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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 534 Session of  
2017

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INTRODUCED BY COSTA, BREWSTER, SABATINA, YUDICHAK, LEACH,  
TARTAGLIONE, SCHWANK, FARNESE AND DINNIMAN, MARCH 24, 2017

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REFERRED TO FINANCE, MARCH 24, 2017

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AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An  
2 act relating to tax reform and State taxation by codifying  
3 and enumerating certain subjects of taxation and imposing  
4 taxes thereon; providing procedures for the payment,  
5 collection, administration and enforcement thereof; providing  
6 for tax credits in certain cases; conferring powers and  
7 imposing duties upon the Department of Revenue, certain  
8 employers, fiduciaries, individuals, persons, corporations  
9 and other entities; prescribing crimes, offenses and  
10 penalties," providing for addiction prevention and treatment  
11 assessment and establishing the Opioid Addiction Prevention  
12 and Treatment Fund.

13 The General Assembly of the Commonwealth of Pennsylvania  
14 hereby enacts as follows:

15 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as  
16 the Tax Reform Code of 1971, is amended by adding an article to  
17 read:

18 ARTICLE XII-B

19 ADDICTION PREVENTION AND TREATMENT ASSESSMENT

20 Section 1201-B. Definitions.

21 The following words and phrases when used in this article  
22 shall have the meanings given to them in this section unless the  
23 context clearly indicates otherwise:

1 "Assessment." The addiction prevention and treatment  
2 assessment imposed under this article.

3 "Department." The Department of Revenue of the Commonwealth.

4 "Fund." The Opioid Addiction Prevention and Treatment Fund  
5 established under section 1210-B.

6 "Opioid product." A pharmaceutical drug containing opiates.

7 "Person." An individual, unincorporated association,  
8 company, corporation, joint stock company, group, agency,  
9 syndicate, trust, trustee, receiver, fiduciary, partnership or  
10 conservator. If used in any of the provisions of this article  
11 prescribing or imposing penalties, the term, as applied to a  
12 partnership, unincorporated association or other joint venture,  
13 shall mean the partners or members of the partnership,  
14 unincorporated association or other joint venture, and as  
15 applied to a corporation shall mean each officer and director of  
16 the corporation.

17 "Program." The Emergency Addiction Treatment Program  
18 established under 35 Pa.C.S. § 8304 (relating to Emergency  
19 Addiction Treatment Program).

20 "Purchase price." The total value of anything paid or  
21 delivered, or promised to be paid or delivered, money or  
22 otherwise, in complete performance of a sale or purchase,  
23 without any deduction on account of any of the following:

24 (1) the cost or value of:

25 (i) the property sold;

26 (ii) transportation; or

27 (iii) labor service;

28 (2) interest or discount paid or allowed after the sale  
29 is consummated;

30 (3) tax imposed by the Commonwealth; or

1           (4) any other expense.

2 Section 1202-B. Addiction prevention and treatment assessment.

3       (a) Imposition of assessment.--An addiction prevention and  
4 treatment assessment shall be paid by a person that  
5 manufactures, produces, distributes, sells or offers to sell  
6 opioid products in this Commonwealth. The ultimate end user of  
7 an opioid product may not be required to pay any portion of the  
8 assessment under this section, either directly or indirectly.

9       (b) Imposition.--The assessment shall be imposed at the time  
10 each opioid product is first sold in this Commonwealth or for  
11 use in this Commonwealth at the rate of 10% of the purchase  
12 price charged to the initial buyer of the opioid product. The  
13 assessment shall be paid by the person selling the opioid  
14 product to the initial buyer within this Commonwealth and  
15 remitted to the department. A person required to remit the  
16 assessment shall separately state the amount of the assessment  
17 on an invoice or other sales document.

18       (c) Exceptions.--The assessment may not be imposed on opioid  
19 products that:

20           (1) are exported for sale and use outside this  
21 Commonwealth; or

22           (2) are not subject to taxation by the Commonwealth  
23 under any Federal law.

24       (d) Report and remittance of assessment.--

25           (1) A person that manufactures, produces, distributes,  
26 sells or offers to sell opioid products in this Commonwealth  
27 or for use in this Commonwealth shall file monthly reports  
28 with the department by the 20th day of each calendar month  
29 commencing with the second calendar month following the  
30 effective date of this article. The report shall contain the

1 information listed in section 1207-B(b) for the previous  
2 month.

