

CHAPTER 240

(HB 92)

*Provisions of this bill that are to be deleted due to vetoes of the Governor that were not overridden by the General Assembly are displayed as bracketed text with intervening strikethrough and enclosed in double asterisks, e.g., ****[text]****.*

AN ACT relating to the opioid abatement trust fund and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 15.293 is amended to read as follows:

- (1) As used in this section, "commission" means the Kentucky Opioid Abatement Advisory Commission created in KRS 15.291.
- (2) There is hereby established in the State Treasury a trust and agency account to be known as the opioid abatement trust fund. Moneys in the fund are hereby appropriated for the purposes set forth in KRS 15.291, distributed as described in subsection (3) of this section, and shall not be appropriated or transferred by the General Assembly for any other purposes.
- (3) The fund shall consist of:
 - (a) Fifty percent (50%) of all proceeds received by the Commonwealth, counties, consolidated local governments, urban-county governments, and cities of the Commonwealth in any settlement or judgment *or bankruptcy proceeding* against McKesson Corporation, Cardinal Health 5, LLC, Amerisourcebergen Drug Corporation, ~~and~~ Johnson & Johnson, *and any named defendant in In re National Prescription Opiate Litigation, MDL No. 2804, Case No. 1:17-md-02804, in the United States District Court for the Northern District of Ohio*, and any of their affiliates or subsidiaries related to opioid manufacturing or distribution to the extent included in a settlement agreement; and
 - (b) Any other moneys received from state appropriations, gifts, grants, or federal funds.
- (4)
 - (a) The fund shall not consist of the remaining fifty percent (50%) of all proceeds received by the Commonwealth, counties, consolidated local governments, urban-county governments, and cities of the Commonwealth in any settlement or judgment *or bankruptcy proceeding* against McKesson Corporation, Cardinal Health 5, LLC, Amerisourcebergen Drug Corporation, ~~and~~ Johnson & Johnson, *and any named defendant in In re National Prescription Opiate Litigation, MDL No. 2804, Case No. 1:17-md-02804, in the United States District Court for the Northern District of Ohio*, and any of their affiliates or subsidiaries related to opioid manufacturing or distribution to the extent included in a settlement agreement.
 - (b) The remaining fifty percent (50%) of all proceeds not included in the fund shall be paid to counties, consolidated local governments, urban-county governments, and cities of the Commonwealth in accordance with *the negotiation class distribution metrics established in In re National Prescription Opiate Litigation, MDL No. 2804, Case No. 1:17-md-02804, in the United States District Court for the Northern District of Ohio. To the extent that the negotiation class distribution metrics would result in a city receiving a sum total of less than thirty thousand dollars (\$30,000) in any individual settlement, judgment, or bankruptcy proceeding, such payments shall be made to the county, consolidated local government, or urban-county government in which that city sits*~~an agreement reached among them that incorporates the criteria of KRS 15.291(5). If no such agreement is reached, the money shall be paid to a trustee appointed jointly by the Kentucky Association of Counties and the Kentucky League of Cities for distribution of the funds to counties, consolidated local governments, urban-county governments, and cities of the Commonwealth using the criteria listed in KRS 15.291(5)].~~
 - (c)
 1. Each recipient of moneys from the fund shall submit on an annual basis a certification that the funds were used consistent with the criteria in KRS 15.291(5), a description of the use of such funds, and such other information as the commission requests through administrative regulation.
 2.
 - a. Each county, consolidated local government, urban-county government, or city of the Commonwealth that receives any proceeds under paragraph (b) of this subsection shall submit, on an annual basis a certification that the funds were used consistent with the

criteria in KRS 15.291(5), a list of fund recipients and amounts, a description of the use of the funds, and any other information as the commission requests through the promulgation of an administrative regulation.

