join the illegal drug market.

27           (10) The prospect of a future suit for the costs of drug  
28 treatment may drive a wedge between prospective dealers and  
29 their customers by encouraging users to turn on their  
30 dealers. Therefore, liability for those costs, even to the

1 user, is imposed under this act as long as the user  
2 identifies and brings suit against that user's dealers.

3 (11) Allowing dealers who face a civil judgment for  
4 their illegal drug marketing to bring suit against their own  
5 sources for contribution may also drive a wedge into the  
6 relationships among some participants in the illegal drug  
7 distribution network.

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

#### 17 Section 4. Definitions.

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

21 "Illegal drug." A drug whose distribution is a violation of  
22 the act of April 14, 1972 (P.L.233, No.64), known as The  
23 Controlled Substance, Drug, Device and Cosmetic Act.

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

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

29 "Participate in illegal drug market." To distribute, possess  
30 with an intent to distribute, commit an act intended to

1 facilitate the marketing or distribution of, or agree to  
2 distribute, possess with an intent to distribute, or commit an  
3 act intended to facilitate the marketing and distribution of an  
4 illegal drug. The term does not include the purchase or receipt  
5 of an illegal drug for personal use only.

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

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

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

22 "Place of participation." In relation to a defendant in an  
23 action brought under this act, each location in which the person  
24 participates in the illegal drug market or in which the person  
25 resides, attends school or is employed during the period of the  
26 person's participation in the illegal drug market.

27 Section 5. Liability for participation in illegal drug market.

28 (a) Liability.--A person who knowingly participates in the  
29 illegal drug market within this Commonwealth is liable for civil  
30 damages as provided in this act. A person may recover damages



1 under this act for injury resulting from an individual's use of  
2 an illegal drug.

3 (b) Exception.--A law enforcement officer or agency or a  
4 person acting at the direction of a law enforcement officer or  
5 agency of the Commonwealth or a political subdivision thereof is  
6 not liable for participating in the illegal drug market if the  
7 participation is in furtherance of an official investigation.

8 Section 6. Recovery of damages.

9 (a) Action for damages.--One or more of the following  
10 persons may bring an action for damages caused by an  
11 individual's use of an illegal drug:

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

14 (2) An individual who was exposed to an illegal drug in  
15 utero.

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

17 (4) A medical facility, insurer, the Commonwealth, any  
18 governmental entity or political subdivision of the  
19 Commonwealth, employer or other entity that funds a drug  
20 treatment program or employee assistance program for the  
21 individual drug user or that otherwise expended money on  
22 behalf of the individual drug user.

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

25 (b) Liability for damages.--A person entitled to bring an  
26 action under this section may seek damages from any person who  
27 knowingly distributed or knowingly participated in the chain of  
28 distribution of an illegal drug that was actually used by the  
29 individual drug user.

30 (c) Damages.--A person entitled to bring an action under

1 this section may recover all of the following damages:

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

8 (2) Noneconomic damages, including, but not limited to,  
9 physical and emotional pain, suffering, physical impairment,  
10 emotional distress, mental anguish, disfigurement, loss of  
11 enjoyment, loss of companionship, services and consortium and  
12 other nonpecuniary losses proximately caused by an  
13 individual's use of an illegal drug.

14 (3) Reasonable attorney fees.

15 (4) Costs of suit, including, but not limited to, court  
16 costs and reasonable expenses for expert testimony.

17 Section 7. Limited recovery of damages.

18 (a) Individual drug use.--An individual drug user shall not  
19 bring an action for damages caused by the use of an illegal  
20 drug, except as otherwise provided in this section. An  
21 individual drug user may bring an action for damages caused by  
22 the use of an illegal drug only if all of the following  
23 conditions are met:

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

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

30 (3) The individual continues to remain free of the use

of an illegal drug throughout the pendency of the action.

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

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

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

(2) Reasonable attorney fees.

(3) Costs of suit, including, but not limited to, court costs and reasonable expenses for expert testimony.

#### Section 8. Third-party cases.

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

#### Section 9. Joinder of parties.

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

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

(c) Judgments.--A plaintiff need not be interested in

1 obtaining and a defendant need not be interested in defending  
2 against all the relief demanded. Judgment may be given for one  
3 or more plaintiffs according to their respective rights to  
4 relief and against one or more defendants according to their  
5 respective liabilities.

6 Section 10. Comparative responsibility.

7 (a) Principles.--An action by an individual drug user is  
8 governed by the principles of comparative responsibility.  
9 Comparative responsibility attributed to the plaintiff does not  
10 bar recovery but diminishes the award of compensatory damages  
11 proportionally according to the measure of responsibility  
12 attributed to the plaintiff.

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

16 (c) Exclusion from liability.--Comparative responsibility  
17 shall not be attributed to a plaintiff who is not an individual  
18 drug user.

19 Section 11. Contribution among and recovery from multiple  
20 defendants.

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

28 Section 12. Standard of proof and effect of criminal drug  
29 conviction.

30 (a) Standard of proof.--Proof of participation in the

1 illegal drug market in an action brought under this act shall be  
2 shown by clear and convincing evidence. Except as otherwise  
3 provided in this act, other elements of the cause of action  
4 shall be shown by a preponderance of the evidence.

5 (b) Criminal convictions.--A person against whom recovery is  
6 sought who has a criminal conviction pursuant to the act of  
7 April 14, 1972 (P.L.233, No.64), known as The Controlled  
8 Substance, Drug, Device and Cosmetic Act, or other State drug  
9 laws or the Comprehensive Drug Abuse Prevention and Control Act  
10 of 1970 (Public Law 91-513, 84 Stat. 1236) is estopped from  
11 denying participation in the illegal drug market. Such a  
12 conviction is also prima facie evidence of the person's  
13 participation in the illegal drug market during the two years  
14 preceding the date of an act giving rise to a conviction.

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

18 Section 13. Prejudgment attachment and execution on judgments.

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

27 (b) Assets.--Any assets sought to satisfy a judgment under  
28 this act that are named in a forfeiture action or have been  
29 seized for forfeiture by the Commonwealth or any Federal agency  
30 may not be used to satisfy a judgment under this chapter unless

1 and until the assets have been released following the conclusion  
2 of the forfeiture action or released by the agency that seized  
3 the assets.

4 Section 14. Statute of limitations.

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

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

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

25 Section 15. Representation of governmental entities and stay of  
26 action.

27 (a) Prosecuting attorney.--A prosecuting attorney may  
28 represent the Commonwealth or a political subdivision of this  
29 Commonwealth in an action brought under this act.

30 (b) Stay of action.--On motion by a governmental agency

1 involved in a drug investigation or prosecution, an action  
2 brought under this act shall be stayed until the completion of  
3 the criminal investigation or prosecution that gave rise to the  
4 motion for a stay of the action.

5 Section 16. Effect on existing laws.

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

8 Section 17. Severability.

9 If any provision of this act or the application of any  
10 provision to any person or circumstance is held invalid, the  
11 remainder of this act and the application of such provision to  
12 any other person or circumstance shall not be affected by that  
13 invalidation.

14 Section 18. Effective date.

15 This act shall take effect in 90 days.