

HOUSE No. 03142

The Commonwealth of Massachusetts

PRESENTED BY:

John J. Binienda

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act providing for the civil liability of drug dealers

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PETITION OF:

NAME:

DISTRICT/ADDRESS:

John J. Binienda

17th Worcester

John P. Fresolo

16th Worcester

HOUSE No. 03142

By Mr. Binienda of Worcester, a petition (accompanied by bill, House, No. 3142) of Fresolo and Binienda relative to the civil liability of drug dealers Joint Committee on the Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 1281 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 2008 Official Edition, are hereby amended

2 by inserting after Chapter 94F the following new chapter:

3 CHAPTER 94G.

4 THE DRUG DEALER LIABILITY ACT

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

6 (a) “Marketing of controlled dangerous substances”, the illegal distributing, dispensing, or

7 possessing with intent to distribute a specific controlled dangerous substance. (b)

8 “Individual user of the controlled dangerous substance”, the individual whose illegal use of a

9 specified controlled dangerous substance is the basis of an action brought under this
10 chapter. (c) “Level I Offense”: (1) Possessing with intent to distribute less than four
11 ounces of a specified controlled dangerous substance as defined in this section; (2)
12 Distributing or dispensing less than one ounce of a specified controlled dangerous substance as
13 defined in this section; (3) Possessing with intent to distribute 25 or more but less than 50
14 marijuana plants; (4) Possessing with intent to distribute less than four pounds of
15 marijuana; or (5) Distributing or dispensing more than 28.5 grams of marijuana. (d)
16 “Level 2 Offense”: (1) Possessing with intent to distribute four ounces or more but less
17 than eight ounces of a specified controlled dangerous substance as defined in this section;
18 (2) Distributing or dispensing one ounce or more but less than two ounces of a specified
19 controlled dangerous substance as defined in this section; (3) Possessing with intent to
20 distribute 50 or more but less than 75 marijuana plants; (4) Possessing with intent to
21 distribute four pounds or more but less than 8 pounds of marijuana; or (5) Distributing or
22 dispensing more than one pound but less than five pounds of marijuana. (e) “Level 3
23 Offense”: (1) Possessing with intent to distribute eight ounces or more but less than 16
24 ounces of a specified controlled dangerous substance as defined in this section; (2)
25 Distributing or dispensing two ounces or more but less than four ounces of a specified controlled
26 dangerous substance as defined in this section; (3) Possessing with intent to distribute 75
27 or more but less than 100 marijuana plants. (4) Possessing with intent to distribute eight
28 pounds or more but less than 16 pounds of marijuana, or (5) Distributing or dispensing
29 more than five pounds but less than ten pounds of marijuana. (f) “Level 4
30 Offense”: (1) Possessing with intent to distribute 16 ounces or more of a specified
31 controlled dangerous substance as defined in this section; (2) Distributing or dispensing

32 four ounces or more of a specified controlled dangerous substance as defined in this
33 section; (3) Possessing with intent to distribute 100 or more marijuana plants; (4)
34 Possessing with intent to distribute 16 pounds or more of marijuana or (5) Distributing or
35 dispensing more than ten pounds of marijuana.

36 (g) "Person" means an individual, governmental entity, sole proprietorship, corporation,
37 limited liability company, firm, trust, partnership, or incorporated or unincorporated association,
38 existing under or authorized by the laws of this state, another state, or a foreign country.

39 (h) "Participate in the illegal marketing of controlled dangerous substances", means to transport,
40 import into the Commonwealth, distribute, dispense, sell, possess with intent to distribute, or
41 offer to distribute a controlled dangerous substance, in violation of any of the provisions of
42 chapter 94C. "Participate in the marketing of controlled dangerous substances" does not include
43 the purchase or receipt of a controlled dangerous substance for a personal use only. (i)

44 "Period of illegal use", means, in relation to the individual use of a specified controlled
45 dangerous substance, the time of the individual's first illegal use of a controlled dangerous
46 substance to the accrual of the cause of action. (j) "Place of illegal activity", means, in
47 relation to the individual user of a specified controlled dangerous substance, each county in
48 which the individual illegally possesses or uses a specified controlled dangerous substance.

