2023 Bill 3

First Session, 31st Legislature, 2 Charles III

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 3

OPIOID DAMAGES AND HEALTH CARE COSTS RECOVERY AMENDMENT ACT, 2023

THE MINISTER OF MENTAL HEALTH AND ADDICTION

First Reading . . . . . .

Second Reading . . . . . .

Committee of the Whole . . . . . .

Third Reading . . . . . .

Royal Assent . . . . . .

BILL 3

2023

OPIOID DAMAGES AND HEALTH CARE COSTS RECOVERY AMENDMENT ACT, 2023

(Assented to , 2023)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Amends SA 2019 cO-8.5

1 The *Opioid Damages and Health Care Costs Recovery Act* is amended by this Act.

2 Section 1 is amended

(a) in subsection (1)

(i) by renumbering clause (a) as clause (a.2) and adding the following before clause (a.2):

(a) "active ingredient" means an active ingredient set out in the Schedule;

(a.1) "consultant" means a person who provides advisory services to

(i) a wholesaler in relation to the distribution, sale or offering for sale of opioid products, or

(ii) a manufacturer in relation to the sale of active ingredients or opioid products;

Explanatory Notes

1 Amends chapter O-8.5 of the Statutes of Alberta, 2019.

2 Section 1 presently reads in part:

1(1) In this Act,

(g) "manufacturer" means a person who manufactures or has manufactured an opioid product and a person who, in the past or currently,

(i) causes, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of an opioid product,

(ii) for any fiscal year of the person, derives at least 10% of revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of opioid products by that person or by other persons,

(ii) in clause (g)

(A) by adding "active ingredient or" **after** "has manufactured an";

(B) in subclause (i) by adding "active ingredient or" **before** "opioid product";

(C) in subclause (ii) by adding "active ingredients or" **before** "opioid products";

(D) in subclauses (iii) and (iv) by adding "active ingredient or" **before** "opioid product" **wherever it occurs;**

(iii) in clause (h) by adding "or active ingredient" **after** "a drug" **wherever it occurs;**

(iv) in clause (j) by striking out "manufacturer or wholesaler" **wherever it occurs and substituting** "manufacturer, wholesaler or consultant";

(b) by repealing subsection (6) and substituting the following:

(6) For the purposes of determining the market share of a manufacturer for a type of opioid product sold in Alberta, the court must calculate the manufacturer's market share for the type of opioid product by the following formula:

mms = (mm / MM) x 100%

where

mms is the manufacturer's market share for the type of opioid product from the date of the earliest opioid-related wrong committed by that manufacturer to the date of trial;

mm is the quantity of the type of opioid product manufactured by the manufacturer that is distributed, sold or offered for sale within Alberta from the date of the earliest opioid-related wrong committed by that manufacturer to the date of trial;

(iii) engages in, or causes, directly or indirectly, other persons to engage in promoting an opioid product, or

(iv) is a trade association primarily engaged in

(A) advancing the interests of manufacturers,

(B) promoting an opioid product, or

(C) causing, directly or indirectly, other persons to engage in promoting an opioid product;

(h) "opioid product" means any product that contains

(i) a drug set out in the Schedule, or

(ii) a drug prescribed by regulation;

(j) "opioid-related wrong" means

(i) a tort that is committed in Alberta by a manufacturer or wholesaler and that causes or contributes to opioid-related disease, injury or illness, or

(ii) in an action under section 2(1), a breach, by a manufacturer or wholesaler, of a common law, equitable or statutory duty or obligation owed to persons in Alberta who have used or been exposed to or might use or be exposed to an opioid product;

(6) For the purposes of determining the market share of a defendant for a type of opioid product sold in Alberta, the court must calculate the defendant's market share for the type of opioid product by the following formula:

dms = (dm / MM) x 100%

where

dms is the defendant's market share for the type of opioid product from the date of the earliest opioid-related wrong committed by that defendant to the date of trial;

dm is the quantity of the type of opioid product manufactured or promoted by the defendant that is distributed or sold within Alberta from the date of the earliest opioid-related wrong committed by that defendant to the date of trial;

MM is the quantity of the type of opioid product manufactured by all manufacturers that is purchased or dispensed within Alberta for the purpose of providing health care benefits from the date of the earliest opioid-related wrong committed by the manufacturer to the date of trial.

(7) For the purposes of determining the market share of a wholesaler for a type of opioid product sold in Alberta, the court must calculate the wholesaler's market share for the type of opioid product by the following formula:

wms = (wm / WW) x 100%

where

wms is the wholesaler's market share for the type of opioid product from the date of the earliest opioid-related wrong committed by that wholesaler to the date of trial;

wm is the quantity of the type of opioid product that is distributed, sold or offered for sale by the wholesaler within Alberta from the date of the earliest opioid-related wrong committed by that wholesaler to the date of trial;

WW is the quantity of the type of opioid product that is distributed, sold or offered for sale within Alberta for the purpose of providing health care benefits from the date of the earliest opioid-related wrong committed by the wholesaler to the date of trial.

3 Section 2(1) is amended by striking out "manufacturer or wholesaler" **and substituting** "manufacturer, wholesaler or consultant".

4 Section 4(2) is amended by striking out "manufacturers or wholesalers" **wherever it occurs and substituting** "manufacturers, wholesalers or consultants".

MM *is the quantity of the type of opioid product manufactured or promoted by all manufacturers or wholesalers that is purchased or dispensed within Alberta for the purpose of providing health care benefits from the date of the earliest opioid-related wrong committed by the defendant to the date of trial.*

3 Section 2(1) presently reads:

2(1) The Crown has a direct and distinct action against a manufacturer or wholesaler to recover the cost of health care benefits caused or contributed to by an opioid-related wrong.

4 Section 4(2) presently reads:

(2) For the purposes of an action under section 2(1), 2 or more manufacturers or wholesalers, whether or not they are defendants in the action, are deemed to have jointly breached a duty or obligation described in section 1(1)(j) if

5 **Section 7(3)(e) is amended by striking out** "manufacturers or wholesalers" **and substituting** "manufacturers, wholesalers or consultants".

6 **The Schedule is amended by striking out** "a drug containing any of the following active ingredients" **and substituting** "any of the following drugs or active ingredients".

(a) one or more of those manufacturers or wholesalers are held to have breached the duty or obligation, and

(b) at common law, in equity or under an enactment, those manufacturers or wholesalers would be held

(i) to have conspired or acted in concert with respect to the breach,

(ii) to have acted in a principal and agent relationship with each other with respect to the breach, or

(iii) to be jointly or vicariously liable for the breach if damages would have been awarded to a person who suffered damages as a consequence of the breach.

5 Section 7(3)(e) presently reads:

(3) The court may consider the following in apportioning liability under subsection (2):

(e) the degree to which a defendant collaborated or acted in concert with other manufacturers or wholesalers in any conduct that caused, contributed to or aggravated the risk of disease, injury or illness;

6 The Schedule presently reads in part:

A product that contains a drug containing any of the following active ingredients is an opioid product for the purposes of this Act:

RECORD OF DEBATE

Stage	Date	Member	From	To

Interventions	From	To

Stage	Date	Member	From	To

Interventions	From	To

Stage	Date	Member	From	To

Interventions	From	To

Stage	Date	Member	From	To

Interventions	From	To

Stage	Date	Member	From	To

Interventions	From	To

Stage	Date	Member	From	To

Interventions	From	To