



Senate Fiscal Agency
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Senate Bills 993 through 995 (as enacted)
Sponsor: Senator Michael D. MacDonald (S.B. 993)
Senator Mark Huizenga (S.B. 994)
Senator Betty Jean Alexander (S.B. 995)
Senate Committee: Health Policy and Human Services
House Committee: Judiciary

PUBLIC ACTS 83-85 of 2022

Date Completed: 1-3-23

RATIONALE

On February 25, 2022, Johnson & Johnson and the "Big Three" drug distributors, McKesson, Cardinal Health, and AmerisourceBergen, finalized a \$26.0 billion opioid settlement agreement resolving claims by state and local governments that the companies helped fuel the opioid epidemic in the United States. The deal aims to settle thousands of civil lawsuits filed against the companies by state and local governments that were consolidated in multidistrict litigation, *In re Nat'l Prescription Opiate Litigation*.¹

Under the settlement, Johnson & Johnson will pay \$5.0 billion over nine years, with up to \$3.7 billion paid in the first three years, through Janssen, a pharmaceutical subsidiary, and the three drug distributors will pay a combined nearly \$21.0 billion over 18 years (McKesson will pay \$7.9 billion and AmerisourceBergen and Cardinal Health each will pay up to \$6.4 billion). Forty-six states, including Michigan, the District of Columbia, all eligible territories, and roughly 90% of eligible local governments signed on to the deal.

The companies started releasing funds to a national administrator on April 2, 2022, and distribution of the money to state and local governments began in the second or third quarter of 2022. Michigan is expected to receive approximately \$776.0 million over 18 years. Roughly half of the total will be paid directly to eligible local governments while the other half will go to the State. (The State and local governments entered into a separate agreement directing how opioid settlement funds will be distributed.)

Among other things, the settlement agreement requires that states spend at least 70% of the settlement money for opioid remediation expenses and allows 15% of the funds to be used for administrative expenses or to reimburse the states for past opioid-related expenses. Also, the settlement agreement requires states to ban local governments from pursuing any future legal action against Johnson & Johnson and the Big Three related to opioid settlements. Failure to so would result in a state not receiving 100% of its settlement funds.

It was suggested that a fund be created to receive settlement fund; that a committee be created to review local, State, and Federal initiatives and activities related to education, prevention, treatment, and services for people and families affected by substance use disorders and make funding recommendations to the Legislature; and that legislation be enacted to fulfill the terms of the settlement agreement.

CONTENT

Senate Bill 993 amended the Michigan Trust Fund Act to create the "Michigan Opioid

¹ Multidistrict litigation is a legal proceeding under Federal law that allows civil actions in different district courts that involve one or more common questions of fact to be temporarily consolidated and transferred to a single district court for pretrial proceedings. See 28 USC 1407.

Healing and Recovery Fund" within the Department of Treasury and to require the State Treasurer to deposit into the Fund all proceeds received by the State as a result of a judgment or settlement pertaining to violations, or alleged violations, of law pertaining to the manufacture, marketing, and distribution of opioids.

Senate Bill 994 added Chapter 8A (Opioid Advisory Commission) to the Legislative Council Act to create the "Opioid Advisory Commission" within the Legislative Council and to prescribe its membership. The Commission, among other things, must review local, State, and Federal initiatives related to education, prevention, treatment, and services for individuals and families affected by substance abuse disorders and co-occurring mental health conditions. The Commission also must provide, by March 30 of each year, a report to the Governor, the Attorney General, the Senate Majority Leader, the Speaker of the House of Representatives, and the chairs of the House and Senate Appropriations Committees including the information specified in the bill.

Senate Bill 995 enacted the "Opioid Liability Litigation Act" to prohibit a political subdivision of the State from commencing or maintaining legal actions against specified entities related to opioid settlements.

The bills took effect on May 19, 2022.

Senate Bill 993

The bill creates the Michigan Opioid Healing and Recovery Fund within the Department of Treasury. The State Treasurer must deposit all proceeds received by the State as a result of any judgment, settlement, or compromise of claims pertaining to violations, or alleged violations, of law related to the manufacture, marketing, distribution, dispensing, or sale of opioids into the Fund, except for proceeds received under the Medicaid False Claims Act. The State Treasurer may deposit money or other assets from any other source into the Fund provided by law. The State Treasurer must direct the investment of the Fund and must credit to it interest and earnings from the investments. Money in the Fund at the close of the fiscal year must remain in the Fund and may not lapse to the General Fund.

