

Date:

(Filing No. H-)

TAXATION

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 984, L.D. 1362, Bill, “An Act To Fund Opioid Treatment by Establishing an Excise Tax on Manufacturers of Opioids”

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 5 MRSA §20010 is enacted to read:

§20010. Opioid Use Stewardship Fund

1. Fund established. The Opioid Use Stewardship Fund, referred to in this section as "the fund," is established for the purpose of supporting opioid use disorder prevention, treatment and recovery and is administered by the department. The fund consists of money received from proceeds of the opioid tax under Title 36, chapter 725 and appropriations, allocations and contributions from private and public sources. The fund must be held separate from all other money, funds and accounts. Eligible investment earnings credited to the assets of the fund become part of the assets of the fund. Unexpended balances remaining in the fund at the end of a fiscal year do not lapse and must be carried forward to the next fiscal year.

2. Uses of fund proceeds. The proceeds of the fund must be used for opioid use disorder prevention, treatment and recovery services, costs associated with the administration of this section and other purposes consistent with this section.

3. Report. By April 1st of each calendar year, a manufacturer subject to the tax under Title 36, section 4941 shall report to the department in a form determined by the department the following information on opioids made by the manufacturer subject to the tax that were distributed in the State the previous calendar year:

A. The manufacturer's name, address, telephone number, e-mail address, website address and United States Department of Justice, Drug Enforcement Administration registration number and any registration or identification number required by an agency of the State;

1 B. The name, address and United States Department of Justice, Drug Enforcement
2 Administration registration number of the person to whom the opioids subject to the
3 tax under Title 36, section 4941 were provided in the State and each date the opioids
4 were provided;

5 C. The gross receipts in dollars of all opioids distributed;

6 D. The name and national drug code of each opioid distributed;

7 E. The number of containers and the metric quantity of controlled substance in each
8 container of opioids distributed;

9 F. The total number of morphine milligram equivalents of opioids that were
10 distributed; and

11 G. Any other information determined necessary by the department.

12 The department shall forward the information received under this subsection to the State
13 Tax Assessor for the administration of the tax under Title 36, section 4941. For purposes
14 of this subsection, "distribution" has the same meaning as in Title 36, section 4941,
15 subsection 1, paragraph A.

16 **4. Rules.** The department, in consultation with the Maine Board of Pharmacy under
17 Title 32, section 13711, shall adopt rules to carry out the purposes of this section. Rules
18 adopted under this subsection are routine technical rules as defined in Title 5, chapter
19 375, subchapter 2-A.

20 **Sec. 2. 36 MRSA c. 725** is enacted to read:

21 **CHAPTER 725**

22 **TAX ON OPIOIDS**

23 **§4941. Opioid tax**

24 **1. Definitions.** As used in this chapter, unless the context otherwise indicates, the
25 following terms have the following meanings.

26 A. "Distribution" or "distributed" means the final sale of opioids to a consumer.

27 B. "Generic substitute" means a drug that is classified as being the therapeutic
28 equivalent to another drug in the most contemporary version of a publication of the
29 federal Food and Drug Administration that lists approved drug products with
30 therapeutic equivalence evaluations and that is:

31 (1) The same active ingredient of the therapeutic equivalent identified by the
32 federal Food and Drug Administration; and

33 (2) Equivalent in strength to the strength specified on the applicable prescription.

34 C. "Manufacturer" means a person that makes opioids if more than 100,000
35 morphine milligram equivalents of that person's prescription opioid products are
36 distributed in this State during the tax year.

37 D. "Opiate" means the dried, condensed juice of a poppy, Papaver somniferum L.,
38 that has a narcotic, soporific, analgesic and astringent effect.

- 1 E. "Opioid" means:
2 (1) An opiate;
3 (2) A synthetic or semisynthetic narcotic that has effects similar to natural opium
4 alkaloids but is not derived from opium; or
5 (3) A derivative of an opioid described in subparagraph (1) or (2).

