

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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

8 Section 1. Short title.

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

11 Section 2. Definitions.

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

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

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

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

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

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

28 "Level one offense." Possession of one-quarter ounce or
29 more, but less than four ounces, or distribution of less than
30 one ounce of a specified illegal drug, or possession of one

1 pound or 25 plants or more, but less than four pounds or 50
2 plants, or distribution of less than one pound of marijuana.

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

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

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

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

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

1 clear and convincing evidence.

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

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

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

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

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

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

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

28 (b) Exception.--A law enforcement officer or agency, the
29 Commonwealth or a person acting at the lawful direction of a law
30 enforcement officer or agency of the Commonwealth may not be

1 liable for civil damages under this act if the Commonwealth,
2 such officer, agency or person participates in the drug market
3 solely to further an official investigation.

4 Section 4. Private actions by certain persons.

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

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

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

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

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

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

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

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

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

29 (ii) the defendant participated in the illegal drug
30 market and was connected with the same type of illegal

1 drug used by the individual drug user; and

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

5 (c) Elements of civil damages.--A person entitled to bring
6 an action under this section may recover all of the following
7 civil damages:

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

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

20 (3) Exemplary damages.

21 (4) Reasonable attorney fees.

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

24 Section 5. Private actions by individual drug users.

25 (a) Conditions for bringing action.--An individual drug user
26 may bring and maintain a private action for damages caused by
27 the use of an illegal drug only if all of the following
28 conditions are met:

29 (1) the individual drug user personally discloses to
30 narcotics enforcement authorities, more than six months

1 before bringing the action, all of the information known to
2 the individual drug user regarding the individual drug user's
3 source of illegal drugs;

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

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

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

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

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

22 (2) reasonable attorney fees; and

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

25 Section 6. Indemnification prohibited.

26 A third party shall neither pay damages awarded under this
27 act, nor provide a defense or money for a defense, on behalf of
28 a person insured under a contract of insurance or
29 indemnification. Nothing in this act shall prevent a third party
30 from providing a defense or money for a defense to any officer,

1 agency, person or the Commonwealth covered under section 3(b).
2 Section 7. Determination of illegal drug market target
3 community.

4 A person whose participation in the illegal drug market
5 constitutes the following level offense shall be considered to
6 have the following illegal drug market target community:

7 (1) For a level one offense, the county in which the
8 place of participation of the defendant is situated.

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

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

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

16 Section 8. Joinder of parties.

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

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

26 (c) Common interest not required.--A plaintiff need not be
27 interested in obtaining and a defendant need not be interested
28 in defending against all the relief demanded. Judgment may be
29 given for one more plaintiffs according to their respective
30 civil damages.

1 Section 9. Comparative negligence.

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

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

13 (c) Negligence not attributed to certain plaintiffs.--
14 Comparative negligence shall not be plead as an affirmative
15 defense attributed to a person who brings a private action under
16 section 4.

17 Section 10. Right of contribution.

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

27 Section 11. Procedure at trial.

28 (a) Burden of proof.--Proof that a person participates in
29 the illegal drug market in an action brought under this act
30 shall be shown by clear and convincing evidence. Except as

1 otherwise provided in this act, other elements of the cause of
2 action shall be shown by a preponderance of the evidence.

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

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

19 Section 12. Judgment procedure.

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

28 (b) Exemption of property prohibited.--A defendant against
29 whom a judgment has been rendered under this act is not eligible
30 to exempt any property, of whatever kind, from process to levy

1 or process to execute on the judgment.

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

9 Section 13. Time for commencement of action.

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

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

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

1 of this act.

2 Section 14. Representation for Commonwealth.

3 The Attorney General or a district attorney may represent the
4 Commonwealth or a political subdivision in any private action
5 brought under this act.

6 Section 15. Stay of action.

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

12 Section 16. Effective date.

13 This act shall take effect in 60 days.