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Legislative Document

No. 793

S.P. 237

In Senate, February 12, 2019

An Act To Improve Accountability of Opioid Manufacturers

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by President JACKSON of Aroostook.
Cosponsored by Representative MADIGAN of Waterville and
Senators: CLAXTON of Androscoggin, GRATWICK of Penobscot, LIBBY of Androscoggin,
VITELLI of Sagadahoc, Representatives: BAILEY of Saco, HYMANSON of York.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA c. 525** is enacted to read:

3 **CHAPTER 525**

4 **OPIOID CRISIS ACCOUNTABILITY ACT**

5 **§20101. Short title**

6 This chapter may be known and cited as "the Opioid Crisis Accountability Act."

7 **§20102. Definitions**

8 As used in this chapter, unless the context otherwise indicates, the following terms
9 have the following meanings.

10 **1. Abuse liability.** "Abuse liability" means the potential of an opioid medication to
11 result in physical or psychological dependence on the opioid medication that is likely to
12 lead to substance use disorder as described in section 20003, subsection 17-A.

13 **2. Commissioner.** "Commissioner" means the Commissioner of Health and Human
14 Services.

15 **3. Department.** "Department" means the Department of Health and Human
16 Services.

17 **4. Opioid medication manufacturer or distributor.** "Opioid medication
18 manufacturer or distributor" means a business operating in this State that manufactures or
19 distributes opioid medication to another person or business in this State.

20 **§20103. Illegal marketing or distribution of opioid medication prohibited**

21 **1. Prohibited acts.** An opioid medication manufacturer or distributor may not:

22 A. Falsely represent in this State, by means of distributing marketing materials or
23 otherwise advertising, that an opioid medication:

24 (1) Does not have abuse liability; or

25 (2) Has a lower abuse liability than another opioid medication;

26 B. Distribute a quantity of opioid medications in this State that is not medically
27 reasonable; or

28 C. Fail to report to the commissioner pursuant to section 20104 an order or pattern of
29 orders for the distribution of opioid medication in this State that is not medically
30 reasonable.

1 **§20104. Reporting required**

2 An opioid medication manufacturer or distributor shall report to the commissioner an
3 order or pattern of orders for the distribution of opioid medication in this State that is not
4 medically reasonable.

5 **§20105. Medically reasonable standard**

6 The department shall establish by rule the medically reasonable standard applicable
7 to section 20103, subsection 1, paragraphs B and C. In adopting the standard, the
8 department shall consult data from the automated reports and consolidated ordering
9 system of the United States Department of Justice.

10 **§20106. Investigation**

11 The Attorney General, upon the Attorney General's own initiative or upon petition of
12 the commissioner or of 50 or more residents of the State, shall investigate suspected
13 violations of this chapter.

14 **§20107. Violations**

15 **1. Penalty for individual.** Notwithstanding any other law to the contrary, a person
16 employed by an opioid medication manufacturer or distributor who directly and
17 knowingly violates section 20103 or 20104 commits a civil violation for which a fine of
18 not more than the total of the following may be adjudged:

19 A. The amount of the person's salary from the period in which the person was in
20 violation; and

21 B. The amount by which the person's stock or other certificates of ownership interest
22 in the opioid medication manufacturer or distributor increased in value during the
23 period in which the person was in violation.

24 **2. Penalty for business.** An opioid medication manufacturer or distributor that
25 knowingly violates section 20103 or 20104 commits a civil violation for which a fine of
26 not more than 25% of the total profit of the opioid medication manufacturer or distributor
27 from the sale of opioid medication in the United States during the period in which the
28 opioid medication manufacturer or distributor was in violation.

29 **§20108. Fund**

30 **1. Fund established.** The Opioid Reimbursement Fund, referred to in this section as
31 "the fund," is established as a nonlapsing fund in the department for the purposes
32 specified in this section.

33 **2. Source of funds.** The State Controller shall credit to the fund any penalties and
34 finances assessed for violations of this chapter.

35 **3. Uses of the fund.** The fund may be used for activities of the department relating
36 to substance use disorder pursuant to chapter 521.

