

Senate proposal of amendment

H. 922

An act relating to making numerous revenue changes

The Senate proposes to the House to amend the bill as follows:

First: After Sec. 2, by inserting a reader assistance heading and four new sections to be Secs. 2a, 2b, 2c, and 2d to read as follows:

* * * Assessment on Manufacturers of Prescription Opioids
Dispensed in Vermont * * *

Sec. 2a. 18 V.S.A. § 4754 is added to read:

§ 4754. SUBSTANCE USE DISORDER PREVENTION, TREATMENT, AND RECOVERY FUND

(a) The Substance Use Disorder Prevention, Treatment, and Recovery Fund is established as a special fund pursuant to 32 V.S.A. chapter 7, subchapter 5. Into the Fund shall be deposited all revenue from the ratable shares assessed to manufacturers of prescription opioids dispensed in Vermont pursuant to 32 V.S.A. chapter 221.

(b) The Fund shall be administered by the Agency of Human Services and shall be used for the following purposes:

(1) preventing opioid addiction and other substance use disorders;

(2) providing substance use disorder treatment to individuals with a dependency on or addiction to opioids, other controlled substances, prescription drugs, or a combination thereof; and

(3) providing individuals with opportunities to recover safely from substance use disorder.

(c) The Commissioner of Finance and Management may anticipate receipts to the Fund and issue warrants based thereon.

Sec. 2b. 32 V.S.A. chapter 221 is added to read:

CHAPTER 221. ASSESSMENT ON MANUFACTURERS OF OPIOIDS DISPENSED IN VERMONT

§ 9001. DEFINITIONS

As used in this chapter:

(1) "Manufacturer" means any entity that is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription opioids, or a combination thereof, whether directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis,

or any entity engaged in the packaging, repackaging, labeling, relabeling, or distribution of prescription opioids. The term does not include a wholesale distributor of prescription opioids, a retailer, or a pharmacist licensed under 26 V.S.A. chapter 36.

(2) “Morphine milligram equivalent” or “MME” means the conversion factor used to calculate the strength of an opioid using morphine dosage as the comparative unit of measure.

(3) “Opiate” means a drug derived from the dried, condensed juice of a poppy, *Papaver somniferum*, that has a narcotic, soporific, analgesic, or astringent effect, or a combination thereof.

(4) “Opioid” means an opiate or any synthetic or semisynthetic narcotic that has opiatelike activities but is not derived from opium and has effects similar to natural opium alkaloids, and any derivatives thereof.

(5) “Prescription opioid” means an opiate or opioid that is a controlled substance under 21 C.F.R. Part 1308.

(6) “Ratable share” means the proportional amount of the total amount to be assessed across all manufacturers of prescription opioids that shall be paid by each manufacturer whose prescription opioids were dispensed in Vermont.

(7) “Vermont Prescription Monitoring System” means the program established pursuant to 18 V.S.A. chapter 84A.

§ 9002. ASSESSMENT ON OPIOID MANUFACTURERS

(a)(1) There is hereby imposed an assessment upon manufacturers of prescription opioids dispensed in this State as set forth in this section.

(2) The annualized amount of revenue to be generated by the assessment each fiscal year shall be \$3,100,000.00, provided that that amount may be modified at any time by the General Assembly based on the State’s estimated funding needs for substance use disorder prevention, treatment, and recovery programs and activities.

(b)(1) The ratable share of the total assessment amount for each manufacturer of prescription opioids shall be determined by the Department of Taxes, in consultation with the Department of Health, based on the proportional share of MMEs for each manufacturer’s prescription opioids dispensed in Vermont during the same calendar quarter of the previous year, using information from the Vermont Prescription Monitoring System, to the total amount of MMEs for all prescription opioids dispensed in Vermont over the same period.

(2) The Department of Taxes shall send an invoice to each manufacturer for the assessment amount due pursuant to this section quarterly.

Manufacturers of prescription opioids shall pay the assessment amount within 30 days following the date of the invoice.

(3) Manufacturers of prescription opioids dispensed in this State shall not increase the wholesale or retail price of any prescription opioid to recover or offset the cost of the assessment.

(c) The following shall be exempt from the assessment imposed under this chapter:

(1) opioids used in medication-assisted treatment for substance use disorder; and

(2) any assessment that the State is prohibited from imposing by federal law, the U.S. Constitution, or the Vermont Constitution.

