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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 601      Session of  
2001

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STABACK, THOMAS, TRICH, TULLI, WASHINGTON, BISHOP, COLAFELLA  
AND BUTKOVITZ, FEBRUARY 8, 2001

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REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 8, 2001

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AN ACT

1 Imposing civil liability on persons participating in the illegal  
2 drug market; providing for the recovery of damages by certain  
3 persons; and establishing the procedure for bringing a  
4 private action to recover damages.

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

9 Section 1. Short title.

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

12 Section 2. Definitions.

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

16 "Defendant." A person against whom a private action is  
17 brought under section 4 or 5.

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

21 "Illegal drug market." The support system of illegal drug-  
22 related operations, from production to retail sales, through  
23 which an illegal drug reaches an individual drug user.

24 "Illegal drug market target community." The geographical  
25 area described under section 7.

26 "Individual drug user." The person whose use of an illegal  
27 drug serves as the basis of a private action brought under this  
28 act.

29 "Level one offense." Possession of one-quarter ounce or  
30 more, but less than four ounces, or distribution of less than

1 one ounce of a specified illegal drug, or possession of one  
2 pound or 25 plants or more, but less than four pounds or 50  
3 plants, or distribution of less than one pound of marijuana.

4 "Level two offense." Possession of four ounces or more, but  
5 less than eight ounces, or distribution of one ounce or more,  
6 but less than two ounces, of a specified illegal drug, or  
7 possession of four pounds or more or 50 plants or more, but less  
8 than eight pounds or 75 plants, or distribution of more than one  
9 pound but less than ten pounds of marijuana.

10 "Level three offense." Possession of eight ounces or more,  
11 but less than 16 ounces, or distribution of two ounces or more,  
12 but less than four ounces, of a specified illegal drug or  
13 possession of eight pounds or more or 75 plants or more, but  
14 less than 16 pounds or 100 plants, or distribution of more than  
15 five pounds but less than ten pounds of marijuana.

16 "Level four offense." Possession of 16 ounces or more or  
17 distribution of four ounces or more of a specified illegal drug  
18 or possession of 16 pounds or more or 100 plants or more or  
19 distribution of ten pounds or more of marijuana.

20 "Participates in the illegal drug market." To distribute,  
21 possess with an intent to distribute, commit an act intended to  
22 facilitate the marketing or distribution of, or agree to  
23 distribute, possess with an intent to distribute, or commit an  
24 act intended to facilitate the marketing and distribution of an  
25 illegal drug. The term does not include the purchase or receipt  
26 of an illegal drug for personal use only.

27 "Period of illegal drug use." In relation to an individual  
28 drug user, the time of first use by the individual of an illegal  
29 drug to the accrual of the cause of action. The period of  
30 illegal drug use is presumed to commence two years before the

1 cause of action accrues unless the defendant proves otherwise by  
2 clear and convincing evidence.

3 "Person." An individual, a governmental entity, corporation,  
4 firm, trust, partnership, or incorporated or unincorporated  
5 association existing under or authorized by the laws of this  
6 Commonwealth, another state or a foreign country.

7 "Place of illegal drug activity." In relation to an  
8 individual drug user, each county in which the individual  
9 possesses or uses an illegal drug or in which the individual  
10 resides, attends school or is employed during the period of the  
11 illegal drug use of the individual, unless the defendant proves  
12 otherwise by clear and convincing evidence.

13 "Place of participation." In relation to a defendant in an  
14 action is brought under this act, each county in which that  
15 person participates in the illegal drug market or in which that  
16 person resides, attends school or is employed during the period  
17 that that person participates in the illegal drug market.

18 "Plaintiff." A person or individual drug user who brings a  
19 private action under section 4 or 5.

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

24 Section 3. Imposition of liability for participation in illegal  
25 drug market.

26 (a) General rule.--A person who knowingly participates in  
27 the illegal drug market within this Commonwealth shall be liable  
28 for civil damages under this act.

29 (b) Exception.--A law enforcement officer or agency, the  
30 Commonwealth or a person acting at the lawful direction of a law

1 enforcement officer or agency of the Commonwealth may not be  
2 liable for civil damages under this act if the Commonwealth,  
3 such officer, agency or person participates in the drug market  
4 solely to further an official investigation.

5 Section 4. Private actions by certain persons.

6 (a) Persons entitled to recover.--One or more of the  
7 following persons may bring a private action for civil damages  
8 caused by use of an illegal drug by an individual drug user:

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

11 (2) An individual who was exposed to an illegal drug in  
12 utero.

