
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 848 Session of
1999

INTRODUCED BY GREENLEAF, BOSCOLA, COSTA, WAGNER, HOLL, KASUNIC
AND TOMLINSON, APRIL 27, 1999

REFERRED TO JUDICIARY, APRIL 27, 1999

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 an
4 action to recover damages.

5 The General Assembly of the Commonwealth of Pennsylvania
6 finds and declares that:

7 (1) The purpose of this act is to provide a civil remedy
8 for damages to persons in a community injured as a result of
9 illegal drug use. These persons include parents, employers,
10 insurers, governmental entities and others who pay for drug
11 treatment or employee assistance programs, as well as infants
12 injured as a result of exposure to drugs in utero.

13 (2) This act will enable them to recover damages from
14 those persons in the community who have joined the illegal
15 drug market.

16 (3) A further purpose of this act is to shift, to the
17 extent possible, the cost of the damage caused by the
18 existence of the illegal drug market in a community to those

1 who illegally profit from that market.

2 (4) A further purpose of this act is to establish the
3 prospect of substantial monetary loss as a deterrent to those
4 who have not yet entered into the illegal drug distribution
5 market.

6 (5) A further purpose of this act is to establish an
7 incentive for drug users to identify and seek payment for
8 their own drug treatment from those dealers who have sold
9 drugs to the user in the past.

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

30 Section 1. Short title.

1 This act shall be known and may be cited as the Drug Dealer
2 Liability Act.

3 Section 2. Definitions.

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

7 "Illegal drug." A drug, the distribution of which is a
8 violation of State law.

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

12 "Illegal drug market target community." The geographical
13 area described under section 7.

14 "Individual drug user." The person whose use of an illegal
15 drug serves as the basis of an action brought under this act.

16 "Level one offense." Possession of one-quarter ounce or
17 more, but less than four ounces, or distribution of less than
18 one ounce of a specified illegal drug, or possession of one
19 pound or 25 plants or more, but less than four pounds or 50
20 plants, or distribution of less than one pound of marijuana.

21 "Level two offense." Possession of four ounces or more, but
22 less than eight ounces, or distribution of one ounce or more,
23 but less than two ounces, of a specified illegal drug, or
24 possession of four pounds or more or 50 plants or more, but less
25 than eight pounds or 75 plants, or distribution of more than one
26 pound but less than five pounds of marijuana.

27 "Level three offense." Possession of eight ounces or more,
28 but less than 16 ounces, or distribution of two ounces or more,
29 but less than four ounces, of a specified illegal drug or
30 possession of eight pounds or more or 75 plants or more, but

1 less than 16 pounds or 100 plants, or distribution of more than
2 five pounds but less than ten pounds of marijuana.

3 "Level four offense." Possession of 16 ounces or more or
4 distribution of four ounces or more of a specified illegal drug
5 or possession of 16 pounds or more or 100 plants or more or
6 distribution of ten pounds or more of marijuana.

7 "Participates in the illegal drug market." To distribute,
8 possess with an intent to distribute, commit an act intended to
9 facilitate the marketing or distribution of, or agree to
10 distribute, possess with an intent to distribute, or commit an
11 act intended to facilitate the marketing and distribution of an
12 illegal drug. The term does not include the purchase or receipt
13 of an illegal drug for personal use only.

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

20 "Person." An individual, a governmental entity, corporation,
21 firm, trust, partnership, or incorporated or unincorporated
22 association existing under or authorized by the laws of this
23 Commonwealth, another state or a foreign country.

24 "Place of illegal drug activity." In relation to an
25 individual drug user, each county in which the individual
26 possesses or uses an illegal drug or in which the individual
27 resides, attends school or is employed during the period of the
28 illegal drug use of the individual, unless the defendant proves
29 otherwise by clear and convincing evidence.

30 "Place of participation." In relation to a defendant in an

1 action brought under this act, each county in which that person
2 participates in the illegal drug market or in which that person
3 resides, attends school or is employed during the period that
4 that person participates in the illegal drug market.

