



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBs0258/1
TJD&RAC:wlj/ahc/cdc

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 862**

February 11, 2020 - Offered by Representative NYGREN.

1 **AN ACT** *to amend* 19.32 (1) and 19.82 (1); and *to create* 13.94 (1) (dv), 13.94 (1s)
2 (c) 11., 25.17 (1) (kq), 51.4228 and 165.12 of the statutes; **relating to:** opioid
3 settlement moneys and creation of a nonstock, nonprofit opioid settlement
4 corporation.

Analysis by the Legislative Reference Bureau

This bill creates a mechanism to administer and receive moneys from opioid-related claims, including those in the court proceeding titled *In re: National Prescription Opiate Litigation*, Case No.: MDL 2804. The bill requires the attorney general to organize a nonstock, nonprofit corporation to receive and distribute these moneys. As a condition of receiving the moneys, the bill sets criteria that the corporation must meet, which include having a board of directors composed of 19 members appointed as described in the bill; complying with open meetings laws and open records laws; being subject to a financial audit by the Legislative Audit Bureau; allocating 15 percent of the moneys received to the state, 15 percent to the counties, and the remaining as determined by the board of the corporation; having board members serve as fiduciaries; refraining from expending the moneys unless the expenditure is in accordance with any applicable court order and is either an actual and reasonable administrative expense or is included in a comprehensive abatement plan and is consistent with a purpose specified in the bill; and submitting an annual

report describing the activities and expenditures of the corporation and any outcomes achieved by the expenditure. Proposed applications for opioid settlement moneys for the state must be submitted to the Joint Committee on Finance for review under a 14-day passive review process in order to obtain any of the settlement moneys. The bill also specifies the documents the attorney general must submit to JCF, for review under a 10-day passive review process, to obtain authority to enter a settlement agreement in the court proceeding titled *In re: National Prescription Opiate Litigation*.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 13.94 (1) (dv) of the statutes is created to read:

2 13.94 (1) (dv) At least once every 3 years, beginning in 2022, perform a financial
3 audit of the corporation organized under s. 165.12 (2).

4 **SECTION 2.** 13.94 (1s) (c) 11. of the statutes is created to read:

5 13.94 (1s) (c) 11. The corporation organized under s. 165.12 (2) for the cost of
6 the audit performed under sub. (1) (dv).

7 **SECTION 3.** 19.32 (1) of the statutes is amended to read:

8 19.32 (1) “Authority” means any of the following having custody of a record: a
9 state or local office, elective official, agency, board, commission, committee, council,
10 department or public body corporate and politic created by the constitution or by any
11 law, ordinance, rule or order; a governmental or quasi-governmental corporation
12 except for the Bradley center sports and entertainment corporation; a special
13 purpose district; any court of law; the assembly or senate; a corporation organized
14 under s. 165.12 (2); a nonprofit corporation which receives more than 50 percent of
15 its funds from a county or a municipality, as defined in s. 59.001 (3), and which
16 provides services related to public health or safety to the county or municipality; a
17 university police department under s. 175.42; or a formally constituted subunit of
18 any of the foregoing.

1 **SECTION 4.** 19.82 (1) of the statutes is amended to read:

2 19.82 (1) “Governmental body” means a state or local agency, board,
3 commission, committee, council, department or public body corporate and politic
4 created by constitution, statute, ordinance, rule or order; a governmental or
5 quasi-governmental corporation except for the Bradley center sports and
6 entertainment corporation; a local exposition district under subch. II of ch. 229; a
7 long-term care district under s. 46.2895; a corporation organized under s. 165.12 (2);
8 or a formally constituted subunit of any of the foregoing, but excludes any such body
9 or committee or subunit of such body which is formed for or meeting for the purpose
10 of collective bargaining under subch. I, IV, or V of ch. 111.

11 **SECTION 5.** 25.17 (1) (kq) of the statutes is created to read:

12 25.17 (1) (kq) Any fund created by the corporation organized under s. 165.12
13 (2) consisting of moneys delivered to the board under s. 165.12 (2) (h);

14 **SECTION 6.** 51.4228 of the statutes is created to read:

15 **51.4228 Opioid settlement moneys.** To obtain any moneys under s. 165.12
16 (2) (d), the department, or any other person or entity that submits an application on
17 behalf of the state, shall submit to the joint committee on finance a proposed
18 application describing the purpose and amounts for the proposed expenditure of
19 settlement moneys that it proposes to submit to the corporation organized under s.
20 165.12 (2). If the cochairpersons of the joint committee on finance do not notify the
21 department or person or entity within 14 working days after the date of the submittal
22 of the application under this section that the committee has scheduled a meeting for
23 the purpose of reviewing the proposed application, the department or person or
24 entity may submit the application to the corporation organized under s. 165.12 (2)
25 as proposed. If, within 14 working days after the date of the submittal of the proposed

1 application under this section, the cochairpersons of the committee notify the
2 department or person or entity that the committee has scheduled a meeting for the
3 purpose of reviewing the proposed application, the department or person or entity
4 may submit the proposed application only upon approval by the committee.