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

14 (4) A medical facility, insurer, governmental entity,  
15 employer or other entity that funds a drug treatment program  
16 or employee assistance program for the individual drug user  
17 or that otherwise expends money on behalf of the individual  
18 drug user that is not to be repaid.

19 (b) Persons liable for civil damages.--A person entitled to  
20 bring an action under this section may seek civil damages from  
21 one or more of the following:

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

25 (2) A person who knowingly participated in the illegal  
26 drug market if:

27 (i) the place of the illegal drug activity by the  
28 individual drug user is within the illegal drug market  
29 target community of the defendant;

30 (ii) the defendant participated in the illegal drug

1 market and was connected with the same type of illegal  
2 drug used by the individual drug user; and

3 (iii) the defendant participated in the illegal drug  
4 market at any time during the illegal drug use of the  
5 individual drug user.

6 (c) Persons not liable for civil damages.--An individual who  
7 was exposed to an illegal drug in utero may not bring an action  
8 against his or her natural mother.

9 (d) Elements of civil damages.--A person entitled to bring  
10 an action under this section may recover all of the following  
11 civil damages:

12 (1) Economic damages, including, but not limited to, the  
13 cost of treatment and rehabilitation, medical expenses, loss  
14 of economic or educational potential, loss of productivity,  
15 absenteeism, support expenses, accidents or injury and any  
16 other pecuniary loss proximately caused by the use of an  
17 illegal drug by an individual drug user.

18 (2) Noneconomic damages, including, but not limited to,  
19 physical and emotional pain, suffering, physical impairment,  
20 emotional distress, mental anguish, disfigurement, loss of  
21 enjoyment, loss of companionship, services and consortium and  
22 other nonpecuniary losses proximately caused by the use of an  
23 illegal drug by an individual drug user.

24 (3) Exemplary damages.

25 (4) Reasonable attorney fees.

26 (5) Cost of suit, including, but not limited to,  
27 reasonable expenses for expert testimony.

28 Section 5. Private actions by individual drug users.

29 (a) Conditions for bringing action.--An individual drug user  
30 may bring and maintain a private action for damages caused by

1 the use of an illegal drug only if all of the following  
2 conditions are met:

3 (1) the individual drug user personally discloses to  
4 narcotics enforcement authorities, more than six months  
5 before bringing the action, all of the information known to  
6 the individual drug user regarding the individual drug user's  
7 source of illegal drugs;

8 (2) the individual drug user has not used an illegal  
9 drug within the six months prior to filing the action; and

10 (3) the individual drug user does not use an illegal  
11 drug throughout the pendency of the action.

12 (b) Persons against whom action may be brought.--An  
13 individual drug user entitled to bring a private action under  
14 this section may seek damages only from a person who distributed  
15 or is in the chain of distribution of an illegal drug that was  
16 actually used by the individual drug user.

17 (c) Elements of damages.--An individual drug user entitled  
18 to bring an action under this section may recover only the  
19 following damages:

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

26 (2) reasonable attorney fees; and

27 (3) costs of suit, including, but not limited to,  
28 reasonable expenses for expert testimony.

29 Section 6. Indemnification prohibited.

30 A third party shall neither pay damages awarded under this

1 act, nor provide a defense or money for a defense, on behalf of  
2 a person insured under a contract of insurance or  
3 indemnification. Nothing in this act shall prevent a third party  
4 from providing a defense or money for a defense to any officer,  
5 agency, person or the Commonwealth covered under section 3(b).

6 Section 7. Determination of illegal drug market target  
7 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 one offense, the county in which the  
12 place of participation of the defendant is situated.

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

16 (3) For a level three offense, the target community  
17 described in paragraph (2) plus all counties with a border  
18 contiguous to that target community.

19 (4) For a level four offense, the Commonwealth.

20 Section 8. Joinder of parties.

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

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

30 (c) Common interest not required.--A plaintiff need not be



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

5 Section 9. Comparative negligence.

6 (a) General rule.--A defendant in an action brought by an  
7 individual drug user under section 7 may plead comparative  
8 negligence as an affirmative defense against the individual drug  
9 user. If proved under subsection (b), such comparative  
10 negligence shall not bar recovery but shall diminish the award  
11 of civil damages to the individual drug user proportionally,  
12 according to the measure of negligence attributed to the  
13 individual drug user.

14 (b) Burden of proof.--The burden of proving the comparative  
15 negligence of an individual drug user is on the defendant and  
16 shall be shown by clear and convincing evidence.

17 (c) Negligence not attributed to certain plaintiffs.--  
18 Comparative negligence shall not be plead as an affirmative  
19 defense attributed to a person who brings a private action under  
20 section 4.