5 "Specified illegal drug." Cocaine, heroin or methamphetamine
6 and any other drug, the distribution of which is a violation of
7 State law.

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

9 (a) General rule.--A person who knowingly participates in
10 the illegal drug market within this Commonwealth shall be liable
11 for civil damages under this act. A person may recover damages
12 under this act for injury resulting from an individual's use of
13 an illegal drug.

14 (b) Exception.--A law enforcement officer or agency, the
15 Commonwealth or a person acting at the lawful direction of a law
16 enforcement officer or agency of the Commonwealth may not be
17 liable for civil damages under this act if the Commonwealth,
18 such officer, agency or person participates in the drug market
19 to further an official investigation.

20 Section 4. Recovery of damages.

21 (a) Persons entitled to recover.--One or more of the
22 following persons may bring an action for damages caused by use
23 of an illegal drug by an individual drug user:

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

26 (2) An individual who was exposed to an illegal drug in
27 utero.

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

29 (4) A medical facility, insurer, governmental entity,
30 employer or other entity that funds a drug treatment program

1 or employee assistance program for the individual drug user
2 or that otherwise expends money on behalf of the individual
3 drug user.

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

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

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

12 (2) A person who knowingly participated in the illegal
13 drug market if:

14 (i) the place of the illegal drug activity by the
15 individual drug user is within the illegal drug market
16 target community of the defendant;

17 (ii) the defendant participated in the illegal drug
18 market and was connected with the same type of illegal
19 drug used by the individual drug user; and

20 (iii) the defendant participated in the illegal drug
21 market at any time during the illegal drug use by the
22 individual drug user.

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

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

1 use.

2 (2) Noneconomic damages, including, but not limited to,
3 physical and emotional pain, suffering, physical impairment,
4 emotional distress, mental anguish, disfigurement, loss of
5 enjoyment, loss of companionship, services and consortium and
6 other nonpecuniary losses proximately caused by the illegal
7 drug use.

8 (3) Exemplary damages.

9 (4) Reasonable attorney fees.

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

12 Section 5. Limited recovery of damages.

13 (a) Conditions for bringing action.--An individual drug user
14 may bring and maintain an action for damages caused by the use
15 of an illegal drug only if all of the following conditions are
16 met:

17 (1) the individual drug user personally discloses to
18 narcotics enforcement authorities, more than six months
19 before bringing the action, all of the information known to
20 the individual drug user regarding the individual drug user's
21 source of illegal drugs;

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

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

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

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

4 (1) economic damages, including, but not limited to, the
5 cost of treatment, rehabilitation and medical expenses, loss
6 of economic or educational potential, loss of productivity,
7 absenteeism, accidents or injury and other pecuniary loss
8 proximately caused by the use of an illegal drug by the
9 individual drug user;

10 (2) reasonable attorney fees; and

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

13 Section 6. Third party cases.

14 A third party shall neither pay damages awarded under this
15 act, nor provide a defense or money for a defense, on behalf of
16 a person insured under a contract of insurance or
17 indemnification.

18 Section 7. Illegal drug market target community.

19 A person whose participation in the illegal drug market
20 constitutes the following level offense shall be considered to
21 have the following illegal drug market target community:

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

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

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

30 (4) For a level four offense, this Commonwealth.

1 Section 8. Joinder of parties.

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

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

10 (c) Common interest not required.--A plaintiff need not be
11 interested in obtaining and a defendant need not be interested
12 in defending against all the relief demanded. Judgment may be
13 given for one or more plaintiffs according to their respective
14 rights to relief and against one or more defendants according to
15 their respective liabilities.

16 Section 9. Comparative negligence.

17 (a) General rule.--A defendant in an action brought by an
18 individual drug user under section 7 may plead comparative
19 negligence as an affirmative defense against the individual drug
20 user. If proved under subsection (b), such comparative
21 negligence shall not bar recovery but shall diminish the award
22 of civil damages to the individual drug user proportionally,
23 according to the measure of negligence attributed to the
24 individual drug user.

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

28 (c) Negligence not attributed to certain plaintiffs.--
29 Comparative negligence shall not be plead as an affirmative
30 defense attributed to a person who is not an individual drug

1 user.