5 **SECTION 7.** 165.12 of the statutes is created to read:

6 **165.12 Opioid settlement. (1)** (a) If all of the following are satisfied, the
7 attorney general may cooperate with local governments who are parties in the
8 proceedings titled In re: National Prescription Opiate Litigation, Case No.: MDL
9 2804, in entering into a settlement agreement of legal or equitable claims of the state
10 and local governments regarding opioids with any person or entity that engages in
11 or has engaged in the manufacture, marketing, promotion, distribution, or
12 dispensing of an opioid product, including but not limited to any persons or entities
13 named as defendants in the court proceeding titled In re: National Prescription
14 Opiate Litigation, Case No.: MDL 2804:

15 1. The attorney general submits the proposed settlement agreement to the joint
16 committee on finance.

17 2. The proposed settlement agreement submitted under subd. 1. includes all
18 of the following:

19 a. The total amount of proceeds to be received by the corporation organized
20 under sub. (2).

21 b. Identification of the net settlement proceeds allocated to the state under sub.
22 (2) (d) 1.

23 c. Identification of the amount of attorney fees payable as a result of the
24 settlement.

1 3. The joint committee on finance reviews the proposed settlement agreement
2 as described in par. (b).

3 (b) If the cochairpersons of the joint committee on finance do not notify the
4 attorney general within 10 working days after the date of the submittal of the
5 proposed settlement agreement under this subsection that the committee has
6 scheduled a meeting for the purpose of reviewing the proposed settlement
7 agreement, the attorney general is authorized to enter into the settlement
8 agreement as proposed. If, within 10 working days after the date of the submittal
9 of the proposed settlement agreement under this subsection, the cochairpersons of
10 the committee notify the attorney general that the committee has scheduled a
11 meeting for the purpose of reviewing the proposed settlement agreement, the
12 attorney general is authorized to enter the proposed settlement agreement only upon
13 approval by the committee. Notwithstanding s. 165.10, all proceeds under the
14 proposed settlement agreement shall be paid to the corporation organized by the
15 attorney general under sub. (2).

16 **(2)** No later than July 1, 2020, the attorney general shall organize a nonstock,
17 nonprofit corporation under ch. 181 for the purposes of administering, receiving, and
18 distributing all proceeds received from a settlement of any legal or equitable claims
19 regarding opioids with any person or entity that engages in or has engaged in the
20 manufacture, marketing, promotion, distribution, or dispensing of an opioid product,
21 including any persons or entities named as defendants in the proceeding titled In re:
22 National Prescription Opiate Litigation, Case No.: MDL 2804. As a condition of
23 administering or receiving the proceeds of a settlement described under this
24 subsection, the corporation shall meet all of the following criteria:

25 (a) The board of directors of the corporation is composed of all of the following:

1 1. To represent the interests of the state, each of the following, or his or her
2 designee:

- 3 a. The attorney general.
4 b. The majority leader of the senate.
5 c. The minority leader of the senate.
6 d. The governor.
7 e. The speaker of the assembly.
8 f. The minority leader of the assembly.

9 2. To represent the interests of the department of health services, the state, and
10 local governmental units, the secretary of health services, or his or her designee.

11 3. To represent the interests of the hospitals, the state, and local governmental
12 units, a nominee of the president of the Wisconsin Hospital Association, and with
13 advice and consent of the senate appointed, for a 3-year term.

14 4. To represent the interests of American Indian tribes or bands, a nominee of
15 the board of directors of the Great Lakes Inter-Tribal Council, and with advice and
16 consent of the senate appointed, for a 3-year term.

17 5. To represent the interests of the counties of this state, 4 individuals
18 nominated by the executive director of the Wisconsin Counties Association, and with
19 advice and consent of the senate appointed, for staggered 3-year terms.

20 6. To represent the interests of the populous counties of this state, 4 individuals
21 whose nomination is agreed to unanimously by the Milwaukee County executive, the
22 Dane County executive, and the Waukesha County executive, and with advice and
23 consent of the senate appointed, for staggered 3-year terms.

1 7. To represent the interests of the cities of this state, 2 individuals nominated
2 by the executive director of the League of Wisconsin Municipalities, and with advice
3 and consent of the senate appointed, for staggered 3-year terms.

4 (b) 1. Any initial appointment and any vacancy in appointments under par. (a)
5 3. to 7. may be filled by provisional appointment by the nominating authority, subject
6 to senate confirmation.

7 2. Any individual appointed under par. (a) 3. to 7. shall continue in office until
8 a successor is chosen and qualifies.

