Legislative Analysis

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REMOVE EXEMPTION OF FDA-APPROVED DRUGS FROM PRODUCT LIABILITY

Senate Bill 410 as passed by the Senate
Sponsor: Sen. Jeff Irwin
House Committee: Judiciary
Senate Committee: Civil Rights, Judiciary, and Public Safety
Complete to 10-24-23

SUMMARY:

Senate Bill 410 would amend the Revised Judicature Act to eliminate a provision that currently makes the manufacturer or seller of a drug immune from product liability if all of the following are met:

- The drug was approved by the federal Food and Drug Administration (FDA).
- The manufacturer or seller did not fraudulently obtain the approval by bribing someone or withholding or misrepresenting information.
- The drug and its labeling complied with the approval.
- The approval was not withdrawn.

MCL 600.2946

FISCAL IMPACT:

Senate Bill 410 would have an indeterminate fiscal impact on local court systems. The impact would depend on the degree to which court caseloads increased, as well the associated administrative costs. Currently, it is not possible for a suit to be brought against a drug manufacturer for injury caused by a drug if the drug is approved by the FDA. The state's drug immunity law has prevented residents and the attorney general from participating in national class action suits and from filing complaints against pharmaceutical companies. Under the bill, legal recourse would be an option. Plaintiffs would be able to pursue recovering damages if faulty drugs lead to injuries or death. It is difficult to project the actual fiscal impact to courts due to variables such as judicial discretion and the complexity of cases, but an increase in court caseloads could be significant.

The bill also may result in revenue increases to the state and local governments from lawsuit settlement proceeds, depending on any litigation that ensues from the bill's removal of product liability protections and associated court judgments.

By removing the product liability protections, the bill would provide the state and local governments new legal approaches to pursue pharmaceutical and opioid-related lawsuits against pharmaceutical manufacturers. Drug-related settlements can reach large sums due to the size of the pharmaceutical market and the number of individuals affected by it. The use of settlement proceeds would be dependent on individual case settlement agreements and the efficacy of political enforcement of the agreements. Drug settlement agreements often require proceeds to be spent on services to support individuals affected by defective or dangerous drugs, prevention services, and litigation costs.

The bill may increase consumer protection litigation caseloads for the Department of the Attorney General and local prosecutors, resulting in the potential need for additional attorneys, support staff, and compensation costs. Annual state costs for an additional attorney FTE position are approximately $200,000, and annual costs for a support staff position are approximately $100,000.

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