

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 258

BY SENATORS BALDWIN, BEACH, CAPUTO, IHLENFELD,
JEFFRIES, LINDSAY, PLYMALE, ROMANO, STOLLINGS, AND
WOELFEL

[Introduced February 12, 2021; referred
to the Committee on Health and Human Resources;
and then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §11-29-1, §11-29-2, §11-29-3, §11-29-4, §11-29-5, §11-29-6, §11-29-7, and
 3 §11-29-8, all relating to taxation of prescription opioids; imposing a tax on wholesale
 4 opioid distributors and mail-order pharmacies; establishing a license to distribute or
 5 dispense opioids; creating criminal penalties for distributing or dispensing opioids without
 6 a license and for failing to remit tax as required; authorizing the Department of Revenue
 7 to administer the tax; creating an Addiction and Neonatal Addiction Care Fund as a
 8 special revenue account and establishing the purposes for which the funds may be
 9 used; creating an Opioid Drug Taskforce Fund as a special revenue account and
 10 establishing the purposes for which the funds may be used; creating a Drug Courts Fund
 11 as a special revenue account and establishing the purposes for which the funds may be
 12 used; and creating an Opioid Education Fund as a special revenue account and
 13 establishing the purposes for which the funds may be used.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. TAXATION OF PRESCRIPTION OPIOIDS.

§11-29-1. Definitions.

1 As used in this article:
 2 “Administer” has the same meaning as in §30-5-4 of this code;
 3 “Commissioner” means the Tax Commissioner of the State of West Virginia or his or her
 4 designee;
 5 “Department” means the Department of Revenue;
 6 “Dispense” has the same meaning as in §30-5-4 of this code;
 7 “Distribute” has the same meaning as §30-5-4 of this code;
 8 “Dose” means a single pill, capsule, ampule, liquid, or other form of administration
 9 available as a single unit;
 10 “Mail order pharmacy” means any person that dispenses prescription drugs by mail or

11 carrier to a patient who resides in this state;

12 “Manufacturer” has the same meaning as §30-5-4 of this code;

13 “Person” has the same meaning as in §11-10-4 of this code;

14 “Pharmacy” has the same meaning as §30-5-4 of this code;

15 “Practitioner” has the same meaning as §30-5-4 of this code;

16 “Prescription drug” has the same meaning as §30-5-4 of this code;

17 “Repackager” has the same meaning as in §30-5-4 of this code;

18 “Sale” means the disposal of a prescription drug to another person for consideration or in
19 furtherance of commercial distribution;

20 “Opioid” means opium, an opiate, or any salt, compound, derivative, or preparation
21 thereof;

22 “Taxpayer” has the same meaning as in §11-10-4 of this code; and

23 “Wholesale opioid distributor” means any person who is engaged in the distribution of
24 opioids; and involved in the actual, constructive, or attempted transfer of opioids in this state,
25 primarily other than to the ultimate consumer. “Wholesale opioid distributor” includes, but is not
26 limited to, any of the following that are engaged in the distribution of opioids in this state, with
27 facilities located in this state or in any other state or jurisdiction:

28 (1) Wholesalers;

29 (2) Repackagers; and

30 (3) Manufacturers.

31 “Wholesale opioid distributor” does not include any common carrier or person hired
32 solely to transport prescription drugs.

**§11-29-2. Imposition of tax on wholesale opioid distributors and all mail order
pharmacies.**

1 (a) Effective January 1, 2022, a tax shall be imposed upon all wholesale opioid
2 distributors and all mail order pharmacies at the rate of one cent (\$0.01) per dose distributed or

3 dispensed to persons located in this state.

4 (b) The tax revenues shall be appropriated in the following manner:

5 (1) Sixty percent shall be appropriated to the addiction and neonatal addiction care fund
6 established in §11-29-5 of this code;

7 (2) Fifteen percent shall be appropriated to the opioid drug taskforce fund established in
8 §11-29-6 of this code;

9 (3) Fifteen percent shall be appropriated to the drug courts fund established in §11-29-7
10 of this code; and

11 (4) Ten percent shall be appropriated to the opioid education fund established in §11-29-
12 8 of this code.

13 (c) On or before the 20th day of the month following the month in which any opioids are
14 sold, the wholesale opioid distributor or mail order pharmacy shall file with the department a tax
15 return in such form as the department may require and remit the amount of the tax due. A tax
16 return is required for each month even though there may be no tax liability.

§11-29-3. License to distribute or dispense opioids.

1 (a) Beginning January 1, 2022, wholesale opioid distributors or mail order pharmacies
2 may not distribute or dispense opioids to persons located in this state without a valid and current
3 license as provided in this section.

