



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 410 (as reported without amendment)
Sponsor: Senator Jeff Irwin
Committee: Civil Rights, Judiciary, and Public Safety

CONTENT

The bill would amend Part 29 (Provisions Concerning Specific Actions) of the Revised Judicature Act to eliminate a drug manufacturer's or seller's immunity from product liability.

MCL 600.2946

BRIEF RATIONALE

According to testimony, Michigan is the only state that statutorily offers drug manufacturers a blanket defense for products liability. The immunity has prevented Michigan's residents and Attorney General (AG) from participating in national class action suits or filing complaints against pharmaceutical companies.¹ Some of the litigation against pharmaceutical companies has resulted in significant amounts of restitution for residents of other states. It has been suggested that Michigan's drug product liability immunity be deleted.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bill is a reintroduction of Senate Bill 961 from the 2021-2022 Legislative Session.

Legislative Analyst: Tyler P. VanHuyse

FISCAL IMPACT

The bill likely would have an indirect and indeterminate fiscal impact on the State and local governments as it would allow for high profile, high-dollar litigation for pharmaceutical products liability lawsuits against drug makers and sellers.

The AG could find several new avenues of litigation available for pharmaceutical products liability cases on behalf of the people of Michigan. Previous pharmaceutical products liability complaints filed by AGs have failed. In 2011, AG Mike Cox's lawsuit against Merck for \$20.0 million was dismissed under the immunity protection.² In 2020, a Circuit Court dismissed AG Dana Nessel's claims of negligence and public nuisance against opioid distributors, also under the immunity protection.³

Likewise, local governments, who previously failed in opioid-related lawsuits, would have a clearer path toward compensation by litigation. In 2020, claims made by Monroe County of negligence, public nuisance, unjust enrichment, fraud, and civil conspiracy related to the

¹ *AG v Merck Sharp & Dohme Corp*, 292 Mich App 1 (2011).

² *Id.*

³ *Mich. Ex rel. Nessel v Cardinal Health, Inc.*, 2020 Mich. Cir. LEXIS 1796.

fraudulent marketing of opioids were dismissed as products liability actions under the immunity protection.⁴

Although the bill would not create or spend revenue directly, indirect revenue for the State and local governments through litigation would be likely. The amounts of any such benefit cannot be accurately determined, but some broad projections are possible with available data. Over the last five years in Michigan, products liability cases represented an average of 0.62% of all civil complaints.⁵ After consideration of pre-pandemic statistics regarding civil case filings, this would mean roughly 250 products liability cases expected per year over the next several years statewide, of which an unknown handful could potentially be pharmaceutical products liability cases, should the bill be enacted. Potential judgement or settlement award amounts are indeterminate and would be based on the facts of each individual case. Nationwide, most pharmaceutical products liability cases allege off-label promotion and/or deceptive marketing.⁶

The most hidden economic impact could be deterrence. According to the Centers for Disease Control and Prevention, the combined cost to Michigan for opioid use disorder and overdose fatalities in 2017 was estimated at \$41.4 billion dollars (nationwide estimates at \$1.021 trillion).⁷ The bill, if enacted, would not apply ex post facto. Any past damages while the immunity provision was in effect could not be the basis for future claims; however, enactment of the bill could alter pharmaceutical marketing and prescribing practices in anticipation of future litigation. This fiscal impact cannot be determined.

Date Completed: 10-13-23

Fiscal Analyst: Michael Siracuse

⁴ *In re Nat'l Prescription Opiate Litig.*, 458 F. Supp. 3d 665 (2020).

⁵ "State Court Administrative Office: Interactive Court Data Dashboard",

<https://www.courts.michigan.gov/publications/statistics-and-reports/interactive-court-data-dashboard/>

⁶ Garber, Steven, *Economic Effects of Product Liability and Other Litigation Involving the Safety and Effectiveness of Pharmaceuticals*, available at:

<https://www.rand.org/pubs/monographs/MG1259.html>

⁷ Luo, Li, et al., *State-Level Economic Costs of Opioid Use Disorder and Fatal Opioid Overdose – United States 2017*, available at: <https://www.cdc.gov/mmwr/volumes/70/wr/mm7015a1.htm>

floor\sb410

Bill Analysis @ www.senate.michigan.gov/sfa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.