3 (2) The assessment is due at the time the report is due.

4 (3) The department may require the filing of reports and  
5 the remittance of the assessment on a less frequent basis at  
6 its discretion.

7 (e) Other provisions.--Unless otherwise specifically noted,  
8 the provisions of Article II, shall apply to the reports,  
9 payments, penalties, enforcement, collections and appeals of the  
10 assessment imposed under this section.

11 Section 1203-B. Powers and duties of department and  
12 administration.

13 The department shall administer and enforce the provisions of  
14 this article and shall adopt rules and regulations for those  
15 purposes.

16 Section 1204-B. Assessment.

17 The department may make the inquiries, determinations and  
18 valuations of the assessment, including interest, additions and  
19 penalties, imposed by this article.

20 Section 1205-B. Electronic filing.

21 The department may require that a report required to be filed  
22 under this article be filed electronically.

23 Section 1206-B. Extension of limitation period.

24 Notwithstanding any other provision of this article, where,  
25 before the expiration of the period prescribed for the  
26 assessment, a person has consented in writing that the period be  
27 extended, the amount of the assessment due may be imposed by the  
28 department at any time within the extended period. The extended  
29 period may be extended further by subsequent consent in writing  
30 made before the expiration of the extended period.

1 Section 1207-B. Reports, records and inspections.

2 (a) Reports of shipments and receipts of opioid products  
3 required.--The department may, at such times as it deems  
4 necessary, require a report from a common carrier or contract  
5 carrier who transports opioid products to any point or points  
6 within this Commonwealth, and from any bonded warehouseman or  
7 bailee who has in the possession of the warehouseman or bailee  
8 any opioid products. The report shall contain the information  
9 concerning shipments of opioid products that the department  
10 determines to be necessary for the administration and  
11 enforcement of this article. A common carrier or contract  
12 carrier, bailee and warehouseman shall permit the examination by  
13 the department or its authorized agents of any records relating  
14 to the shipment or receipt of opioid products.

15 (b) Records of manufacturers and wholesalers.--A person who  
16 sells opioid products subject to the assessment shall keep, on  
17 an annual basis, for a period of four years, records showing for  
18 each calendar year:

19 (1) The number or units and pharmaceutical name or  
20 description of opioid products sold.

21 (2) The date the opioid products were sold.

22 (3) The name, address or other contact information, as  
23 may be required by the department, of the person to whom the  
24 opioid products were initially sold.

25 (4) The purchase price charged to the initial buyer for  
26 each unit of opioid products sold.

27 (5) The place to which the opioid products were shipped.

28 (6) The name of the common carrier or contract carrier.

29 (c) Inspections.--The department is authorized to inspect  
30 the books and records, the stock of opioid products and the

1 premises and equipment of any person in order to verify the  
2 accuracy of the payment of the assessment imposed by this  
3 article. The person subject to an inspection shall give to the  
4 department or its duly authorized representative the means,  
5 facilities and opportunity for the inspection.

6 Section 1208-B. Information exchange.

7 The department is authorized to exchange information with any  
8 other Federal, State or local enforcement agency for purposes of  
9 administering and enforcing this article.

10 Section 1209-B. Fines and penalties.

11 (a) Collection of assessment.--

12 (1) The amount of the assessment due and not remitted  
13 may be imposed and collected by the department at any time  
14 whenever transactions subject to the assessment are not  
15 reported.

16 (2) If a person willfully files a false or fraudulent  
17 report with the intent to evade the assessment, the amount of  
18 the assessment due may be imposed and collected by the  
19 department at any time.

20 (b) Failure to furnish information, returning false  
21 information or failure to permit inspection.--

22 (1) A person who fails to keep or make a record, report,  
23 inventory or statement or keeps or makes any false or  
24 fraudulent record, report, inventory or statement required by  
25 this article commits a misdemeanor and shall, upon  
26 conviction, be sentenced to pay a fine of \$500 or to  
27 imprisonment for not more than one year, or both.

28 (2) A person who willfully refuses to cooperate with or  
29 permit an inspection to the satisfaction of the department  
30 commits a misdemeanor and shall, upon conviction, be

1 sentenced to pay a fine of \$500 or to imprisonment for not  
2 more than one year, or both.