The Department of Treasury is the administrator of the Michigan Opioid Healing and Recovery Fund for auditing purposes. The Department must spend money from the Fund, on appropriation, in a manner and for purposes consistent with opioid judgment, settlement, or compromise of claims from which the money is received. Money in the Fund must be used to create or supplement programs or services. The money may not be used to replace any other governmental funds that otherwise would have been appropriated or spent for any other program or service. The Department of Attorney General may spend money from the Fund, on appropriation, to pay for costs and reasonable attorney fees incurred in the pursuit of an opioid judgment, settlement, or compromise of claims, except for a pursuit under the Medicaid False Claim Act. If possible, the Department of Attorney General must attempt to have costs and attorney fees paid by a defendant or source other than the Fund.

Senate Bill 994

Membership & Meetings

The bill creates the Opioid Advisory Commission within the Legislative Council. The Commission consists of 12 voting members that have experience in substance abuse prevention, health care, mental health, law enforcement, local government, first responder work, or similar fields appointed as follows:

- Four members appointed by the Senate Majority Leader.
- Four members appointed by the Speaker of the House of Representatives.
- One member appointed by the Senate Minority Leader.

- One member appointed by the House Minority Leader.
- One member appointed by the Senate Majority Leader and the Speaker of the House selected from a list of three individuals provided by the Governor.
- One member appointed by the Senate Majority Leader and the Speaker of the House selected from a list of three individuals provided by the Attorney General.

The Commission also consists of the Director of the Department of Health and Human Services, or his or her designee, and the Council Administrator, or his or her designee, who serve as ex officio members without vote.

In appointing members or providing a list from which members are selected, the Governor, the Senate Majority Leader, the Speaker of the House, the Senate Minority Leader, the House Minority Leader, and the Attorney General must ensure that the members, to the extent possible, reflected the geographic diversity of the State.

All initial members must be appointed within 60 days after the bill's effective date.

Of the first voting members appointed, four must be appointed to one-year terms, four must be appointed to two-year terms, and four must be appointed to three-year terms, as determined by the Senate Majority Leader and the Speaker of the House. After the first appointments, the term of a voting member is three years or until a successor is appointed, whichever is later. If a vacancy occurs on the Commission, an individual must be appointed in the same manner as the original appointment to fill the vacancy for the balance of the term. The Senate Majority Leader and the Speaker of the House may concur to remove a Commission member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

The Council Administrator, or his or her designee, must call the first meeting of the Commission. At the first meeting, the Commission must elect a member as a chairperson and, except as otherwise provided, may elect other officers that it considers necessary or appropriate. The Council Administrator, or his or her designee, serves as secretary. The Commission must meet at least quarterly and may meet more frequently at the call of the chairperson or at the request of at least seven members. Seven voting members of the Commission constitute a quorum for transacting business. A majority vote of the voting members appointed and serving is required for any Commission action.

The Commission is subject to the Open Meetings Act and the Freedom of Information Act.

A Commission member is not entitled to compensation for service on the Commission but may be reimbursed for actual and necessary expenses incurred in serving.

Duties & Responsibilities

The bill requires the Commission to adopt policies and procedures for the administration of the Commission as allowed by law and to review local, State, and Federal initiatives and activities related to education, prevention, treatment, and services for individuals and families affected by substance use disorders and co-occurring mental health conditions, and establish priorities to address substance use disorders and co-occurring mental health conditions, for the purpose of recommending funding initiatives to the Legislature.

By March 30 of each year, the Commission also must provide a written report to the Governor, the Attorney General, the Senate Majority Leader, the Speaker of the House, and the chairs of the Senate and House Appropriations Committees that includes all of the following:

- An evidence-based assessment of the previous use of money appropriated from the Michigan Opioid Healing and Recovery Fund, including the extent to which those expenditures abated the opioid crisis in the State.

- Recommended funding for tasks, activities, projects, and initiatives that would support the Commission's objectives.
- Recommended additional legislation needed to accomplish the Commission's objectives, if applicable.
- Goals and recommendations, including the rationale behind them, sustainability plans, and performance indicators relating to substance use disorder and co-occurring mental health conditions prevention, treatment, recovery, and harm reduction efforts and reducing disparities in access to prevention, treatment, recovery, and harm reduction programs, services, supports, and resources.
- A statewide evidence-based needs assessment.