49 (k) "Place of participation", means, in relation to a defendant in an action brought under
50 this chapter, each county in which the defendant participates in the marketing of controlled
51 dangerous substances. (l) "Specified controlled dangerous substance", means heroin,

52 cocaine, lysergic acid, diethylamide, phencyclidine, methamphetamine, phenyl-2-propanoic
53 (P2P) and any other controlled dangerous substance specified under the provisions of chapter

54 94C as being unlawful to manufacture, distribute, or dispense, or to possess or have under a
55 person's control with intent to manufacture, distribute, or dispense.

56 Section 2. A person who knowingly participates in the illegal marketing of controlled
57 dangerous substances within the Commonwealth is liable for damages, as provided in this
58 chapter, for injury resulting from an individual's illegal use of a controlled dangerous substance.

59 Section 3. (a) Any of the following persons may bring an action for damages caused by
60 an individual's illegal use of a controlled dangerous substance: (1) A parent, legal
61 guardian, child, spouse, or sibling of the controlled dangerous substance user. (2) An
62 individual who was exposed to a controlled dangerous substance in utero. (3) An
63 employer of the controlled dangerous substance user. (4) A medical facility, insurer,
64 governmental entity, employer, or other entity that funds a drug treatment program or employee
65 assistance program for the controlled dangerous substance user or that otherwise expends money
66 on behalf of the controlled dangerous substance user. (5) A person injured as a result of
67 the willful, reckless, or negligent actions of an individual user of an illegal controlled
68 substance. (b) A person entitled to bring action under this chapter may seek damages
69 against: (1) A person who distributed or dispensed a controlled dangerous substance to the
70 individual user of the controlled dangerous substance; or (2) A person who knowingly
71 participated in the marketing of controlled dangerous substances, if all of the following
72 apply: (a) The defendant's place of participation is situated in the same county as the
73 individual user's place of illegal activity; (b) The defendant participated in the marketing
74 of the same type of controlled dangerous substances as those used by the individual user;
75 (c) The defendant was previously convicted of an offense in the Commonwealth for that type of
76 controlled dangerous substance; and (d) The defendant participated in the marketing of

77 controlled dangerous substances at any time during the period the individual user unlawfully
78 used the controlled dangerous substance. (e) A person entitled to bring an action under
79 this section may recover all of the following damages: (1) Economic damages, including,
80 but not limited to, the cost of treatment, rehabilitation and medical expenses, loss of economic or
81 educational potential, loss of productivity, absenteeism, support expenses, accidents or injury,
82 and any other pecuniary loss proximately caused by the use of a controlled dangerous
83 substance. (2) Noneconomic damages, including, but not limited to, physical and
84 emotional pain, suffering, physical impairment, emotional distress, disfigurement, loss of
85 enjoyment, loss of companionship, services and consortium, and other nonpecuniary losses
86 proximately caused by an individual's use of a controlled dangerous substance.

87 (3) Punitive damages.

88 (4) Reasonable attorney fees.

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

90 Section 4. (a) An individual user of a controlled dangerous substance may bring an action
91 for damages caused by the use of a controlled dangerous substance only if all of the following
92 conditions are met:

93 (1) At least six months before filing an action, the individual personally discloses to law
94 enforcement authorities all of the information known to the individual regarding all that
95 individual's sources of controlled dangerous substances. (2) The individual does not use a
96 controlled dangerous substance within the six months immediately preceding the date the user
97 files the action. (3) The individual continues to remain free of the use of all illegal
98 controlled dangerous substances throughout the pendency of the action.

99 (b) An individual user entitled to bring an action under this section may seek damages
100 only from a person who transported, imported into this state, distributed, dispensed, sold,
101 possessed with intent to distribute, or offered to distribute, in violation of any of the provisions of
102 chapter 94C, the controlled dangerous substance actually used by the individual user of a
103 controlled dangerous substance.