6 **2. Tax rate.** Beginning January 1, 2020 and ending December 31, 2023, an excise
7 tax is imposed upon a manufacturer on opioids manufactured by that manufacturer that
8 are distributed in the State at the rate of:

9 A. \$0.01 per morphine milligram equivalent for a brand-name opioid; and

10 B. \$0.0025 per morphine milligram equivalent for a generic substitute.

11 **3. Exemptions.** A person is exempted from the tax under this section:

12 A. If the State is prohibited from taxing the person under the United States
13 Constitution or laws of the United States or under the Constitution of Maine; or

14 B. For opioids distributed in the State for the purpose of medication-assisted
15 treatment of substance use disorder. The Maine Board of Pharmacy under Title 32,
16 section 13711 periodically shall provide to the assessor a list of medications
17 exempted under this paragraph.

18 **4. Returns; payment of opioid tax required.** Annually, on or before May 15th and
19 following the submission of the report to the Department of Health and Human Services
20 required by Title 5, section 20010, subsection 3, a person subject to the tax imposed by
21 this chapter shall file a return on a form prescribed and furnished by the assessor and pay
22 to the assessor the tax due pursuant to this chapter for the preceding calendar year.

23 **5. Revenue.** All taxes, interest, penalties and other amounts received by the assessor
24 under this section must be credited to a General Fund suspense account. No later than the
25 last day of each month, the State Controller shall transfer all revenues received by the
26 assessor during the month under subsection 4 to the Opioid Use Stewardship Fund
27 established under Title 5, section 20010.

28 **6. Review.** By March 15, 2023, the joint standing committee of the Legislature
29 having jurisdiction over taxation matters shall review the tax imposed under this section
30 and may submit a bill to the First Regular Session of the 131st Legislature to extend,
31 amend or repeal the tax.

32 **Sec. 3. Appropriations and allocations.** The following appropriations and
33 allocations are made.

34 **ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF**
35 **Revenue Services, Bureau of 0002**

36 Initiative: Provides one-time funding for computer programming to create a new tax and
37 related forms in the sales tax system.

1	GENERAL FUND	2019-20	2020-21
2	All Other	\$100,000	\$0
3			
4	GENERAL FUND TOTAL	<u>\$100,000</u>	<u>\$0</u>

5	ADMINISTRATIVE AND FINANCIAL		
6	SERVICES, DEPARTMENT OF		
7	DEPARTMENT TOTALS	2019-20	2020-21
8			
9	GENERAL FUND	\$100,000	\$0
10			
11	DEPARTMENT TOTAL - ALL FUNDS	<u>\$100,000</u>	<u>\$0</u>

12 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**

13 **Opioid Stewardship Fund N314**

14 Initiative: Provides allocations to support opioid use disorder prevention, treatment and
15 recovery.

16	OTHER SPECIAL REVENUE FUNDS	2019-20	2020-21
17	All Other	\$0	\$1,562,500
18			
19	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$0</u>	<u>\$1,562,500</u>

20	HEALTH AND HUMAN SERVICES,		
21	DEPARTMENT OF		
22	DEPARTMENT TOTALS	2019-20	2020-21
23			
24	OTHER SPECIAL REVENUE FUNDS	\$0	\$1,562,500
25			
26	DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$1,562,500</u>

27	SECTION TOTALS	2019-20	2020-21
28			
29	GENERAL FUND	\$100,000	\$0
30	OTHER SPECIAL REVENUE FUNDS	\$0	\$1,562,500
31			
32	SECTION TOTAL - ALL FUNDS	<u>\$100,000</u>	<u>\$1,562,500</u>
33			

34 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
35 section number to read consecutively.

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SUMMARY

This amendment makes the following changes to the bill.

1. It provides that the excise tax is a tax on manufacturers of opioids if more than 100,000 morphine milligram equivalents of the manufacturer's prescription opioid products are dispensed in the State in the tax year.
2. It changes the rate of the tax from 0.1¢ per morphine milligram equivalent to \$0.01 per morphine milligram equivalent for a brand-name opioid distributed in the State or \$0.0025 per morphine milligram equivalent for a generic substitute.
3. It removes the prohibition on passing the tax on to consumers.
4. It provides that revenue collected from the tax also may be used to fund the costs of administering the tax and provides necessary administrative details.
5. It provides that the tax is in effect until December 31, 2023 and requires the joint standing committee of the Legislature having jurisdiction over taxation matters to review the tax. It authorizes the committee to submit a bill to extend, amend or repeal the tax to the 131st Legislature based on the review.
6. It adds an appropriations and allocations section.

FISCAL NOTE REQUIRED
(See attached)