The statewide evidence-based need assessment must include at least all of the following:

- A summary of current local, State, and Federal funding used to address substance use disorders and co-occurring mental health conditions.
- A discussion about how to prevent overdoses, address disparities in access to health care, and prevent youth substance use.
- An analysis, based on quantitative and qualitative data, of the effects on the State of substance use disorders and co-occurring mental health conditions.
- A description of the most common risk factors associated with substance use disorders and co-occurring mental health conditions.

Senate Bill 995

Under the Opioid Liability Litigation Act, a political subdivision of the State may not commence or maintain an action as follows:

- After January 1, 2021, an action related to the released claims as defined in the distributor settlement against the released entities as defined in the distributor settlement.
- After January 1, 2021, an action related to the released claims as defined in the Janssen settlement against the released entities as defined in the Janssen settlement.

"Political subdivision" means a public body corporate in the State, an agency of a public body corporate in the State, a nonincorporated body in the State of whatever nature, or an agency of a nonincorporated body in the State. The term includes a county, city, village, township, school district, or special district or authority of the State. The term does not include the State.

"Distributor settlement" means the master settlement agreement arising out of the MDL [i.e., multidistrict litigation] and entered into by the State with AmerisourceBergen Corporation, Cardinal Health, Inc., and McKesson Corporation; "MDL" means *In re Nat'l Prescription Opiate Litigation*, multidistrict litigation consolidated in the United States District Court for the Northern District of Ohio, Case No. 1:17-MD-2804.

"Janssen settlement" means the master settlement agreement arising out of the MDL and entered into by the State with Janssen Pharmaceuticals, Inc.

MCL 12.252 et al. (S.B. 993)
MCL 4.1850 & 4.1851 (S.B. 994)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Centers for Disease Control and Prevention estimates that roughly 108,000 people died from drug overdoses nationwide between June 2021 and June 2022 (a 5.0% increase from the previous

12-month period and 28% higher than from July 2019 to June 2020). In Michigan, 2,748 died from drug overdoses during the same 12-month period.

Michigan is expected to receive nearly \$800.0 million over the next 18 years as part of the settlement with Johnson & Johnson and the "Big Three" pharmaceutical distributors. Senate Bill 993 creates the Michigan Opioid Health and Recovery Fund to receive dollars from the national opioid settlement and any future opioid case for use to fund abatement practices and support for opioid use disorder, substance use disorder, and mental health treatment. Senate Bill 994 creates the Opioid Advisory Commission to review local, State, and Federal initiatives and activities related to education, prevention, treatment, and services for people and families affected by substance use disorder and make funding recommendations to the Legislature. The bill provides proper oversight to ensure that the settlement funds are being used efficiently to combat the opioid epidemic. Senate Bill 995 creates the Opioid Liability Litigation Act to prohibit local units of government from pursuing further legal action against Johnson & Johnson and the Big Three related to opioid settlements. This ensures that the State complies with the terms of the settlement agreement and will not lose any of the settlement funds.

Legislative Analyst: Stephen P. Jackson

FISCAL IMPACT

Senate Bill 993

The bill will have a minimal fiscal impact on the State and no fiscal impact on local units of government. The Department of Treasury will experience minor administrative costs to create and administer the Michigan Opioid Healing and Recovery Fund. The costs will be minimal and within current appropriations.

The Department of the Attorney General may receive additional appropriations from the Fund to support costs and reasonable attorney fees incurred in pursuit of opioid judgments, settlements, or compromise of claims. The amount of funding that may be provided to the Department of the Attorney General from the Fund is subject to appropriations.

Senate Bill 994

The bill will have an indeterminate fiscal impact on the Legislative Council. The bill creates the Opioid Advisory Commission within the Legislative Council. A Council member may not receive a salary but is eligible for reimbursement for necessary expenses incurred in the performance of his or her duties. The cost for reimbursing members for necessary expenses (based on other similar commissions and committees) will average less than \$50,000 annually.

Senate Bill 995

The bill will have no immediate fiscal impact on State or local government. The settlement agreements, and the formulas for determining State shares of settlement payments that will continue for the next 18 years, can be found on the National Opioid Settlement website.² These formulas include base-level and incentive-level payments to states and local governments. The incentives are achieved by making efforts to end litigation and prohibit future claims. Enacting the bill will allow the State and local governments that have settled to receive full incentives under the settlement payment plans.

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² "National Opioid Settlement", www.nationalopioidsettlement.com. Retrieved on 4-12-22.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.