HOUSE DOCKET, NO. 2651 FILED ON: 1/21/2011

HOUSE . . . . . No. 3142

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:

An Act providing for the civil liability of drug dealers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
John J. Binienda	*17th Worcester*
John P. Fresolo	*16th Worcester*

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HOUSE . . . . . No. 3142

By Mr. Binienda of Worcester, a petition (accompanied by bill, House, No. 3142) of John J. Binienda and John P. Fresolo relative to the civil liability of drug dealers. The Judiciary.

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

The Commonwealth of Massachusetts

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:

SECTION 1. The General Laws, as appearing in the 2008 Official Edition, are hereby amended by inserting after Chapter 94F the following new chapter:

CHAPTER 94G.

THE DRUG DEALER LIABILITY ACT

Section 1. As used in this chapter, the following terms shall have the following meanings: (a) "Marketing of controlled dangerous substances", the illegal distributing, dispensing, or possessing with intent to distribute a specific controlled dangerous substance. (b) "Individual user of the controlled dangerous substance", the individual whose illegal use of a specified controlled dangerous substance is the basis of an action brought under this chapter. (c) "Level I Offense": (1) Possessing with intent to distribute less than four ounces of a specified controlled dangerous substance as defined in this section; (2) Distributing or dispensing less than one ounce of a specified controlled dangerous substance as defined in this section; (3) Possessing with intent to distribute 25 or more but less than 50 marijuana plants; (4) Possessing with intent to distribute less than four pounds of marijuana; or (5) Distributing or dispensing more than 28.5 grams of marijuana. (d) "Level 2 Offense": (1) Possessing with intent to distribute four ounces or more but less than eight ounces of a specified controlled dangerous substance as defined in this section; (2) Distributing or dispensing one ounce or more but less than two

19 ounces of a specified controlled dangerous substance as defined in this section; (3)
20 Possessing with intent to distribute 50 or more but less than 75 marijuana plants; (4)
21 Possessing with intent to distribute four pounds or more but less that 8 pounds of marijuana; or
22 (5) Distributing or dispensing more than one pound but less than five pounds of
23 marijuana. (e) "Level 3 Offense": (1) Possessing with intent to distribute eight
24 ounces or more but less than 16 ounces of a specified controlled dangerous substance as defined
25 in this section; (2) Distributing or dispensing two ounces or more but less than four
26 ounces of a specified controlled dangerous substance as defined in this section; (3)
27 Possessing with intent to distribute 75 or more but less than 100 marijuana plants. (4)
28 Possessing with intent to distribute eight pounds or more but less than 16 pounds of marijuana,
29 or (5) Distributing or dispensing more than five pounds but less than ten pounds of
30 marijuana. (f) "Level 4 Offense": (1) Possessing with intent to distribute 16 ounces
31 or more of a specified controlled dangerous substance as defined in this section; (2)
32 Distributing or dispensing four ounces or more of a specified controlled dangerous substance as
33 defined in this section; (3) Possessing with intent to distribute 100 or more marijuana
34 plants; (4) Possessing with intent to distribute 16 pounds or more of marijuana or
35 (5) Distributing or dispensing more than ten pounds of marijuana.

36 (g) "Person" means an individual, governmental entity, sole proprietorship,
37 corporation, limited liability company, firm, trust, partnership, or incorporated or unincorporated
38 association, existing under or authorized by the laws of this state, another state, or a foreign
39 country. (h) "Participate in the illegal marketing of controlled dangerous substances",
40 means to transport, import into the Commonwealth, distribute, dispense, sell, possess with intent
41 to distribute, or offer to distribute a controlled dangerous substance, in violation of any of the
42 provisions of chapter 94C. "Participate in the marketing of controlled dangerous substances"
43 does not include the purchase or receipt of a controlled dangerous substance for a personal use
44 only. (i) "Period of illegal use", means, in relation to the individual use of a specified
45 controlled dangerous substance, the time of the individual's first illegal use of a controlled
46 dangerous substance to the accrual of the cause of action. (j) "Place of illegal activity",
47 means, in relation to the individual user of a specified controlled dangerous substance, each
48 county in which the individual illegally possesses or uses a specified controlled dangerous
49 substance.