2 Section 10. Right of contribution.

3 A person subject to liability under this act has the right of
4 contribution set forth in 42 Pa.C.S. § 8324 (relating to right
5 of contribution) against another person subject to liability
6 under this act. Such right of contribution may be plead either
7 in the action brought under this act or by a separate action
8 brought for that purpose. A plaintiff may seek recovery in
9 accordance with this act and existing law against any person
10 against whom a defendant in the action asserts a right of
11 contribution.

12 Section 11. Procedure at trial.

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

18 (b) Effect of conviction for drug law violation.--A person
19 against whom recovery is sought under this act and who has been
20 convicted of a violation of the act of April 14, 1972 (P.L.233,
21 No.64), known as The Controlled Substance, Drug, Device and
22 Cosmetic Act, or the Comprehensive Drug Abuse Prevention and
23 Control Act of 1970 (Public Law 91-513, 84 Stat. 1236) shall be
24 estopped from denying that such person participates in the
25 illegal drug market. Such a conviction shall be prima facie
26 evidence that the person participates in the illegal drug market
27 during the two years preceding the date of an act giving rise to
28 the conviction.

29 (c) Absence of conviction not a bar.--The absence of such a
30 conviction of a person against whom recovery is sought shall not

1 bar an action under this act against that person.

2 Section 12. Judgment procedure.

3 (a) Prejudgment attachment.--A plaintiff subject to
4 subsection (c) may request an ex parte prejudgment attachment
5 order from the court against all assets of a defendant
6 sufficient to satisfy a potential award. If attachment is
7 instituted, a defendant shall be entitled to an immediate
8 hearing. Attachment may be lifted if the defendant demonstrates
9 that the assets will be available for a potential award or if
10 the defendant posts a bond sufficient to cover a potential
11 award.

12 (b) Exemption of property prohibited.--A defendant against
13 whom a judgment has been rendered under this act shall not be
14 eligible to exempt any property, of whatever kind, from process
15 to levy or process to execute on the judgment.

16 (c) Property subject to forfeiture action.--Any assets
17 sought to satisfy a judgment under this act that are named in a
18 forfeiture section or have been seized for forfeiture by any
19 Federal or State agency may not be used to satisfy a judgment
20 unless and until the assets have been released following the
21 conclusion of the forfeiture action or are released by the
22 agency that seized the assets.

23 Section 13. Time for commencement of action.

24 (a) General rule.--Except as otherwise provided in this
25 section, an action under section 4 or 5 shall not be brought
26 more than two years after the cause of action accrues. A cause
27 of action accrues under this act when a person who may bring the
28 action under section 4 or 5 has reason to know of the harm from
29 illegal drug use that is the basis for the action and has reason
30 to know that the illegal drug use is the cause of the harm.

1 (b) Extension of time.--For a plaintiff, the statute of
2 limitations under this section shall be tolled if that
3 individual becomes incapacitated by the use of an illegal drug
4 to the extent that the individual cannot reasonably be expected
5 to seek recovery under this act or as otherwise provided for by
6 law. For a defendant, the statute of limitations under this
7 section shall be tolled until six months after the defendant is
8 convicted of a violation of Federal or State Law set forth in
9 section 11(b) or as otherwise provided by law.

10 (c) Claims antedating act.--The statute of limitations under
11 subsection (a) for an action based on participation in the
12 illegal drug market prior to the effective date of this act
13 shall not begin to run until the effective date of this act.

14 Section 14. Representation for Commonwealth and political
15 subdivisions.

16 The Attorney General or a district attorney may represent the
17 Commonwealth or a political subdivision in an action brought
18 under this act.

19 Section 15. Stay of action.

20 On motion by a governmental agency involved in an official
21 investigation or prosecution that involves the illegal drug
22 market plead in an action under sections 4 or 5, such action
23 shall be stayed until completion of the criminal investigation
24 or prosecution that gave rise to the motion.

25 Section 16. Effective date.

26 This act shall take effect in 60 days.