- b. If a trustee is appointed under paragraph (b) of this subsection, the certifications shall be sent to the trustee, and the trustee will compile and submit one (1) report to the commission.
 - c. If a trustee is not appointed, the certifications shall be submitted to the commission as provided by administrative regulation.
 - d. Funds shall be withheld from any county, consolidated local government, urban-county government, or city of the Commonwealth that does not comply with this paragraph until such time as compliance is achieved.
- (d) To the extent that a settlement has been reached in any litigation against the companies listed in paragraph (a) of this subsection, each county, consolidated local government, urban-county government, ~~and~~ city, political subdivision, and public agency, as that term is defined in KRS 61.805(2), of the Commonwealth shall be deemed to have released its claims against the companies listed in paragraph (a) of this subsection and their affiliates and subsidiaries to the extent referenced in a settlement agreement, consent judgment, order, or other document that reflects the terms of any settlement.
- (5) Amounts deposited in the fund shall be used only for the purposes described in KRS 15.291.
- (6) Notwithstanding KRS 45.229, moneys in the fund not expended at the close of a fiscal year shall not lapse but shall be carried forward into the next fiscal year.
- (7) Any interest earnings of the fund shall become a part of the fund and shall not lapse.
- (8) Moneys in the fund shall be distributed no less than annually.
- (9) (a) The Department of Law may recover its reasonable costs of litigation from the moneys received under subsection (3)(a) of this section.
- (b) The Department of Law may recover any direct costs, including employee time, used to perform or administer the duties required by this section and KRS 15.291 from the moneys received under subsection (3)(a) of this section. The Department of Law shall report all such recovered costs to the commission no less than annually.
- (10) The commission shall continue to make distributions from the fund as long as defendants in the opioid litigation make payments to the Commonwealth or until the time that the moneys in the fund are exhausted.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby established a supplemental attorney fees fund to be used to compensate private attorneys to be known as the local government fee fund. These funds shall be maintained and administered by Wilmington Trust, N.A., which was appointed the Directed Trustee of the settlement administration of the National Opioid Settlement.*
- (2) *The local government fee fund shall consist of moneys received from any national settlement included in Section 1 of this Act or related to opioid manufacturing or distribution. Moneys deposited in the fund shall be a percentage of the collective local government share in Kentucky provided by subsection (4) of Section 1 of this Act, that when added to the percentage awarded to attorneys from the national contingency fee fund established by court order in In re National Prescription Opiate Litigation, MDL No. 2804, Case No. 1:17-md-02804, in the United States District Court for the Northern District of Ohio, shall not exceed fifteen percent (15%) in aggregate. No portion of the state share as provided in subsection (3) of Section 1 of this Act shall be used for the local government fee fund or in any other way to fund any participating local government's attorney's fees and costs.*
- (3) (a) *The amounts deposited into the fund shall be used to compensate counsel for counties, consolidated local governments, urban-county governments, and cities of the Commonwealth that filed an opioid lawsuit on or before June 1, 2021.*
- (b) *Allocation of payments out of the fund shall be determined by a mathematical model to calculate allocation of payments to counsel from the local government fee fund, which shall be based on the share of each county, consolidated local government, urban-county government, and city of the*

Commonwealth and shall be determined by the negotiation class metrics and the rate set forth in their contingency contracts, which shall be provided by counsel for a litigating participating local government, in order for counsel to be eligible to receive payments from the local government fee fund.

- (c) *Counsel shall not collect more for its work on behalf of a county, consolidated local government, urban-county government, or city of the Commonwealth from the national contingency fee fund or the local government fee fund than 15% of the aggregate of the collective local government fee fund and the national contingency fee fund as established in In re National Prescription Opiate Litigation, MDL No. 2804, Case No. 1:17-md-02804, in the United States District Court for the Northern District of Ohio. In order to collect from the local government fee fund, counsel must also first apply to the national contingency fee fund.*
- (4) *No less than eighty-five percent (85%) of the proceeds received by each county, consolidated local government, urban-county government, or city of the Commonwealth shall go toward abatement of the opioid epidemic in those communities.*
- (5) *The amount and timing for the payments to counsel from the local government fee fund shall be consistent with the percentages and timing set forth in Exhibit R, Section II. A. 1. of the Distributor Settlement Agreement and Exhibit R, Section II. A. 1. of the Janssen (Johnson & Johnson) Settlement Agreement. With respect to any future settlements, payments to the local government fee fund shall be consistent with the attorney's fee and cost schedules set forth in any future settlement agreements.*
- (6) *Any funds remaining in the local government fee fund in excess of the amounts needed to cover private counsels' representation agreements consistent with the terms established in this section shall revert to the participating local governments to be reallocated using the same Negotiation Class Metrics and used for approved purposes as set forth herein and in Section 1 of this Act. Any interest earnings of the fund shall become a part of the fund and shall not lapse.*

➔Section 3. Nothing in this Act shall establish or preclude the establishment of a State Back-Stop agreement as defined in In re National Prescription Opiate Litigation, MDL No. 2804, Case No. 1:17-md-02804, in the United States District Court for the Northern District of Ohio.

➔Section 4. Whereas it is imperative that the attorney fees be paid in accordance with In re National Prescription Opiate Litigation, MDL No. 2804, Case No. 1:17-md-02804, in the United States District Court for the Northern District of Ohio, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Vetoed in Part and Signed by Secretary of State April 26, 2022.