

HOUSE No. 1321

By Mr. Binienda of Worcester, petition of John J. Binienda and others relative to providing for the civil liability of drug dealers. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

John J. Binienda
Christopher G. Fallon

John P. Fresolo
James E. Timilty

In the Year Two Thousand and Seven.

AN ACT PROVIDING FOR THE CIVIL LIABILITY OF DRUG DEALERS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws, as appearing in the 2004 Official
2 Edition, are hereby amended by inserting after Chapter 94F the
3 following new chapter—

4 CHAPTER 94G. 5 DRUG DEALER LIABILITY.

6 Section 1. As used in this chapter, the following terms shall have
7 the following meanings:—

8 (a) “Marketing of controlled dangerous substances”, the illegal
9 distributing, dispensing, or possessing with intent to distribute a spe-
10 cific controlled dangerous substance.

11 (b) “Individual user of the controlled dangerous substance”, the
12 individual whose illegal use of a specified controlled dangerous sub-
13 stance is the basis of an action brought under this chapter.

14 (c) “Level I Offense”:—

15 (1) Possessing with intent to distribute less than four ounces of a
16 specified controlled dangerous substance as defined in this section;

17 (2) Distributing or dispensing less than one ounce of a specified
18 controlled dangerous substance as defined in this section;

19 (3) Possessing with intent to distribute 25 or more but less than 50
20 marijuana plants;

21 (4) Possessing with intent to distribute less than four pounds of
22 marijuana; or

23 (5) Distributing or dispensing more than 28.5 grams of marijuana.

24 (d) “Level 2 Offense”:—

25 (1) Possessing with intent to distribute four ounces or more but
26 less than eight ounces of a specified controlled dangerous substance
27 as defined in this section;

28 (2) Distributing or dispensing one ounce or more but less than
29 two ounces of a specified controlled dangerous substance as defined
30 in this section;

31 (3) Possessing with intent to distribute 50 or more but less than 75
32 marijuana plants;

33 (4) Possessing with intent to distribute four pounds or more but
34 less than 8 pounds of marijuana; or

35 (5) Distributing or dispensing more than one pound but less than
36 five pounds of marijuana.

37 (e) “Level 3 Offense”:—

38 (1) Possessing with intent to distribute eight ounces or more but
39 less than 16 ounces of a specified controlled dangerous substance as
40 defined in this section;

41 (2) Distributing or dispensing two ounces or more but less than
42 four ounces of a specified controlled dangerous substance as defined
43 in this section;

44 (3) Possessing with intent to distribute 75 or more but less than
45 100 marijuana plants.

46 (4) Possessing with intent to distribute eight pounds or more but
47 less than 16 pounds of marijuana, or

48 (5) Distributing or dispensing more than five pounds but less than
49 ten pounds of marijuana.

50 (f) “Level 4 Offense”:—

51 (1) Possessing with intent to distribute 16 ounces or more of a
52 specified controlled dangerous substance as defined in this section;

53 (2) Distributing or dispensing four ounces or more of a specified
54 controlled dangerous substance as defined in this section;

55 (3) Possessing with intent to distribute 100 or more marijuana
56 plants;

57 (4) Possessing with intent to distribute 16 pounds or more of mar-
58 ijuana or

59 (5) Distributing or dispensing more than ten pounds of marijuana.

60 (g) “Person” means an individual, governmental entity, sole pro-
61 prietorship, corporation, limited liability company, firm, trust, part-
62 nership, or incorporated or unincorporated association, existing
63 under or authorized by the laws of this state, another state, or a for-
64 eign country.

65 (h) “Participate in the illegal marketing of controlled dangerous
66 substances”, means to transport, import into the Commonwealth,
67 distribute, dispense, sell, possess with intent to distribute, or offer to
68 distribute a controlled dangerous substance, in violation of any of
69 the provisions of Chapter 94C. “Participate in the marketing of con-
70 trolled dangerous substances” does not include the purchase or
71 receipt of a controlled dangerous substance for a personal use only.

72 (i) “Period of illegal use”, means, in relation to the individual use
73 of a specified controlled dangerous substance, the time of the indi-
74 vidual’s first illegal use of a controlled dangerous substance to the
75 accrual of the cause of action.

76 (j) “Place of illegal activity”, means, in relation to the individual
77 user of a specified controlled dangerous substance, each county in
78 which the individual illegally possesses or uses a specified con-
79 trolled dangerous substance.

80 (k) “Place of participation”, means, in relation to a defendant in
81 an action brought under this chapter, each county in which the
82 defendant participates in the marketing of controlled dangerous sub-
83 stances.

