

BILL

No. 78

An Act to amend *The Opioid Damages and Health Care Costs Recovery Act*

(Assented to _____)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Opioid Damages and Health Care Costs Recovery Amendment Act, 2022*.

SS 2020, c 32 amended

2 *The Opioid Damages and Health Care Costs Recovery Act* is amended in the manner set forth in this Act.

Section 2 amended

3(1) **Subsection 2(1) is amended:**

(a) **by adding the following definition in alphabetical order:**

“**‘consultant’** means a person who, in the course of providing services to a manufacturer or wholesaler, assists the manufacturer or wholesaler in designing, recommending or implementing a strategy to promote an opioid product”;

(b) **in the definition of “manufacturer” by striking out the portion preceding clause (a) and substituting the following:**

“**‘manufacturer’** means a person who manufactures or has manufactured an opioid product or an active pharmaceutical ingredient contained in an opioid product and a person who, in the past or currently:”;

(c) **in clause (b) of the definition of “opioid-related wrong” by striking out “or wholesaler” and substituting “, wholesaler or consultant”; and**

(d) **in the definition of “person” by adding “partnership,” before “trust”.**

(2) **Subsection 2(3) is amended in the portion preceding clause (a) by adding “or (5.1)” after “subsection (2)”.**

(3) **The following subsection is added after subsection 2(5):**

“(5.1) For the purposes of this Act, a consultant who provides services to a manufacturer or wholesaler is presumed to provide those services to any related manufacturer or wholesaler”.

(4) Subsection 2(6) is repealed and the following substituted:

“(6) For the purposes of determining the market share of a manufacturer for a type of opioid product sold in Saskatchewan, the court must calculate the manufacturer’s market share for the type of opioid product by the following formula:

$$\text{DMS} = \frac{\text{DM}}{\text{MM}} \times 100\%$$

where:

DMS is the manufacturer’s market share for the type of opioid product from the date of the earliest opioid-related wrong committed by that manufacturer to the date of trial;

DM is the quantity of the type of opioid product manufactured or promoted by the manufacturer that is distributed or sold within Saskatchewan from the date of the earliest opioid-related wrong committed by that manufacturer to the date of trial;

MM is the quantity of the type of opioid product manufactured or promoted by all manufacturers that is purchased or dispensed within Saskatchewan for the purpose of providing health care benefits from the date of the earliest opioid-related wrong committed by the manufacturer to the date of trial.

“(7) For the purposes of determining the market share of a wholesaler for a type of opioid product sold in Saskatchewan, the court must calculate the wholesaler’s market share for the type of opioid product by the following formula:

$$\text{DMS} = \frac{\text{DM}}{\text{MM}} \times 100\%$$

where:

DMS is the wholesaler’s market share for the distribution of the type of opioid product from the date of the earliest opioid-related wrong committed by that wholesaler to the date of trial;

DM is the quantity of the type of opioid product distributed by the wholesaler that is distributed within Saskatchewan from the date of the earliest opioid-related wrong committed by that wholesaler to the date of trial;

MM is the quantity of the type of opioid product distributed by all wholesalers that is distributed within Saskatchewan for the purpose of providing health care benefits from the date of the earliest opioid-related wrong committed by the wholesaler to the date of trial”.

Section 3 amended

4 Subsection 3(1) is amended by striking out “or wholesaler” and substituting “, wholesaler or consultant”.

Section 5 amended

5 Subsection 5(2) is amended by striking out “or wholesalers” wherever it appears and in each case substituting “, wholesalers or consultants”.

New section 5.1

6 The following section is added after section 5:

“Joint and several liability of directors and officers

5.1(1) A director or officer of a corporation who directs, authorizes, assents to, acquiesces in or participates in an opioid-related wrong committed by the corporation is jointly and severally liable with the corporation for the cost of health care benefits, or for damages, caused or contributed to by the opioid-related wrong.

(2) Subsection (1) applies whether or not an action against the corporation for recovery of the cost of health care benefits, or for damages, has been commenced or concluded.

(3) A director or officer is not liable under subsection (1) if the director or officer proves, on a balance of probabilities, that the director or officer:

(a) did not know, and in the exercise of reasonable diligence could not have known, that the corporation was committing an opioid-related wrong; or

(b) exercised reasonable diligence to prevent the corporation from committing the opioid-related wrong”.

Section 7 amended

7 Subsection 7(1) is amended by striking out “2 years” and substituting “15 years”.

Coming into force

8 This Act comes into force on assent but is retroactive and is deemed to have been in force on and from July 3, 2020.

SECOND SESSION

Twenty-ninth Legislature

SASKATCHEWAN

B I L L

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Health Care Costs Recovery Act*

Received and read the

First time

Second time

Third time

And passed

Honourable Paul Merriman