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

106 (1) Economic damages, including, but not limited to, the cost of treatment, rehabilitation
107 and medical expenses, loss of economic or educational potential, loss of productivity,
108 absenteeism, accidents or injury, and any other pecuniary loss proximately caused by the
109 person's use of a controlled dangerous substance.

110 (2) Reasonable attorney fees.

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

112 Section 5. (a) A third party shall not pay damages awarded under this act, or provide a
113 defense or money for a defense, on behalf of an insured under a contract of insurance or
114 indemnification. (b) A cause of action authorized pursuant to this chapter may not be

115 assigned, either expressly, by subrogation, or by any other means, directly or indirectly, to any
116 public or publicly funded agency or institution.

117 Section 6. A person whose participation in the marketing of controlled dangerous
118 substances is grounds for liability pursuant to this act shall be rebuttably presumed to be liable
119 for damages incurred by the plaintiff in the following percentages:

120 (a) For a level 1 offense, 25 percent of the damages; (b) For a level 2 offense, 50
121 percent of the damages;
122 (c) For a level 3 offense, 75 percent of the damages; and (d) For a level 4 offense, 100
123 percent of the damages.

124 Section 7. (a) Two or more persons may join in one action under this act as plaintiffs if
125 their respective actions have at least one market for controlled dangerous substances in common
126 and if any portion of the period of use of a controlled dangerous substance overlaps with the
127 period of use of a controlled dangerous substance for every other plaintiff. (b) Two or
128 more persons may be joined in one action under this chapter as defendants if those persons are
129 liable to at least one plaintiff.

130 Section 8. (a) An action by an individual user of a controlled dangerous substance is
131 governed by the principles of comparative responsibility. Comparative responsibility attributed
132 to an individual user does not bar the user's recovery but diminishes the award of damages
133 proportionately, according to the measure of responsibility attributed to the user. The burden of
134 proving comparative responsibility is on the defendant, who shall prove comparative
135 responsibility by clear and convincing evidence.

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

138 Section 9. A person subject to liability under this chapter has a right of action for
139 contribution against another person subject to liability under this chapter. Contribution may be
140 enforced either in the original action or by a separate action brought for that purpose. A plaintiff

141 may seek recovery in accordance with this chapter and other laws against a person whom a
142 defendant has asserted a right of contribution.

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

145 (b) A person against whom recovery is sought who has been convicted of a violation of
146 chapter 94C, manufacturing, distributing or dispensing, or an equivalent offense under federal
147 law or the law of any other state, is estopped from, denying illegal participation in the market for
148 controlled dangerous substances. If such conviction was based upon the same type of controlled
149 dangerous substance as that used by the individual user, the conviction also constitutes prima
150 facie evidence of the person's participation in the marketing of controlled dangerous substances
151 pursuant to this chapter.

152 (c) The absence of a criminal conviction of a person for a violation of chapter 94C or an
153 equivalent offense under federal law or the law of any other state does not bar an action against
154 that person by a plaintiff bringing suit pursuant to this chapter.

155 Section 11. (a) A cause of action accrues under this act when a person has reason to know
156 of the harm from use of a controlled dangerous substance that is the basis for the cause of action
157 and has reason to know that the use of a controlled dangerous substance is the cause of the harm.

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

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163 Section 12. (a) The district attorney's office or the attorney general's office may represent the
164 state or a political subdivision of the state in an action brought under this act.

165 (b) On motion by a governmental agency involved in an investigation or prosecution involving a
166 controlled dangerous substance, an action brought under this act shall be stayed until the
167 completion of any underlying criminal investigation or prosecution.

168 (c) An action shall not be brought under this chapter against a law enforcement officer or agency,
169 or a person acting in good faith at the direction of a law enforcement officer or agency, for
170 participation in illegal marketing of a controlled substance if that participation is in furtherance
171 of an official investigation.

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