21 Section 10. Right of contribution.

22 A person subject to liability under this act has the right of  
23 contribution set forth in 42 Pa.C.S. § 8324 (relating to right  
24 of contribution) against another person subject to liability  
25 under this act. Such right of contribution may be plead either  
26 in the private action brought under this act or by a separate  
27 action brought for that purpose. A plaintiff may seek recovery  
28 in accordance with this act and existing law against any person  
29 against whom a defendant in the private action asserts a right  
30 of contribution.

1 Section 11. Procedure at trial.

2 (a) Burden of proof.--Proof that a person participates in  
3 the illegal drug market in an action brought under this act  
4 shall be shown by clear and convincing evidence. Except as  
5 otherwise provided in this act, other elements of the cause of  
6 action shall be shown by a preponderance of the evidence.

7 (b) Effect of conviction for drug law violation.--A person  
8 against whom recovery is sought under this act and who has been  
9 convicted of a violation of the act of April 14, 1972 (P.L.233,  
10 No.64), known as The Controlled Substance, Drug, Device and  
11 Cosmetic Act, or the Comprehensive Drug Abuse Prevention and  
12 Control Act of 1970 (Public Law 91-513, 84 Stat. 1236) shall be  
13 estopped from denying that such person participates in the  
14 illegal drug market. A conviction under Federal or State law set  
15 forth in this subsection also shall be prima facie evidence that  
16 the person participates in the illegal drug market during the  
17 two years preceding the date of an act giving rise to the  
18 conviction.

19 (c) Absence of conviction not a bar.--The absence of a  
20 conviction under Federal or State law set forth in subsection  
21 (b) of a person against whom recovery is sought does not bar a  
22 private action under this act against that person.

23 Section 12. Judgment procedure.

24 (a) Prejudgment attachment.--A plaintiff subject to  
25 subsection (c) may request an ex parte prejudgment attachment  
26 order from the court against all assets of a defendant  
27 sufficient to satisfy a potential award. If attachment is  
28 instituted, a defendant is entitled to an immediate hearing.  
29 Attachment may be lifted if the defendant demonstrates that the  
30 assets will be available for a potential award or if the

1 defendant posts a bond sufficient to cover a potential award.

2 (b) Exemption of property prohibited.--A defendant against  
3 whom a judgment has been rendered under this act is not eligible  
4 to exempt any property, of whatever kind, from process to levy  
5 or process to execute on the judgment.

6 (c) Property subject to forfeiture action.--Any assets  
7 sought to satisfy a judgment under this act that are named in a  
8 forfeiture section or have been seized for forfeiture by any  
9 Federal or State agency may not be used to satisfy a judgment  
10 unless and until the assets have been released following the  
11 conclusion of the forfeiture action or are released by the  
12 agency that seized the assets.

13 Section 13. Time for commencement of action.

14 (a) General rule.--Except as otherwise provided in this  
15 section, a private action under section 4 or 5 shall not be  
16 brought more than two years after the cause of action accrues. A  
17 cause of action accrues under this act when a person who may  
18 bring the private action under section 4 or 5 has reason to know  
19 of the harm from illegal drug use that is the basis for the  
20 private action and has reason to know that the illegal drug use  
21 is the cause of the harm.

22 (b) Extension of time.--For a plaintiff who is an individual  
23 drug user, the statute of limitations under this section shall  
24 be tolled if the individual drug user becomes incapacitated by  
25 the use of an illegal drug to the extent that the individual  
26 cannot reasonably be expected to seek recovery under this act or  
27 as otherwise provided for by law. For a defendant, the statute  
28 of limitations under this section shall be tolled until six  
29 months after the defendant is convicted of a violation of  
30 Federal or State Law set forth in section 11(b).

1 (c) Claims antedating act.--The statute of limitations under  
2 subsection (a) for a private action based on a person who  
3 participated in the illegal drug market prior to the effective  
4 date of this act shall not begin to run until the effective date  
5 of this act.

6 Section 14. Representation for Commonwealth.

7 The Attorney General or a district attorney may represent the  
8 Commonwealth or a political subdivision in any private action  
9 brought under this act.

10 Section 15. Stay of action.

11 On motion by a governmental agency involved in an official  
12 investigation or prosecution that involves the illegal drug  
13 market plead in a private action under sections 4 or 5, such  
14 action shall be stayed until completion of the criminal  
15 investigation or prosecution that gave rise to the motion.

16 Section 16. Effective date.

17 This act shall take effect in 60 days.