3 (c) Penalties.--

4 (1) A person who sells an opioid product for which the  
5 proper assessment has not been paid commits a summary offense  
6 and shall, upon conviction, be sentenced to pay a fine of not  
7 less than \$100 nor more than \$1,000 or to imprisonment for  
8 not more than 60 days, or both.

9 (2) A person who falsely, fraudulently, maliciously,  
10 intentionally or willfully, with intent to evade the payment  
11 of the assessment, sells an opioid product for which the  
12 proper assessment has not been paid commits a felony and  
13 shall, upon conviction, be sentenced to pay a fine of not  
14 more than \$15,000 or to imprisonment for not more than five  
15 years, or both.

16 (3) In addition to the penalties prescribed in  
17 paragraphs (1) and (2), if a person fails to file the report  
18 required under section 1202-B(d) or fails to pay the  
19 assessment, the department may impose an administrative  
20 penalty equal to the amount of the assessment not paid. The  
21 penalty shall be added to the assessment not paid and imposed  
22 and collected at the same time and in the same manner as the  
23 assessment.

24 (d) Failure to electronically file.--A person who fails to  
25 electronically file a report or other information that the  
26 department directs to be filed electronically shall be subject  
27 to a penalty of 5% of the assessment due on the report, up to a  
28 maximum of \$1,000, but not less than \$10. The penalty may be  
29 imposed at any time and collected in the manner provided in this  
30 article. The penalty shall be in addition to any administrative

1 penalty imposed under subsection (c) (3). The criminal penalty  
2 for failure to file a report electronically shall be the same as  
3 the criminal penalty for failure to furnish information or file  
4 a report under subsection (b) (1).

5 (e) Fines and penalties payable to department.--All fines  
6 and penalties imposed and collected under the provisions of this  
7 article shall be payable to the Commonwealth and appropriated to  
8 the department to be used in carrying out its duties under this  
9 article.

10 Section 1210-B. Fund.

11 (a) Establishment.--The Opioid Addiction Prevention and  
12 Treatment Fund is established in the State Treasury. The  
13 department shall deposit the assessment remitted under section  
14 1202-B into the fund. Money in the fund may not lapse and shall  
15 be appropriated on a continuing basis for the purposes set forth  
16 in this section.

17 (b) Distributions.--Money in the fund shall be distributed  
18 quarterly as follows:

19 (1) Fifty-five percent to the Department of Drug and  
20 Alcohol Programs to fund the implementation and  
21 administration of the program.

22 (2) Five percent to the Department of Drug and Alcohol  
23 Programs for grants for the purchase of naloxone for local  
24 police and first responders and the provision of training on  
25 the use of naloxone.

26 (3) Fifteen percent to the Department of Drug and  
27 Alcohol Programs to fund the following:

28 (i) Drug and alcohol addiction counseling in county  
29 jails.

30 (ii) Costs to the criminal justice system related to

1 drug and alcohol addiction.

2 (iii) Establishment and maintenance of procedures to  
3 ensure the transition of overdose survivors to addiction  
4 treatment programs.

5 (4) Five percent to the department to fund the  
6 activities under 35 Pa.C.S. Ch. 83 (relating to emergency  
7 addiction treatment).

8 (5) Four percent to the department to fund its other  
9 duties under this article.

10 (6) Seven and one-half percent to the Department of  
11 Education to fund grants to organizations as provided under  
12 section 1528 of the act of March 10, 1949 (P.L.30, No.14),  
13 known as the Public School Code of 1949.

14 (7) Seven and one-half percent to the Pennsylvania  
15 Higher Education Assistance Agency to fund the Alcohol and  
16 Drug Addiction Counselor Loan Forgiveness Program as provided  
17 for under the act of \_\_\_\_\_, \_\_\_\_\_ (P.L. \_\_\_\_\_, No. \_\_\_\_\_), known  
18 as the Alcohol and Drug Addiction Counselor Loan Forgiveness  
19 Program Act.

20 (8) One percent to the Department of Health to be used  
21 exclusively for prescription drug monitoring under the act of  
22 October 27, 2014 (P.L.2911, No.191), known as the Achieving  
23 Better Care by Monitoring All Prescriptions Program (ABC-MAP)  
24 Act.

25 (c) Other funding.--Money distributed from the fund shall be  
26 used to supplement, and not to replace, other funding for drug  
27 and alcohol addiction treatment programs in this Commonwealth.

28 Section 2. This act shall take effect in 60 days.