SENATE RECEDED FROM AMENDMENT

May 12, 2022

**H. 5182**

Introduced by Reps. Lucas, Fry, Hewitt, Bailey, Erickson, Dillard, Huggins, Wooten, Caskey, Ballentine, R. Williams and Jefferson

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Read the first time April 26, 2022.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “SOUTH CAROLINA OPIOID RECOVERY ACT” BY ADDING CHAPTER 50 TO TITLE 44 SO AS TO PROVIDE FOR PURPOSES OF THE ACT, PROVIDE DEFINITIONS, ESTABLISH THE SOUTH CAROLINA OPIOID RECOVERY FUND, ESTABLISH THE DISCRETIONARY SUBFUND, ESTABLISH THE GUARANTEED POLITICAL SUBDIVISION SUBFUND, ESTABLISH THE ADMINISTRATIVE SUBFUND, ESTABLISH THE SOUTH CAROLINA OPIOID RECOVERY FUND BOARD, PROVIDE THAT THE STATE FISCAL ACCOUNTABILITY AUTHORITY IS RESPONSIBLE FOR ADMINISTRATIVE OPERATIONS, PROVIDE FOR CERTAIN RESTRICTIONS ON BRINGING CERTAIN CLAIMS, AND TO PROVIDE THAT THIS ACT MUST BE LIBERALLY CONSTRUED.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 11 of the 1976 Code is amended by adding:

“CHAPTER 58

South Carolina Opioid Recovery Act

Section 11‑58‑10. (A) This act may be cited as the ‘South Carolina Opioid Recovery Act’.

(B) The purpose of this act is to ratify and implement the necessary terms of certain opioid‑related settlements entered into by the State of South Carolina and its participating political subdivisions by:

(1) creating the South Carolina Opioid Recovery Fund from which money will be distributed to help address and remediate opioid‑related issues;

(2) creating the South Carolina Opioid Recovery Fund Board to administer and distribute money in the South Carolina Opioid Recovery Fund; and

(3) barring future claims by state and local governmental entities against certain companies which have entered into opioid‑related settlements with the State of South Carolina.

Section 11‑58‑20. For purposes of this chapter:

(1) ‘Administrative Subfund’ means the subaccount or subaccounts with the State Treasurer created pursuant to this chapter where certain funds in the South Carolina Opioid Recovery Fund are expended by the South Carolina Opioid Recovery Fund Board and the State Fiscal Accountability Authority to pay for costs associated with administering this chapter.

(2) ‘Approved abatement strategies’ means those measures to address and remediate opioid‑related issues that are set forth in opioid‑related settlements between the State of South Carolina, its participating political subdivisions, and certain companies that market, promote, distribute, dispense, or supply opioids and incorporated herein.

(3) ‘Discretionary Subfund’ means the subaccount or subaccounts with the State Treasurer created pursuant to this chapter where certain funds in the South Carolina Opioid Recovery Fund are distributed by the South Carolina Opioid Recovery Fund Board in its discretion to qualified applicants for approved abatement strategies.

(4) ‘Guaranteed Political Subdivision Subfund’ means the subaccount or subaccounts with the State Treasurer created pursuant to this chapter where certain funds in the South Carolina Opioid Recovery Fund guaranteed to participating political subdivisions are distributed by the South Carolina Opioid Recovery Fund Board to qualified applicants for approved abatement strategies.

(5) ‘Participating political subdivision’ means those counties and municipalities that participated in certain opioid‑related settlements with the State of South Carolina.

(6) ‘South Carolina Opioid Recovery Fund’ means the account or accounts with the State Treasurer created pursuant to this chapter to receive funds obtained through settlement with or judgment against certain companies that market, promote, distribute, dispense, or supply opioids. These funds are not general fund revenue of the State and must be kept by the State Treasurer in a distinct and separate unbudgeted trust and agency fund apart from the general fund. These funds are to be administered pursuant to this chapter and expended only for the purposes provided in this chapter. For the avoidance of doubt, the Administrative Subfund, the Discretionary Subfund, and the Guaranteed Political Subdivision Subfund are part of the South Carolina Opioid Recovery Fund.

(7) ‘South Carolina Opioid Recovery Fund Board’ or ‘the board’ means the entity created pursuant to this chapter for the purpose of administering and distributing the funds within the South Carolina Opioid Recovery Fund.

Section 11‑58‑30. (A) The State Treasurer shall establish the South Carolina Opioid Recovery Fund. This fund must be held and maintained separately from all other funds, properties, assets, and accounts of the State and its other agencies.

(B) The South Carolina Opioid Recovery Fund shall receive money from certain opioid‑related settlements entered into by the State of South Carolina and its participating political subdivisions pursuant to the terms of an agreement between the Attorney General and the participating political subdivisions. The Attorney General and participating political subdivisions may direct funds from future opioid‑related settlements or judgments to the South Carolina Opioid Recovery Fund.