(d) All revenue from the assessment imposed under this chapter, including penalties and interest, shall be deposited in the Substance Use Disorder Prevention, Treatment, and Recovery Fund established by 18 V.S.A. § 4754.

§ 9003. ADMINISTRATION OF ASSESSMENT

(a) The Commissioner of Taxes shall administer and enforce this chapter and the assessment.

(b) Except as otherwise provided in section 9004 of this title, all of the administrative provisions of chapter 151 of this title shall apply to the assessment imposed by this chapter as if it were a tax. In addition, the provisions of chapter 103 of this title, including those relating to the imposition of interest and penalty for failure to pay the assessment, shall apply to the assessment imposed by this chapter as if it were a tax.

§ 9004. DETERMINATION OF DEFICIENCY, REFUND, PENALTY, OR INTEREST

(a) Within 60 days after the mailing of a notice of deficiency, denial, or reduction of a refund claim, or assessment of penalty or interest, a manufacturer may petition the Commissioner in writing for a determination of that deficiency, refund, or assessment. The Commissioner shall thereafter grant a hearing upon the matter and notify the manufacturer in writing of his or her determination concerning the deficiency, penalty, or interest. This is the exclusive remedy of a manufacturer with respect to these matters.

(b) Any hearing granted by the Commissioner under this section shall be subject to and governed by 3 V.S.A. chapter 25.

(c) Any aggrieved manufacturer may, within 30 days after a determination by the Commissioner concerning a notice of deficiency, an assessment of penalty or interest, or a claim to refund, appeal that determination to the Washington Superior Court or to the Superior Court for any county in this

State in which the manufacturer has a place of business.

§ 9005. MME DATA TO BE PROVIDED TO COMMISSIONER OF TAXES

(a) The Department of Health shall provide to the Commissioner of Taxes or designee reports of data available to the Department of Health through the Vermont Prescription Monitoring System that are necessary to determine the total amount of morphine milligram equivalents dispensed in this State during any specified time period, the amount of the dispensed morphine milligram equivalents attributable to each manufacturer of prescription opioids, and the ratable share of the total assessment amount owed by each manufacturer of prescription opioids pursuant to this chapter.

(b) The Department of Health and the Department of Taxes shall enter into a memorandum of understanding regarding the terms by which the Department of Health shall provide the information described in subsection (a) of this section, including the timing and frequency of the data sharing, the format in which the data will be provided, and the measures to be established to ensure the confidentiality of the information provided to the Department of Taxes.

Sec. 2c. 18 V.S.A. § 4284(b)(2) is amended to read:

(2) The Department shall provide reports of data available to the Department through the VPMS only to the following persons:

* * *

(H) The Commissioner of Taxes or designee, for the purpose of determining the total amount of morphine milligram equivalents dispensed in this State during any specified time period, the amount of the dispensed morphine milligram equivalents attributable to each manufacturer of prescription opioids, and the ratable share of the total assessment amount owed by each manufacturer of prescription opioids pursuant to 32 V.S.A. chapter 221.

Sec. 2d. FISCAL YEAR 2019 APPROPRIATIONS; LEGISLATIVE
INTENT FOR FUTURE FUNDING

(a) The following sums are appropriated from the Substance Use Disorder Prevention, Treatment, and Recovery Fund in fiscal year 2019:

(1) \$188,000.00 to the Department for Children and Families to support and maintain mentoring and afterschool programs for children. It is the intent of the General Assembly to increase the funding for this purpose to \$376,000.00 in fiscal year 2020.

(2) \$215,000.00 to the Department of Health to support needle exchange programs and the distribution of naloxone. It is the intent of the General Assembly to increase the funding for this purpose to \$430,000.00 in fiscal year 2020.

(3) \$137,500.00 to the Agency of Human Services to fund two positions and the operating costs of the Governor’s Opioid Coordination Council to support its efforts to reduce the demand for opioids, provide adequate and effective treatment and recovery opportunities, and reduce the supply of opioids through prevention of opioid abuse and diversion. In fiscal year 2019, the sum of \$137,500.00 in federal matching funds is also appropriated to the Agency of Human Services, providing a total funding level of \$275,000.00 for the Governor’s Opioid Coordination Council.