9 (c) The corporation is subject to a financial audit by the legislative audit bureau
10 under s. 13.94 (1) (dv).

11 (d) The moneys received by the corporation related to a settlement of legal or
12 equitable claims regarding opioids with any person or entity that engages in or has
13 engaged in the manufacture, marketing, promotion, distribution, or dispensing of an
14 opioid product, including any persons or entities named as defendants in the
15 proceeding titled In re: National Prescription Opiate Litigation, Case No.: MDL
16 2804, are allocated as follows after taking into consideration par. (e):

17 1. Fifteen percent of the moneys received by the corporation shall be allocated
18 to the state. The corporation shall release these moneys to the department of health
19 services upon application to the corporation by the department of health services.

20 2. Fifteen percent of the moneys received by the corporation shall be allocated
21 to the counties as determined by agreement of the counties.

22 3. After taking into account subds. 1. and 2., the remaining proceeds shall be
23 used in the manner determined by the board.

24 (e) If attorney fees and costs have not been paid before the receipt of settlement
25 proceeds under this subsection by the corporation, the board may consider an

1 application for attorney fees and costs and may pay attorney fees and costs from the
2 proceeds received by the corporation.

3 (f) The articles of incorporation or bylaws of the corporation state that the
4 corporation shall not have members and that a purpose of the corporation is to
5 receive, invest, manage, and administer moneys for the purpose of abating the opioid
6 epidemic.

7 (g) Each board member shall serve as a fiduciary of the corporation, separate
8 and distinct from any representational capacity of the entity or person nominating
9 or appointing the board member. The board shall manage and invest moneys and
10 conduct all matters of the corporation consistent with the responsibility as a
11 fiduciary to the corporation.

12 (h) Any moneys determined by the board of the corporation to require
13 investment may be delivered to the investment board to be invested by the
14 investment board under s. 25.17 (1) (kq).

15 (i) The corporation complies with open meetings laws under subch. V of ch. 19
16 as if the corporation is a governmental body, as defined in s. 19.82 (1), and complies
17 with open records law under subch. II of ch. 19 as if the corporation is an authority,
18 as defined in s. 19.32 (1).

19 (j) The corporation authorizes no expenditure of proceeds of opioid-related
20 settlements unless the expenditure is in accordance with any applicable court order
21 and the expenditure is either an actual and reasonable administrative expense or is
22 included in a comprehensive abatement plan and is consistent with any of the
23 following purposes:

24 1. Supporting clinical and evidence-based research and treatment efforts in
25 this state to prevent and remedy opioid addiction.

1 2. Supporting cost-effective opioid prevention and cessation programs,
2 including programs that do any of the following:

3 a. Improve access to medications that have been proven to prevent or reverse
4 an opioid overdose and support recovery.

5 b. Support peer support specialists.

6 c. Support screening, brief intervention, and referral to treatment services in
7 hospitals and correctional facilities.

8 d. Support access to crisis beds and residential treatment services.

9 e. Expand and establish mobile crisis response systems and crisis stabilization
10 centers.

11 f. Enforce laws regarding opioid prescriptions and sales.

12 g. Build provider capacity for an integrated medical home model that
13 coordinates substance abuse treatment between regional providers that provide
14 ongoing care.

15 h. Generally mitigate the growing opioid crisis through treatment, harm
16 reduction, education, training, and law enforcement.

17 i. Support access to foster care and child protective services for children and
18 families dealing with opioid addiction.

19 j. Improve access to opioid use treatment for high-risk populations, including
20 children and adolescents, pregnant women, and infants who have been exposed in
21 utero to opioids.

22 k. Improve the public health of the citizens of this state by addressing issues
23 arising as a result of past, present, and future use of opioid pain medications.

24 (k) Annually, the corporation submits to the attorney general, the
25 cochairpersons of the joint committee on finance, and each county clerk a report

1 describing the activities of the corporation, reporting any expenditures of the
2 corporation, and reporting any outcomes achieved by the expenditure.

3 (3) Nothing in this section shall alter any local government's right to pursue,
4 litigate, or resolve its claims.

5 **SECTION 8. Nonstatutory provisions.**

6 (1) Notwithstanding s. 165.12 (2) (a) 5., the initial terms of the members under
7 that subdivision shall be staggered so as to have one member's term expire in 2022,
8 one member's term expire in 2023, and two members' terms expire in 2024.

9 (2) Notwithstanding s. 165.12 (2) (a) 6., the initial terms of the members under
10 that subdivision shall be staggered so as to have one member's term expire in 2022,
11 one member's term expire in 2023, and two members' terms expire in 2024.

12 (3) Notwithstanding s. 165.12 (2) (a) 7., the initial terms of the members under
13 that subdivision shall be staggered so as to have one member's term expire in 2023
14 and one member's term expire in 2024.

15 (END)