(C) All funds in the South Carolina Opioid Recovery Fund must be spent on approved abatement strategies, except that up to two percent of funds deposited into the South Carolina Opioid Recovery Fund pursuant to subsection (B) may be allocated by the South Carolina Opioid Recovery Fund Board to the Administrative Subfund for the purpose of administering this chapter.

(D) The State Auditor shall conduct an annual examination of the South Carolina Opioid Recovery Fund and provide a report of its findings to the South Carolina Opioid Recovery Fund Board and the State Fiscal Accountability Authority.

(E) The State Treasurer may invest funds held in the South Carolina Opioid Recovery Fund for the sole benefit of that fund.

(F) The State Inspector General may investigate and address allegations of fraud, waste, abuse, mismanagement, misconduct, violations of state or federal law, and wrongdoing relating to the South Carolina Opioid Recovery Fund. If any such allegations come to the attention of the board or its staff, immediate notice of the relevant facts must be transmitted to the State Inspector General.

Section 11‑58‑40. (A) The State Treasurer shall establish the Discretionary Subfund within the South Carolina Opioid Recovery Fund.

(B) The South Carolina Opioid Recovery Fund Board may authorize payments from the Discretionary Subfund to requesting entities, if all of the following requirements are met:

(1) the request complies with all application requirements set out by the board;

(2) the request is for an approved abatement strategy;

(3) sufficient funds to pay the request are in the Discretionary Subfund; and

(4) the request is, in the judgment and discretion of the board, an appropriate, reasonable, and merited use of funds to help address issues caused by opioids.

(C) The board may approve, deny, or defer any request. The board may establish criteria for evaluating competing requests for payments from the Discretionary Subfund. The board may, but is not required to, provide its grounds for denying a request for funds from the Discretionary Subfund.

(D) All decisions of the South Carolina Opioid Recovery Fund Board to authorize payment from the Discretionary Subfund are final and not subject to appeal or judicial review.

Section 11‑58‑50. (A) The State Treasurer shall establish the Guaranteed Political Subdivision Subfund within the South Carolina Opioid Recovery Fund.

(B) The South Carolina Opioid Recovery Fund Board shall authorize payments from the Guaranteed Political Subdivision Subfund to requesting entities, if all of the following requirements are met:

(1) the request complies with all application requirements set out by the board;

(2) the request is for an approved abatement strategy;

(3) the request is made by the governing body of a participating political subdivision or another entity with written authorization from the governing body of a participating political subdivision; and

(4) sufficient funds to pay the request are in the Guaranteed Political Subdivision Subfund and set aside for use by that participating political subdivision.

(C) If the board denies a request under this section, it promptly shall notify the participating political subdivision that requested or authorized the request for funds and provide its grounds for denying the request.

(D) Any legal challenge to a decision of the South Carolina Opioid Recovery Fund Board denying payment from the Guaranteed Political Subdivision Subfund must be brought as a declaratory judgment action in the court of common pleas in Richland County by the participating political subdivision directly.

Section 11‑58‑60. (A) The State Treasurer shall establish the Administrative Subfund within the South Carolina Opioid Recovery Fund.

(B) Funds allocated to the Administrative Subfund by the South Carolina Opioid Recovery Fund Board may be expended by the board and the State Fiscal Accountability Authority to pay for the costs associated with administering this chapter, in accordance with a budget adopted or amended pursuant to Section 11‑58‑80(E).

(C) The board may authorize the State Treasurer to transfer funds from the Administrative Subfund to the South Carolina Opioid Recovery Fund at any time.

Section 11‑58‑70. (A) The South Carolina Opioid Recovery Fund Board is hereby created as an independent, quasi‑governmental agency responsible for the purpose of managing the South Carolina Opioid Recovery Fund. The board is not an ‘agency’ or ‘state agency’ as defined in Chapter 23, Title 1.

(B) The South Carolina Opioid Recovery Fund Board shall be comprised of nine members, who shall be appointed as follows:

(1) the Governor shall appoint one member, who shall serve as chairperson;

(2) the President of the Senate shall appoint one member;

(3) the Speaker of the House of Representatives shall appoint one member;

(4) the Governor shall appoint three members, the Speaker one member, and the President of the Senate one member from a list provided by the South Carolina Association of Counties, with at least one member selected from each of the South Carolina public health regions as defined by the South Carolina Department of Health and Environmental Control; and

(5) the Governor shall appoint one member from a list provided by the Municipal Association of South Carolina.

The members appointed by the Governor, other than the chairperson, shall select one of themselves to serve as vice chairperson.