(4) \$400,000.00 to the Department of Corrections for expansion of medication-assisted treatment in correctional facilities. It is the intent of the General Assembly to increase the funding for this purpose to \$800,000.00 in fiscal year 2020.

(5) \$75,000.00 to the Criminal Justice Training Council to provide law enforcement officers with specialized training related to opioid investigation and enforcement. It is the intent of the General Assembly to increase the funding for this purpose to \$100,000.00 in fiscal year 2020.

(b) In addition to the amounts identified for funding in fiscal year 2020 in subsection (a) of this section, it is also the intent of the General Assembly that, to the extent additional funds are available after fully funding the priorities specified in subdivisions (a)(1)–(4) of this section, those additional funds should be appropriated to the Agency of Human Services to increase the availability of substance use treatment services in underserved regions of the State.

(c) In order to implement any system changes needed to administer the assessment established in Sec. 2 (32 V.S.A. chapter 221), the Department of Taxes shall allocate one-time systems implementation funds as needed from the special funds appropriated in 2018 Acts and Resolves No. 87, Sec. 49 and shall allocate any additional resources needed from the funds appropriated to the Department of Taxes in the fiscal year 2019 budget. The Department of Taxes shall identify any ongoing funding required to administer the assessment in its fiscal year 2020 budget request.

Second: In Sec. 7, after the section heading “REPORT ON NONPOSTSECONDARY USE OF HIGHER EDUCATION INVESTMENT PLAN FUNDS” by striking out the word “The” and inserting in lieu thereof the following: As far as practicable, the

Third: After Sec. 7, by inserting a reader assistance heading and two new sections to be Secs. 7a and 7b to read as follows:

* * * Federal Income Tax Link and Report on Federal Tax Reform * * *

Sec. 7a. 32 V.S.A. § 5824 is amended to read:

§ 5824. ADOPTION OF FEDERAL INCOME TAX LAWS

The statutes of the United States relating to the federal income tax, as in effect for ~~taxable year 2016~~ on December 31, 2017, but without regard to federal income tax rates under 26 U.S.C. § 1, are hereby adopted for the purpose of computing the tax liability under this chapter.

Sec. 7b. FEDERAL TAX REFORM

On or before November, 15, 2018, the Office of Legislative Council, with the assistance of the Joint Fiscal Office and the Department of Taxes, shall report to the Joint Fiscal Committee, the Senate Committee on Finance, and the House Committee on Ways and Means on the federal and State implementation of changes necessitated by the Tax Cut and Jobs Act and shall identify potential areas for legislative or administrative reactions.

Fourth: In Sec. 11, amending 32 V.S.A. § 9202(10)(D), after ““Taxable meal” shall not include:”, by striking out the following:

“* * *

(ii) Food or beverage, including that described in subdivision (10)(C) of this section:

(I) served or furnished on the premises of a nonprofit corporation or association organized and operated exclusively for religious or charitable purposes, in furtherance of any of the purposes for which it was organized; with the net proceeds of the food or beverage to be used exclusively for the purposes of the corporation or association; provided, however, if the organization or association is a fire department, as defined in 24 V.S.A. § 1951, or provides emergency medical services or first responder services, as defined under 24 V.S.A. § 2651, it is not necessary that the meal be served on the premises of the organization to qualify as an exclusion from “taxable meal” under this subdivision;”

Fifth: After Sec. 13, by inserting a reader assistance heading and two new sections to be Secs. 13a and 13b to read as follows:

* * * Publicly Traded Partnerships Income Tax Withholding Exemption * * *

Sec. 13a. 32 V.S.A. § 5920(h) is amended to read:

(h)(1) Notwithstanding any provisions in this section, a publicly traded partnership as defined in 26 U.S.C. § 7704(b), that is treated as a partnership for the purposes of the Internal Revenue Code, is exempt from any income tax liability and any compliance and payment obligations under subsections (b) and (c) of this section, if information required by the Commissioner under subdivision (2) of this subsection is provided by the due date of the partnership’s return. This information includes the name, address, taxpayer identification number, and annual Vermont source of income greater than \$500.00 for each partner who had an interest in the partnership during the

~~tax year. This information shall be provided to the Commissioner in an electronic format, according to rules or procedures adopted by the Commissioner.~~

(2) Publicly traded partnerships shall provide to the Commissioner in an electronic format, according to rules or procedures adopted by the Commissioner, an annual return that includes the name, address, taxpayer identification number, and other information requested by the Commissioner for each partner with Vermont source income in excess of \$500.00.