4 (b) Every wholesale opioid distributor and mail order pharmacy shall, prior to January 1,
5 2022, and annually before each January 1 thereafter, file an application for a license in such
6 form as the department may prescribe. Every application shall be accompanied by a licensing
7 fee of \$500 and shall be signed by:

8 (1) The owner, if a natural person;

9 (2) A member or partner, if the person is an association, limited liability company, limited
10 liability partnership, or partnership;

11 (3) An executive officer, if the person is a corporation, or some person specifically

12 authorized by the corporation to sign the application, to which shall be attached written evidence
13 of his or her authority; or

14 (4) A licensed certified public accountant, or an attorney licensed to practice law in this
15 state, acting on behalf of the person.

16 (c) If any wholesale opioid distributor or mail order pharmacy fails to comply with any
17 provisions of §11-29-1, §11-29-2, §11-29-3, and §11-29-4 of this code or any administrative rule
18 promulgated by the department relating thereto, the department may order the revocation of the
19 license held by the taxpayer.

20 (d) Any person, including any officer of a corporation, who distributes or dispenses
21 opioids to persons located in this state without obtaining a license or after a license has been
22 suspended or revoked, is guilty of a misdemeanor and, upon conviction thereof, shall be fined
23 not less than \$500. The distribution of each dose of any opioid shall be considered a separate
24 violation for the purpose of this penalty. This penalty shall be in addition to the civil penalties
25 provided by §11-29-4 of this code.

26 (e) (1) The department may, by legislative rule promulgated in accordance with §29A-3-1
27 et seq. of this code, require any person requesting a license or holding a license under this
28 section to supply such information concerning his business, sales, or any privilege exercised, as
29 is deemed reasonably necessary for the regulation of the licensees, and to protect the revenues
30 of the state.

31 (2) The failure on the part of the applicant or licensee to comply with §11-29-1, §11-29-2,
32 §11-29-3, and §11-29-4 of this code or any administrative regulations promulgated thereunder
33 shall be grounds for the denial or revocation of any license issued by the department, after due
34 notice and a hearing by the department.

35 (3) The commissioner may assign a time and place for the hearing and may appoint a
36 conferee who shall conduct a hearing, receive evidence, and hear arguments.

37 (4) The conferee shall thereupon file a report with the commissioner together with a

38 recommendation as to the denial or revocation of the license.

39 (5) From any denial or revocation made by the commissioner on the report, the licensee
40 may appeal to the West Virginia Office of Tax Appeals as provided by §11-10A-9 of this code.

41 (6) Any person whose license has been revoked for the willful violation of any provision
42 of §11-29-1, §11-29-2, §11-29-3, and §11-29-4 of this code or any administrative rule
43 promulgated thereunder is not entitled to any license provided for in this section, or have any
44 interest in any license, either disclosed or undisclosed, either as an individual, partnership,
45 corporation, or otherwise, for a period of two years after the revocation.

46 (f) No license issued pursuant to this section shall be transferable or negotiable, except
47 that a license may be transferred between an individual and a corporation, if that individual is
48 the exclusive owner of that corporation, or between a subsidiary corporation and its parent
49 corporation.

50 (g)(1) Every wholesale opioid distributor and mail order pharmacy distributing or
51 dispensing opioids in this state shall keep written records of all shipments of opioids to persons
52 within this state and shall submit to the department monthly reports of such shipments.

53 (2) All books, records, invoices, and documents required by this section shall be
54 preserved in a form prescribed by the department for not less than six years from the making of
55 the records unless the department authorizes, in writing, the destruction of the records.

56 (h) Any license issued by the department under this section may not be construed to
57 waive or condone any violation that occurred or may have occurred prior to the issuance of the
58 license and shall not prevent subsequent proceedings against the licensee.

§11-29-4. Authority of department to administer article.

1 (a) The department shall administer the provisions of this article and shall have all the
2 powers, rights, duties, and authority with respect to promulgation of administrative rules,
3 assessment, collection, refunding, and administration of the taxes levied by §11-29-2 of this
4 code conferred generally on it by this chapter.

5 (b) (1) As soon as practicable after each return is received, the department shall
6 examine and audit it. If the amount of tax computed by the department is greater than the
7 amount returned by the taxpayer, the excess shall be assessed within four years from the date
8 the return was filed, except:

9 (A) As provided in subsection (e) of this section; and

10 (B) In the case of a failure to file a return or of a fraudulent return, the excess may be
11 assessed at any time.

12 (2) A notice of such assessment shall be mailed to the taxpayer.

13 (3) The time for filing a return may be extended by agreement between the taxpayer and
14 the department.

15 (c) For the purpose of subsections (a) and (e) of this section, a return filed before the last
16 day prescribed by law for filing the return shall be considered as filed on the last day.