50 (k) "Place of participation", means, in relation to a defendant in an action brought
51 under this chapter, each county in which the defendant participates in the marketing of controlled
52 dangerous substances. (l) "Specified controlled dangerous substance", means heroin,
53 cocaine, lyscigic acid, diethylamide, phencyclidine, methamphetamine, phenyl-2-propanoic
54 (P2P) and any other controlled dangerous substance specified under the provisions of chapter
55 94C as being unlawful to manufacture, distribute, or dispense, or to possess or have under a
56 person's control with intent to manufacture, distribute, or dispense.

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

61 Section 3. (a) Any of the following persons may bring an action for damages
62 caused by an individual's illegal use of a controlled dangerous substance: (1) A parent,
63 legal guardian, child, spouse, or sibling of the controlled dangerous substance user. (2) An
64 individual who was exposed to a controlled dangerous substance in utero. (3) An
65 employer of the controlled dangerous substance user. (4) A medical facility, insurer,
66 governmental entity, employer, or other entity that funds a drug treatment program or employee
67 assistance program for the controlled dangerous substance user or that otherwise expends money
68 on behalf of the controlled dangerous substance user. (5) A person injured as a result of
69 the willful, reckless, or negligent actions of an individual user of an illegal controlled
70 substance. (b) A person entitled to bring action under this chapter may seek damages
71 against: (1) A person who distributed or dispensed a controlled dangerous substance to the
72 individual user of the controlled dangerous substance; or (2) A person who knowingly
73 participated in the marketing of controlled dangerous substances, if all of the following
74 apply: (a) The defendant's place of participation is situated in the same county as the
75 individual user's place of illegal activity; (b) The defendant participated in the marketing
76 of the same type of controlled dangerous substances as those used by the individual user;
77 (c) The defendant was previously convicted of an offense in the Commonwealth for that type of
78 controlled dangerous substance; and (d) The defendant participated in the marketing of
79 controlled dangerous substances at any time during the period the individual user unlawfully
80 used the controlled dangerous substance. (e) A person entitled to bring an action under
81 this section may recover all of the following damages: (1) Economic damages, including,
82 but not limited to, the cost of treatment, rehabilitation and medical expenses, loss of economic or
83 educational potential, loss of productivity, absenteeism, support expenses, accidents or injury,
84 and any other pecuniary loss proximately caused by the use of a controlled dangerous
85 substance. (2) Noneconomic damages, including, but not limited to, physical and
86 emotional pain, suffering, physical impairment, emotional distress, disfigurement, loss of
87 enjoyment, loss of companionship, services and consortium, and other nonpecuniary losses
88 proximately caused by an individual's use of a controlled dangerous substance.

89 (3) Punitive damages.

90 (4) Reasonable attorney fees.

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

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

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

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

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

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

112 (2) Reasonable attorney fees.

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

115 Section 5. (a) A third party shall not pay damages awarded under this act, or
116 provide a defense or money for a defense, on behalf of an insured under a contract of insurance
117 or indemnification. (b) A cause of action authorized pursuant to this chapter may not be
118 assigned, either expressly, by subrogation, or by any other means, directly or indirectly, to any
119 public or publicly funded agency or institution.

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

123 (a) For a level 1 offense, 25 percent of the damages; (b) For a level 2
124 offense, 50 percent of the damages;

125 (c) For a level 3 offense, 75 percent of the damages; and (d) For a level 4 offense,
126 100 percent of the damages.

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

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

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

141 Section 9. A person subject to liability under this chapter has a right of action for
142 contribution against another person subject to liability under this chapter. Contribution may be
143 enforced either in the original action or by a separate action brought for that purpose. A plaintiff
144 may seek recovery in accordance with this chapter and other laws against a person whom a
145 defendant has asserted a right of contribution.

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

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

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

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

160 of action and has reason to know that the use of a controlled dangerous substance is the cause of
161 the harm.

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

166

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

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

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

176

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