(C)(1) All members of the South Carolina opioid recovery fund board shall be academic, medical, licensed health, or other professionals with significant experience in opioid prevention, treatment, or intervention or who can represent the interest of the victims and families of victims of opioid overuse or misuse. Members of the board must not have been convicted of a felony or a crime of moral turpitude.

(2) In making appointments, race, gender, national origin, and other demographic factors should be considered by the appointing authority to ensure nondiscrimination to the greatest extent possible as to all segments of the population of the State.

(D) Members of the South Carolina Opioid Recovery Fund Board shall not be compensated for their services except as provided in Section 11‑58‑80(C).

(E) All members of the South Carolina Opioid Recovery Fund Board shall be appointed within thirty days of the board’s creation.

(F) The terms of appointment as a member of the South Carolina Opioid Recovery Fund Board shall be as follows:

(1) for the initial term of the chairperson and four of the members selected by the Governor from the list provided by the South Carolina Association of Counties, six years;

(2) for the initial term of all other members of the board, four years; and

(3) for all subsequent members of the board, four years.

All terms of members are deemed to commence on May first of the appointing year and expire on April thirtieth of the ending year.

Members of the board may continue to serve upon the expiration of their terms until either reappointed or a new appointment is made. Any vacancy on the board caused by the death, incapacity, or resignation of a member shall be filled for the unexpired term in the same manner as the original appointment.

(G) The South Carolina Opioid Recovery Fund Board shall hold at least four regular meetings each year, and the board may hold additional meetings as scheduled by the Chairperson or by request of at least five members. The board shall conduct its first meeting within sixty days of its creation or thirty days after all members have been appointed, whichever comes first. At that meeting, the board shall, at a minimum:

(1) allocate all funds in the South Carolina Opioid Recovery Fund to the Administrative Subfund, the Discretionary Subfund, and the Guaranteed Political Subdivision Subfund pursuant to the terms of an agreement between the Attorney General and the participating political subdivisions;

(2) develop and publish the process under which entities may apply for funds from the Discretionary Subfund or the Guaranteed Political Subdivision Subfund and, in the case of the Discretionary Subfund, the necessary qualifications of any applicants; and

(3) adopt bylaws that shall include, among other things, a conflicts of interest policy.

(H) All members of the South Carolina Opioid Recovery Fund Board shall be required to attend all meetings unless notice and justification for the absence is provided to the chairperson. Absences are subject to Section 1‑3‑245.

(I) The board shall have the power to adopt, promulgate, amend, and repeal regulations and bylaws. The board shall not enact regulations, bylaws, or other items that are inconsistent with the terms of any court order or opioid‑related settlement, or any agreement between the Attorney General and participating political subdivisions that pertains to any opioid‑related settlement.

(J) The South Carolina Opioid Recovery Fund Board shall prepare and publish, on or before July first of each year, an annual report of all funds spent from the South Carolina Opioid Recovery Fund.

(K) The South Carolina Opioid Recovery Fund Board is subject to the requirements of the Freedom of Information Act. In addition to the provisions of Section 30‑4‑70, the board may enter into executive session to receive legal advice or to address a potential conflict of interest by a member.

(L) The South Carolina Opioid Recovery Fund Board may obtain services in accordance with the procedures, guidelines, and criteria established by the board for that purpose and are not restricted by Chapter 35, Title 11 or any successor provision.

(M) Membership on the South Carolina Opioid Recovery Fund Board shall not constitute holding an ‘office’ for the purpose of the prohibition on dual office holding in Section 3, Article VI and Section 1A, Article XVII of the South Carolina Constitution, 1895.

(N) The State of South Carolina, its participating political subdivisions, the Office of Attorney General, the State Fiscal Accountability Authority, and the South Carolina Opioid Recovery Fund Board are not liable for a loss resulting from the performance of any duty related to the service of the members of the board.

(O) The South Carolina Opioid Recovery Fund Board shall remain in existence until all funds in the South Carolina Opioid Recovery Fund have been exhausted, no new funds are expected, and the board has satisfied all reporting obligations in any settlement that has provided funds to the South Carolina Opioid Recovery Fund.

(P) Before authorizing payments from the Discretionary Subfund to a requesting entity, the board may require that the entity has the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its ability to meet all requirements established by the board; a satisfactory record of performance; and a satisfactory record of integrity.

(Q) The board has the duty and authority to regulate the expenditure by requesting entities of authorized payments from the Discretionary Subfund to ensure authorized payments are used only for approved purposes, to facilitate accountability for their use, and to prevent fraud, waste, abuse, mismanagement, and misconduct.