17 (d) Any final ruling, order, or determination of the department with regard to the
18 administration of this chapter may be reviewed only in the manner provided in §11-10A-1 et seq.
19 of this code.

20 (e) In the case of a return where the taxpayer underpays the tax due by 25 percent or
21 more, the remainder shall be assessed by the department within six years from the date the
22 return was filed.

23 (f) Any person who violates any of the provisions of this article shall be subject to the
24 uniform civil penalties imposed pursuant to §11-9-1 et seq. of this code.

25 (g) Any tax not paid on or before the due date shall bear interest at the tax interest rate
26 as provided by §11-10-1 et seq. of this code from the date due until paid.

27 (h) (1) Notwithstanding any other provisions of this chapter to the contrary, the president,
28 vice president, secretary, treasurer, or any other person holding any equivalent corporate office
29 of any corporation subject to the provisions of this chapter shall be personally and individually
30 liable, both jointly and severally, for the taxes imposed under §11-29-2 of this code.

31 (2) Neither the corporate dissolution nor withdrawal of the corporation from the state nor
32 the cessation of holding any corporate office shall discharge the foregoing liability of any person.

33 (3) The personal and individual liability shall apply to each and every person holding the
34 corporate office at the time the taxes become or became due. No person will be personally and
35 individually liable pursuant to this section who had no authority in the management of the
36 business or financial affairs of the corporation at the time that the taxes imposed by this chapter
37 become or became due.

38 (i) (1) Notwithstanding any other provisions of this chapter, §31B-3-303 or §47B-3-6 of
39 this code, the managers of a limited liability company, the partners of a limited liability
40 partnership, and the general partners of a limited liability limited partnership, or any other person
41 holding any equivalent office of a limited liability company, limited liability partnership, or limited
42 liability, limited partnership subject to the provisions of this chapter shall be personally and
43 individually liable, both jointly and severally, for the taxes imposed under this chapter.

44 (2) Dissolution or withdrawal of the limited liability company, limited liability partnership,
45 or limited liability, limited partnership from the state, or the cessation of holding any office may
46 not discharge the liability of any person.

47 (3) The personal and individual liability shall apply to each and every manager of a
48 limited liability company, partner of a limited liability partnership, and the general partners of a
49 limited liability limited partnership at the time the taxes become or became due. No person shall
50 be personally and individually liable under this subsection who had no authority to collect,
51 truthfully account for, or pay over any tax imposed by this chapter at the time that the taxes
52 imposed by this chapter become or became due.

53 (i) Any taxpayer who fails to file required returns or remit the tax due under §11-29-1,
54 §11-29-2, §11-29-3, and §11-29-4 of this code or who falsifies or alters a certificate or other
55 form required under §11-29-3 of this code is guilty of a misdemeanor and, upon conviction
56 thereof, shall be fined not more than \$500 or confined in jail not more than one year, or both

57 fined and confined. This penalty shall be in addition to the civil penalties provided by this
58 section.

59 (k) "Taxes," as used in this section, shall include interest accrued at the rate provided by
60 subsection (g) of this section, all applicable penalties imposed under §11-29-1, §11-29-2, §11-
61 29-3, and §11-29-4 of this code, and all applicable penalties and fees imposed under §11-10-1
62 et seq. of this code.

§11-29-5. Addiction and Neonatal Addiction Care Fund.

1 (a) The Addiction and Neonatal Addiction Care Fund is hereby created in the State
2 Treasury as a special revenue account. The fund shall be administered by the Secretary of the
3 Department of Health and Human Resources and shall consist of moneys received from the tax
4 imposed by §11-29-2 of this code, and grants, bequests or transfers from any source, any
5 moneys that may be appropriated and designated for those purposes by the Legislature and all
6 interest or other return earned from investment of the fund, gifts, and all other sums available for
7 deposit to the special revenue account from any source, public or private.

8 (b) Expenditures from the fund shall be for the purposes set forth in this section and are
9 not authorized from collections but are to be made only in accordance with appropriation by the
10 Legislature and in accordance with the provisions of §12-3-1 et seq. of this code and upon the
11 fulfillment of the provisions set forth in §11B-2-1 et seq. of this code.

12 (c) Amounts deposited in the fund shall be used only for the following purposes:

13 (1) Programs authorized and operating pursuant to chapter 16 of this code that employ
14 evidence-based behavioral health treatment or medically assisted treatment for inmates with
15 opioid addiction or other substance abuse disorders;

16 (2) Supplemental grant funding to community mental health centers that employ
17 evidence-based behavioral health treatment or medically assisted treatment for the purpose of
18 offering additional substance abuse treatment resources through programs; and

19 (3) Supplemental grant funding to community substance abuse treatment providers,

20 including local health departments that employ evidence-based behavioral health treatment or
21 medically assisted treatment to offer treatment services to pregnant women or children with
22 neonatal abstinence syndrome.