84 (l) “Specified controlled dangerous substance”, means heroin,
85 cocaine, lycsigic acid, diethylamide, phencyclidine, methampheta-
86 mine, phenyl-2-propanoic (P2P) and any other controlled dangerous
87 substance specified under the provisions of Chapter 94C as being
88 unlawful to manufacture, distribute, or dispense, or to possess or
89 have under a person’s control with intent to manufacture, distribute,
90 or dispense.

91 Section 2. A person who knowingly participates in the illegal
92 marketing of controlled dangerous substances within the Common-
93 wealth is liable for damages, as provided in this chapter, for injury
94 resulting from an individual’s illegal use of a controlled dangerous
95 substance.

96 Section 3. (a) Any of the following persons may bring an action
97 for damages caused by an individual's illegal use of a controlled
98 dangerous substance:—

99 (1) A parent, legal guardian, child, spouse, or sibling of the con-
100 trolled dangerous substance user.

101 (2) An individual who was exposed to a controlled dangerous
102 substance in utero.

103 (3) An employer of the controlled dangerous substance user.

104 (4) A medical facility, insurer, governmental entity, employer, or
105 other entity that funds a drug treatment program or employee assis-
106 tance program for the controlled dangerous substance user or that
107 otherwise expends money on behalf of the controlled dangerous sub-
108 stance user.

109 (5) A person injured as a result of the willful, reckless, or negli-
110 gent actions of an individual user of an illegal controlled substance.

111 (b) A person entitled to bring action under this chapter may seek
112 damages against:—

113 (1) A person who distributed or dispensed a controlled dangerous
114 substance to the individual user of the controlled dangerous sub-
115 stance; or

116 (2) A person who knowingly participated in the marketing of con-
117 trolled dangerous substances, if all of the following apply:—

118 (a) The defendant's place of participation is situated in the same
119 county as the individual user's place of illegal activity;

120 (b) The defendant participated in the marketing of the same type
121 of controlled dangerous substances as those used by the individual
122 user;

123 (c) The defendant was previously convicted of an offense in the
124 Commonwealth for that type of controlled dangerous substance; and

125 (d) The defendant participated in the marketing of controlled dan-
126 gerous substances at any time during the period the individual user
127 unlawfully used the controlled dangerous substance.

128 (e) A person entitled to bring an action under this section may
129 recover all of the following damages:—

130 (1) Economic damages, including, but not limited to, the cost of
131 treatment, rehabilitation and medical expenses, loss of economic or
132 educational potential, loss of productivity, absenteeism, support
133 expenses, accidents or injury, and any other pecuniary loss proxi-
134 mately caused by the use of a controlled dangerous substance.

135 (2) Non-economic damages, including, but not limited to, phys-
136 ical and emotional pain, suffering, physical impairment, emotional
137 distress, disfigurement, loss of enjoyment, loss of companionship,
138 services and consortium, and other non-pecuniary losses proxi-
139 mately caused by an individual's use of a controlled dangerous sub-
140 stance.

141 (3) Punitive damages.

142 (4) Reasonable attorney fees.

143 (5) Costs of suit, including, but not limited to, reasonable
144 expenses for expert testimony.

145 Section 4. (a) An individual user of a controlled dangerous sub-
146 stance may bring an action for damages caused by the use of a con-
147 trolled dangerous substance only if all of the following conditions
148 are met:—

149 (1) At least six months before filing an action, the individual per-
150 sonally discloses to law enforcement authorities all of the informa-
151 tion known to the individual regarding all that individual's sources
152 of controlled dangerous substances.

153 (2) The individual does not use a controlled dangerous substance
154 within the six months immediately preceding the date the user files
155 the action.

156 (3) The individual continues to remain free of the use of all illegal
157 controlled dangerous substances throughout the pendency of the
158 action.

159 (b) An individual user entitled to bring an action under this
160 section may seek damages only from a person who transported,
161 imported into this state, distributed, dispensed, sold, possessed with
162 intent to distribute, or offered to distribute, in violation of any of the
163 provisions of Chapter 94C, the controlled dangerous substance actu-
164 ally used by the individual user of a controlled dangerous substance.

165 (c) An individual user entitled to bring an action under this
166 section may recover only the following damages:—

167 (1) Economic damages, including, but not limited to, the cost of
168 treatment, rehabilitation and medical expenses, loss of economic or
169 educational potential, loss of productivity, absenteeism, accidents or
170 injury, and any other pecuniary loss proximately caused by the per-
171 son's use of a controlled dangerous substance.