(R) The board may enter assistance agreements with each requesting entity approved to receive authorized payments from the Discretionary Subfund. These agreements are enforceable. Without limitation, such agreements may impose restrictions on the appropriate use of payments and penalties for the misuse of such payments. In addition, such agreements may impose payment, purchasing, accounting, auditing, record keeping, performance and financial reporting, and compliance requirements. Without limitation, the application requirements adopted by the board may include the acceptance of such agreements by the requesting entity. The board may inspect, audit, and examine any requesting entity receiving authorized payments from the Discretionary Subfund.

(S) Without limitation, a participating political subdivision may, but is not required to, enter into an assistance agreement, as referenced in subsection (R), with any entity receiving payments from the Guaranteed Political Subdivision Subfund as a result of the entity having received written authorization from the governing body of the participating political subdivision to submit the request pursuant to Section 11‑58‑50(B)(1).

Section 11‑58‑80. (A) The State Fiscal Accountability Authority is solely responsible for all administrative operations of the South Carolina Opioid Recovery Fund Board. Administrative operations may include, but are not limited to, finance, human resources, procurement, clerical, and associated support services. The authority’s executive director shall employ and supervise personnel necessary to provide any required administrative operations. The authority’s executive director is authorized to pay for and receive from other state and local agencies and departments such services as will in his opinion promote the efficient and economical provision of administrative operations to the board. The authority will not provide legal services to the board or its staff. The board must retain ultimate responsibility and provide proper oversight for the implementation of this chapter.

(B) The State Fiscal Accountability Authority shall receive compensation for expenses incurred in providing administrative operations to the South Carolina Opioid Recovery Fund Board from the Administrative Subfund. With the approval of the board, staff of the authority shall enter into contracts and agreements on behalf of the board to implement this chapter. The Administrative Subfund may be used to satisfy any obligations of the board pursuant to such contracts and agreements.

(C) When attending meetings that require travel, members of the South Carolina Opioid Recovery Fund Board and staff assigned to the board by the authority or the Attorney General may receive the usual rate for mileage, subsistence, and per diem as provided by law for members of state boards, committees, and commissions and may be reimbursed for actual and necessary expenses incurred in connection with and as a result of their work as members of the board or support for the members of the board. The board, within the limits set by the Comptroller General, shall establish reimbursement standards for travel and other expenses incurred in aid of the board’s official duties. Compensation and reimbursements paid under this subsection shall be paid from the Administrative Subfund.

(D) The Attorney General shall designate an attorney within the Office of Attorney General to attend all South Carolina Opioid Recovery Fund Board meetings, to provide all necessary legal services to the board, to ensure that funds within the South Carolina Opioid Recovery Fund are spent only on approved abatement strategies, and to ensure that the board complies with all applicable laws, settlement agreements, and court orders.

(E) The South Carolina Opioid Recovery Fund Board shall prepare and publish an annual budget for administrative costs and expenses and publish an annual report of these expenditures. The annual budget may be amended as necessary.

(F) The South Carolina Opioid Recovery Fund Board shall be considered ‘qualified personnel for the purpose of bona fide research or education’ for the purpose of Section 44‑53‑1650, and the Department of Health and Environmental Control shall enter into a written agreement with the board to enable the sharing of prescription information with appropriate redactions.

Section 11‑58‑90. (A) To the extent the Attorney General has entered into a settlement with, or obtained a judgment against, a company or individual that markets, promotes, distributes, dispenses, or supplies opioids settling or adjudicating claims arising out of such conduct, and an agreement has been reached between the Attorney General and participating political subdivisions regarding the disposition of funds obtained through such settlement or judgment, no claims released by the Attorney General or participating political subdivisions or adjudicated by a court of competent jurisdiction may be brought against that company or individual by any of the following entities:

(1) a state agency;

(2) a political subdivision including, but not limited to, counties and municipalities;

(3) a school district;

(4) a health district;

(5) a hospital district;

(6) a fire district; or

(7) a library district.

(B) This section shall not infringe upon the power of the Attorney General or any participating political subdivision to enforce the terms of any such settlement agreement or judgment.

Section 11‑58‑100. This act and all powers granted by this chapter must be liberally construed to effectuate its intent and their purposes, without implied limitations on them. This chapter constitutes full and complete authority for all things herein contemplated to be done. All rights and powers granted in this chapter shall be as cumulative with those derived from other sources and shall not, except as expressly stated in this chapter, be construed in limitation thereof. Insofar as the provisions of this chapter are inconsistent with the provisions of any other act, general or special, the provisions of this chapter are controlling. If any clause, sentence, paragraph, section, or part of this chapter be adjudged by any court of competent jurisdiction to be invalid, this judgment shall not affect, impair, or invalidate the remainder of this chapter but is confined in its operation to the clause, sentence, paragraph, section, or part of the chapter directly involved in the controversy in which the judgment shall have been rendered.”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, then such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. This act takes effect upon approval by the Governor.

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