23 (d) Any moneys remaining in the fund at the close of a fiscal year shall be carried
24 forward for use in the next fiscal year.

25 (e) Any interest earnings of the fund shall become a part of the fund and may not lapse.

26 (f) Moneys deposited in the fund are hereby appropriated for the purposes set forth in
27 this section and may not be appropriated or transferred by the Legislature for any other
28 purposes.

§11-29-6. Opioid Drug Task Force Fund.

1 (a) The Opioid Drug Task Force Fund is hereby created in the State Treasury as a
2 special revenue account. The fund shall be administered by the Secretary of the Department of
3 Military Affairs and Public Safety and shall consist of moneys received from the tax imposed by
4 §11-29-2 of this code, and grants, bequests or transfers from any source, any moneys that may
5 be appropriated and designated for those purposes by the Legislature and all interest or other
6 return earned from investment of the fund, gifts, and all other sums available for deposit to the
7 special revenue account from any source, public or private.

8 (b) Expenditures from the fund shall be for the purposes set forth in this section and are
9 not authorized from collections but are to be made only in accordance with appropriation by the
10 Legislature and in accordance with the provisions of §12-3-1 et seq. of this code and upon the
11 fulfillment of the provisions set forth in §11B-2-1 et seq. of this code.

12 (c) Amounts deposited in the fund shall be used only for the purpose of assisting the
13 West Virginia State Police and local law-enforcement agencies in creating and maintaining drug
14 task forces to combat opioid abuse and other related resources.

15 (d) Any moneys remaining in the fund at the close of a fiscal year shall be carried
16 forward for use in the next fiscal year.

17 (e) Any interest earnings of the fund shall become a part of the fund and may not lapse.

18 (f) Moneys deposited in the fund are hereby appropriated for the purposes set forth in
19 this section and may not be appropriated or transferred by the Legislature for any other
20 purposes.

§11-29-7. Drug Courts Fund.

1 (a) The Drug Courts Fund is hereby created in the State Treasury as a special revenue
2 account. The fund shall be administered by the administrative office of the Supreme Court of
3 Appeals and shall consist of moneys received from the tax imposed by §11-29-2 of this code,
4 and grants, bequests or transfers from any source, any moneys that may be appropriated and
5 designated for those purposes by the Legislature and all interest or other return earned from
6 investment of the fund, gifts, and all other sums available for deposit to the special revenue
7 account from any source, public or private.

8 (b) Expenditures from the fund shall be for the purposes set forth in this section and are
9 not authorized from collections but are to be made only in accordance with appropriation by the
10 Legislature and in accordance with the provisions of §12-3-1 et seq. of this code and upon the
11 fulfillment of the provisions set forth in §11B-2-1 et seq. of this code.

12 (c) Amounts deposited in the fund shall be used only for the purpose of establishing and
13 maintaining eligible drug court programs authorized by §62-15-1 et seq. of this code.

14 (d) Any moneys remaining in the fund at the close of a fiscal year shall be carried
15 forward for use in the next fiscal year.

16 (e) Any interest earnings of the fund shall become a part of the fund and may not lapse.

17 (f) Moneys deposited in the fund are hereby appropriated for the purposes set forth in
18 this section and may not be appropriated or transferred by the Legislature for any other
19 purposes.

§11-29-8. Opioid Education Fund.

1 (a) The Opioid Education Fund is hereby created in the State Treasury as a special

2 revenue account. The fund shall be administered by the Secretary of the Department of Health
3 and Human Resources and shall consist of moneys received from the tax imposed by §11-29-2
4 of this code, and grants, bequests or transfers from any source, any moneys that may be
5 appropriated and designated for those purposes by the Legislature and all interest or other
6 return earned from investment of the fund, gifts, and all other sums available for deposit to the
7 special revenue account from any source, public or private.

8 (b) Expenditures from the fund shall be for the purposes set forth in this section and are
9 not authorized from collections but are to be made only in accordance with appropriation by the
10 Legislature and in accordance with the provisions of §12-3-1 et seq. of this code and upon the
11 fulfillment of the provisions set forth in §11B-2-1 et seq. of this code.

12 (c) Amounts deposited in the fund shall be used only for the purpose of providing drug-
13 related education and programming through local health departments.

14 (d) Any moneys remaining in the fund at the close of a fiscal year shall be carried
15 forward for use in the next fiscal year.

16 (e) Any interest earnings of the fund shall become a part of the fund and may not lapse.

17 (f) Moneys deposited in the fund are hereby appropriated for the purposes set forth in
18 this section and may not be appropriated or transferred by the Legislature for any other
19 purposes.

NOTE: The purpose of this bill is to authorize taxation of prescription opioids.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.