(3) A lower-tier pass-through entity of a publicly traded partnership may request from the Commissioner an exemption from the compliance and payment obligations specified in subsections (b) and (c) of this section. The request for the exemption must be in writing and contain:

(A) the name, the address, and the account number or federal identification number of each of the lower-tier pass-through entity's partners, shareholders, members, or other owners; and

(B) information that establishes the ownership structure of the lower-tier pass-through entity and the amount of Vermont source income.

(4) The Commissioner may request additional documentation before granting an exemption to a lower-tier pass-through entity. As used in this subsection, a "lower-tier pass-through entity" means a pass-through entity for purposes of the Internal Revenue Code, which can include a partnership, S-Corp, disregarded entity, or limited liability company and which allocates income, directly or indirectly, to a publicly traded partnership. The exemption under subdivision (3) of this subsection shall only apply to income allocated, directly or indirectly, to a publicly traded partnership.

(5) If granted, the exemption for the lower-tier pass-through entity shall be effective for three years following the date the exemption is granted. At the end of the three-year period, the lower-tier pass-through entity of a publicly traded partnership shall submit a new exemption request to continue the exemption. The Commissioner may revoke the exemption for the lower-tier pass-through entity if the Commissioner determines that the lower-tier pass-through entity is not satisfying its tax payment and reporting obligations to the State with respect to income allocated, directly or indirectly, to nonresident partners or members that are not publicly traded partnerships.

Sec. 13b. 32 V.S.A. § 3102(e)(20) is added to read:

(20) To a publicly traded partnership as defined in subdivision 5920(h)(1) of this title and to lower-tier pass-through entities of a publicly traded partnership as defined in subdivision 5920(h)(4) of this title for the purpose of reviewing, granting, or denying exemption requests from the requirements of section 5920 of this title.

Sixth: By striking out Sec. 19, 32 V.S.A. § 5402, in its entirety and inserting in lieu thereof the following:

[Deleted.]

Seventh: By striking out Sec. 21, 32 V.S.A. § 5405, in its entirety and inserting in lieu thereof the following:

[Deleted.]

Eighth: By striking out Sec. 31, Effective Dates, in its entirety and inserting in lieu thereof a new Sec. 31 to read as follows:

Sec. 31. EFFECTIVE DATES

This act shall take effect on passage, except:

(1) Notwithstanding 1 V.S.A. § 214, Sec. 27 (short-term rental platform reporting) shall take effect retroactively on July 1, 2017.

(2) Notwithstanding 1 V.S.A. § 214, Sec. 7a (income tax link to the federal tax statutes) shall take effect retroactively on January 1, 2018 and apply to taxable years beginning on January 1, 2017 and after.

(3) Notwithstanding 1 V.S.A. § 214, Secs. 3–6 (Vermont higher education investment plan credit), 12 (solar energy investment tax credit), 13 (minimum corporate income tax), and 30(2) (repeal of business solar energy tax credit) shall take effect retroactively on January 1, 2018 and apply to taxable years beginning on January 1, 2018 and thereafter.

(4) Secs. 1 (municipal stormwater fees), 2 (Green Mountain Care Board billback formula), 2a (18 V.S.A. § 4754), 2c (18 V.S.A. § 4284), 2d (Substance Use Disorder Prevention, Treatment, and Recovery Fund appropriations), 7b (tax reform report), 8 (first time homebuyer program), 9 (downtown and village center tax credit), 10–10a (tax on e-cigarettes), and 11 (taxable meal exclusion) shall take effect on July 1, 2018.

(5) Secs. 14–21 (property tax sections) shall take effect on July 1, 2018 and apply to grand lists lodged after that date.

(6) Sec. 30(1) (repeal of land use change tax lien subordination) shall take effect on July 1, 2019.

(7) Sec. 2b (32 V.S.A. chapter 221) shall take effect on October 1, 2018, with the Department of Taxes sending its first quarterly ratable share invoice to manufacturers on or before January 15, 2019 based on each manufacturer's prescription opioids dispensed in Vermont during the period from October 1, 2017 through December 31, 2017.