172 (2) Reasonable attorney fees.

173 (3) Costs of suit, including, but not limited to, reasonable
174 expenses for expert testimony.

175 Section 5. (a) A third party shall not pay damages awarded under
176 this act, or provide a defense or money for a defense, on behalf of an
177 insured under a contract of insurance or indemnification.

178 (b) A cause of action authorized pursuant to this chapter may not
179 be assigned, either expressly, by subrogation, or by any other means,
180 directly or indirectly, to any public or publicly funded agency or
181 institution.

182 Section 6. A person whose participation in the marketing of con-
183 trolled dangerous substances is grounds for liability pursuant to this
184 act shall be rebuttably presumed to be liable for damages incurred by
185 the plaintiff in the following percentages:—

186 (a) For a level 1 offense, 25 percent of the damages;

187 (b) For a level 2 offense, 50 percent of the damages;

188 (c) For a level 3 offense, 75 percent of the damages; and

189 (d) For a level 4 offense, 100 percent of the damages.

190 Section 7. (a) Two or more persons may join in one action under
191 this act as plaintiffs if their respective actions have at least one
192 market for controlled dangerous substances in common and if any
193 portion of the period of use of a controlled dangerous substance
194 overlaps with the period of use of a controlled dangerous substance
195 for every other plaintiff.

196 (b) Two or more persons may be joined in one action under this
197 chapter as defendants if those persons are liable to at least one plain-
198 tiff.

199 Section 8. (a) An action by an individual user of a controlled dan-
200 gerous substance is governed by the principles of comparative
201 responsibility. Comparative responsibility attributed to an individual
202 user does not bar the user's recovery but diminishes the award of
203 damages proportionately, according to the measure of responsibility
204 attributed to the user. The burden of proving comparative responsi-
205 bility is on the defendant, who shall prove comparative responsi-
206 bility by clear and convincing evidence.

207 (b) Comparative responsibility shall not be attributed to a plaintiff
208 who is not an individual user of a controlled substance.

209 Section 9. A person subject to liability under this chapter has a
210 right of action for contribution against another person subject to lia-
211 bility under this chapter. Contribution may be enforced either in the

212 original action or by a separate action brought for that purpose. A
213 plaintiff may seek recovery in accordance with this chapter and other
214 laws against a person whom a defendant has asserted a right of con-
215 tribution.

216 Section 10. (a) Proof of liability in an action brought under this
217 chapter shall be shown by clear and convincing evidence.

218 (b) A person against whom recovery is sought who has been con-
219 victed of a violation of Chapter 94C, manufacturing, distributing or
220 dispensing, or an equivalent offense under federal law or the law of
221 any other state, is estopped from, denying illegal participation in the
222 market for controlled dangerous substances. If such conviction was
223 based upon the same type of controlled dangerous substance as that
224 used by the individual user, the conviction also constitutes prima
225 facie evidence of the person's participation in the marketing of con-
226 trolled dangerous substances pursuant to this chapter.

227 (c) The absence of a criminal conviction of a person for a viola-
228 tion of Chapter 94C or an equivalent offense under federal law or the
229 law of any other state does not bar an action against that person by a
230 plaintiff bringing suit pursuant to this chapter.

231 Section 11. (a) A cause of action accrues under this act when a
232 person has reason to know of the harm from use of a controlled dan-
233 gerous substance that is the basis for the cause of action and has
234 reason to know that the use of a controlled dangerous substance is
235 the cause of the harm.

236 (b) A claim under this chapter shall not be brought more than
237 three years after the defendant distributes, dispenses, or possesses, or
238 sells the controlled dangerous substance and after the defendant is
239 convicted of a crime involving controlled dangerous substances,
240 whichever is the later.

241 Section 12. (a) The district attorney's office or the attorney gener-
242 al's office may represent the state or a political subdivision of the
243 state in an action brought under this act.

244 (b) On motion by a governmental agency involved in an investi-
245 gation or prosecution involving a controlled dangerous substance, an
246 action brought under this act shall be stayed until the completion of
247 any underlying criminal investigation or prosecution.

248 (c) An action shall not be brought under this chapter against a law
249 enforcement officer or agency, or a person acting in good faith at the
250 direction of a law enforcement officer or agency, for participation in

251 illegal marketing of a controlled substance if that participation is in
252 furtherance of an official investigation.

1 SECTION 2. No cause of action shall arise based on any act by a
2 defendant which occurred prior the effective date of this chapter.